

(1925) 10 MAD CK 0018
In the Madras High Court

Sagi Venkatasubbayya

APPELLANT

Vs

Sagi Kotamma and Others

RESPONDENT

Date of Decision : 12-10-1925

Acts Referred:

Citation : 95 Ind. Cas. 222 : (1926) 50 MLJ 369

Hon'ble Judges : Ramesam, J

Bench : Division Bench

Judgement

Ramesam, J.—The facts of this second appeal may be briefly stated as follows:
The following pedigree shows the relationship of the parties:

Venkambhotlu

Sankayya Kamayya.

Atchayya

(d)M Viswanadhan, Sarabhaiah (died Appiah adopted

Kotamma D.1 before Atchayya) to Atcha yya in

D,2 M 1870. d, 1876,

Veukamma (d).

Peramma Rangamma Appayya (d)

D, 3. D. 4, M

Sitamma.

2. When Atchayya died in 1867 he left his widow Kotamma (2nd defendant) and two daughters, the 3rd and 4th defendants. In 1870 the widow

Kotamma adopted Appiah the youngest brother of 1st defendant. This Appiah died in 1876 leaving a widow Sitamma. The family possessed

about 160 acres of land. Sitamma was allotted 16 acres of land in Miriyala for her maintenance. The 2nd defendant was also given a definite plot of 18 acres and 17 cents in Voppicherla village for her life (as admitted by her in her deposition) for her maintenance. (vide paragraph 4 of the District judge's judgment where the plaintiff's version on this point was found true). According to the finding of the Courts below when Atchayya died the family was undivided. This is a finding of fact which I must accept and which has not been questioned before me. But for some reason the names of the 2nd defendant and her daughter-in-law Sitamma were also entered in the patta relating to the family lands along with that of the 1st defendant. In 1908, Ex. V, dated 18th July, 1908, was executed by the 1st and 2nd defendants in favour of a stranger in which they agreed to sell one of the family lands, obviously the vendee insisted on the 2nd defendant joining in the agreement because the patta stood in her name also. A suit for specific performance of this agreement was filed in the District Munsif's Court of Narasa-raopet (O.S. No. 580 of 1911). The present defendants 1 and 2 were also defendants 1 and 2 in that suit and Ex. V was then Ex. B. The 1st defendant did not contest the suit but the 2nd defendant stated that she was willing to carry out the terms of the agreement if half of the sale price was paid to her. If the family was undivided the property wholly belonged to the 1st defendant and the 2nd defendant was not entitled to any portion of the consideration. Apparently, taking advantage of the fact that she was also a party to the agreement she put forward a claim for half of the consideration and thus obstructed the completion of that transaction. The District Munsif dismissed the suit on the 26th August, 1911. The same pleader appeared for the 1st and 2nd defendants. Within three months after the dismissal of the suit, that is, on 16th November, 1911, the 1st defendant executed Ex. I in favour of the 2nd defendant giving 48 acres of land including the 18 acres 17 cents already allotted. Two days before the execution of Ex. I the land in respect of which the agreement was executed and the suit for specific performance was filed was sold to the vendee under Ex. VI, dated 14th November, 1911, and on the same date as the sale deed (Ex. I), Ex. VII was executed by the 2nd defendant in favour of the 1st defendant by which the patta was agreed to be transferred entirely in favour of the 1st defendant. The District Judge has found that these three documents I, VI and VII came

into existence and were executed at the same time, by which he apparently meant to say that they are all parts of one transaction. I agree. The

District Judge also found that at that time the question whether Atchayya died undivided or not was not free from doubt though now a finding is

given that he died undivided. Though the undivided status of the family at the time of Atchayya's death must have been known to all the parties

concerned still it is also clear that, in 1911, if the 2nd defendant and her daughter-in-law Sitamma chose to dispute it, the 1st defendant was not in

a position to establish the joint status beyond all doubt. This is what the District Judge must have meant when he said ""The question as regards the

status of Atchayya was not however free from doubt."" The District Judge finally winds up paragraph 9 of his judgment by saying: ""Those two

namely (1) giving up her right to half the sale proceeds, and (2) admitting that Atchayya was joint with the 1st defendant, formed the consideration

for the execution of Ex. I in her favour."" (He had previously found all the other pleas of the 2nd defendant as the motive for Ex. I not true). The

second part of the sentence I accept unreservedly, that is, I have no doubt that, in 1911, the 2nd defendant set up a case that her husband

Atchayya died divided and therefore the 1st defendant and his adopted son the plaintiff were not entitled to more than a half share of the family

property. So far I am of opinion that the view taken by the Lower Court is correct. But what does this amount to? If the family was not undivided

but was divided, when Atchayya died the property would descend to his adopted son Appiah and, when he died in 1876, the half share would

descend to his widow Sitamma and Sitamma would be entitled to a half share of the whole of the family property in 1911 and 2nd defendant

would still be a maintenance holder out of the half share. So that the dispute raised by the 2nd defendant in 1911 amounts to putting forward the

title of Sitamma to half of the share in the property and not to put forward a claim in her own behalf, for, I do not think in 1911 there would have

been anybody so ignorant of Hindu Law in the country that one could plausibly suggest that the mother of a last male owner was entitled to

succeed in preference to the widow. If there is any foolish person who could put forward such a claim there is no foolish person who can admit

such a claim. So that, what happened in 1911 was this. Kotamma threatened the 1st defendant by putting forward the case that Atchayya died

divided and therefore her daughter-in-law Sitamma was entitled to half the property, not that she was herself entitled to any portion of the property. This was done behind the back of Sitamma. If this is the claim that was put forward in 1911 she could not have put forward any title to half of the sale proceeds of the land agreed to be sold in 1908. Any claim to the sale proceeds on the ground that her name was included in the patta was illusory, especially when, as to half the family property, a claim was simultaneously put forward on behalf of the daughter-in-law. I am therefore satisfied that the substantial dispute raised in 1911 was only a doubt about the joint status of the family (as found by the Courts below) resulting in the putting forward of a title to half of the property in Sitamma but did not and could not legally include a claim to half share of the sale proceeds on the ground of a possible title in 2nd defendant. The 1st defendant was therefore interested in shutting the mouth of the 2nd defendant. The situation then was that the daughter-in-law herself did not put forward her title to a half share of the property, but another person, the mother-in-law, raised a cloud over the 1st defendant's title by suggesting that the daughter-in-law was entitled to half the property. If both the mother-in-law and daughter-in-law raised the dispute, a compromise would have been perfectly binding. But then the compromise which would then have been effected would be entirely unlike the compromise effected under Ex. I. Under Ex. I nothing was allotted to Sitamma. but all the 48 acres were given to the 2nd defendant. If Sitamma herself had put forward the claim she would have got the substantial bulk of the property surrendered by the 1st defendant as the price of peace and the 2nd defendant would have either got nothing or a very small addition to her allotment for maintenance. It is obvious therefore that what has happened is this. The 1st defendant closed the mouth of the 2nd defendant by bribing her by executing Ex. I behind the back of Sitamma whose name was used by the 2nd defendant as a Damocles' sword to threaten the 1st defendant and to induce him to execute Ex. I as a price of peace. On these facts, does Ex. 1 come within the scope of the rule of law which protects bona fide family settlements in compromise of doubtful claims or disputes and declares them to be valid, a rule of law not questioned before me by " both the parties? Mr. Venkatarama Aiyar for appellant contends that the suit transaction does not come under the protection of that rule.

3. In *Miles v. New Zealand Alford Estate Company* (1886) 32 CHD 266 Fry, L.J., says: "I do not think the policy of the Court is to prevent real

bona fide compromises of real and bona fide claims When there is a pending action it is easy to suppose that the giving up of that action is the

consideration for the compromise Again, when there is real cause of action slight evidence of the claim being made may be admissible." Those

sentences imply that the claims set up must be that of the person who is getting the benefit under the compromise. His Lordship then proceeds to

say: "Now, in the present case, was there any real cause of action or any evidence on the part of the company that there was no cause of action.

After discussing the evidence he says, "But was there any claim by a shareholder? It is not suggested that any share-holder has been advised to

make any claim, or, except the angry words that passed at the meeting, that he had ever asserted a claim." I think these remarks of Fry, L.J., are

applicable to the present case. Here, the title set up is of a person who does not put it forward. Sitamma never put forward any title. The same

idea is implied in the language of Cockburn, C.J. in *Callisher v. Bischoff Sheim* (1870) 5QB 449 He says: "The authorities clearly establish that if

an agreement is made to compromise a disputed claim, forbearance to sue in respect of that claim is a good consideration; and whether

proceedings to enforce the disputed claim have or have not been instituted makes no difference.

4. Every day a compromise is effected on the ground that the party making it has a chance of succeeding in it, and if he bona fide believes he has a

fair chance of success, he has a reasonable ground for suing, and his forbearance to sue will constitute a good consideration. When such a person

forbears to sue he gives up what he believes to be a right of action, and the other party gets an advantage, and, instead of being annoyed with an

action, he escapes from the vexatious incident to it." In *Shyam Lal v. Rameswari* (1915) 23 CLJ 82 the Court observed at page 95 "In some of the

cases, the compromise was based on the assumption that there was an antecedent title of some kind in the parties, and the compromise merely

acknowledged and defined what that title was." In the present case that antecedent title is not in Kotamma but in Sitamma who had no knowledge

of the compromise. At page 97 it is observed: "It is contended, that it was a family settlement, but a family settlement presupposes that there are

bona fide claims on either side and an honest settlement after full disclosure of facts on either side. Here one party secretly and fraudulently obtained probate of a will and when the other party wanted to have it revoked, the former agreed to pay a larger annuity, and obtained an admission of the genuineness of the will which might be used against the reversioners. We do not think that in these circumstances the principle of family settlements applies." In the present case there is no claim on the part of one of the parties to the compromise who merely set up the title of a third person and the settlement was made secretly without the knowledge of the person. If all the three were parties, it would have been regarded a family settlement. A settlement made for the purpose of getting rid of a certain title set up without the knowledge of that person and without resulting in any benefit to that person cannot be regarded as a settlement of that claim. The language used in some of the other cases cited before me (*Krishna Chandra Dutta Roy v. Hemaja Sankar Nandi Mazumdar* 22 CWN 463 at 469 and *Chahlu v. Parmal* ILR (1919) All 611 also implies the same idea. In the notes to *Stapilton v. Stapilton* White Tudor's leading cases, it was said, "The real consideration and motive of a compromise, as well in our law as in the civil law and systems derived from it, is not the sacrifice of a right but the abandonment of a claim." Now there can be no abandonment of a claim except by the person who has the title or set up his own title to the thing claimed. A cannot abandon a claim that may possibly be made by B but not made by B and without B's knowledge. This is exactly the case here. The dictum of Lord Westbury in *Dixon v. Evans* (1872) LR 5 HL 606 also shows the same thing. He says: "The claim on the one side or the defence on the other shall be admitted or not." It is suggested by the learned vakils for the respondent that Kotamma would be a reversioner after the death of her daughter-in-law and that she might be entitled to a larger rate of maintenance if the family was divided. In the first place, the evidence does not disclose that these claims were set up. But assuming that they were set up they might well have been, for, if Sitamma was entitled to half, Kotamma was entitled to maintenance from that half and would be a reversioner if the daughter-in-law predeceases her this only amounts to putting forward the title of Sitamma. A claim by Kotamma for larger maintenance out of the half share of Sitamma is merely a pendant to a claim by or on behalf of Sitamma.

for a half share in the property. Again, a claim by-Kotamma that she will be reversioner after the death of Sitamma amounts to merely putting forward a spes successionis and is also merely a pendant to a claim by her or on behalf of Sitamma. Either way, it cannot be regarded as a substantial claim by Kotamma for herself. Nor can the dispute set up by Kotamma be regarded as a claim for maintenance directly against the whole property in the hands of the 1st defendant. In whatever way we look at the transaction, it is difficult to avoid the main feature of it, namely, that Sitamma's name and supposed title was used to threaten the 1st defendant with and ended in a substantial benefit to Kotamma with Sitamma remaining in the background altogether. I am therefore of opinion that the nature of the transaction is substantially that of a bribe to Kotamma to keep quiet and not to stir up litigation by another claimant, namely, Sitamma, in which possibly Kotamma might have given evidence. Sitamma herself being totally ignorant of the settlement, it is impossible to regard such a settlement as a family settlement or a bona fide settlement of a doubtful claim. I do not think, therefore, it will be upheld as against the plaintiff in this case.

5. The question next arises, what is the relief that should be awarded to the plaintiff. Mr. Venkatrama Aiyar contends that Ex. I should be entirely set aside and the plaintiff should be given a decree for the extra lands covered by it beyond the original 18 acres and odd given to Kotamma. I do not think the cases cited by him support this plea *Ramkishore Redarnath v. Jainarayan Ramrachpal* ILR (1913) Cal 966 *Davood Beevi Animal v. Radhakrishna Aiyar* (1922) 44 MLJ 309 and *Deivachilai Aiyangar Vs. Raghupathi Venkatachariar and Others*, In the present case, I do not see why the alienation under Ex. I should not be binding at least to the extent of the father's half share. In the subsequent partition between the 1st defendant and the plaintiff these lands have not been allotted, to the plaintiff's share but were left out of the partition. I think the proper decree to be passed in this case is that the plaintiff should be given a decree for partition and recovery of half the land conveyed under Ex. I beyond the original 18 acres and odd with mesne profits from the date of plaint to be determined in execution Plaintiff will be entitled to recover the 18 acres and odd after the death of the 2nd defendant. The decree will be modified accordingly.

6. As each party succeeds only to the extent of a half, each party will bear its own costs throughout.