
(1915) 04 MAD CK 0026
In the Madras High Court

Segu Chidambaramma

APPELLANT

Vs

Sareddi Hussainamma and Others

RESPONDENT

Date of Decision : 01-04-1915

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 60(m)

Citation : 30 Ind. Cas. 101 : (1915) 2 LW 952

Hon'ble Judges : Tyabji, J;Sadasiva Aiyar, J

Bench : Division Bench

Judgement

Sadasiva Aiyar, J.—The facts are as follows. The plaintiff is the decree-holder in Original Suit No. 311 of 1901 on the file of the Nandyal

Munsif's Court. The judgment-debtor is the first defendant, a Hindu widow who represented her husband's estate fully, and the decree was

passed for a debt due by her husband. The plaintiff property was attached by the plaintiff (decree-holder) as belonging to her husband's estate. The

attachment was made on the 11th November 1908, but the widow (the first defendant) had sold the property in 1899 itself to the third defendant,

who sold it in his turn to the second defendant in 1905. The widow's sale was not made for necessity and was invalid beyond her life-time.

2. On these facts the question in second appeal is whether the plaintiff, who is the appellant before us, is or is not entitled to attach and bring to sale

in execution of his decree in Original Suit No. 311 of 1901 that portion of the husband's estate which is left unaffected by the sale executed by the

widow, that sale-deed, as we said before, not affecting more than that interest in the property which could enure during the widow's life-time.

There are no doubt observations in several cases deprecating the description of a Hindu widow's estate at a life-interest, because she fully

represents the estate for most purposes and nobody else represents any interest in the estate during her life-time and she is not a trustee for any body (See paragraphs (524 and 025 of Mayne's Hindu Law). My own opinion is that when once it is admitted that she represents the estate fully, some of the Hindu law texts which direct her not to alienate the estate except for necessary purposes are merely moral admonitions and a sale by her in contravention of those moral precepts does not fail to convey the absolute ownership to the purchaser. But authorities which cannot possibly be got over have held that an alienation not for legal necessity is only valid during her life-time, that is, it conveys to the purchaser only a right to enjoy during the widow's life-time. See the very recent case of Singaram Chettiar v. Kalyanasundaram Pillai (1914) M.W.N. 735. When the full estate is vested in her and yet owing to the restrictions, which from being moral restrictions have become legal restrictions, she can convey only an interest to last during her life-time by a conveyance not for legal necessity, it seems to me to follow that the absolute estate vested in her becomes by her alienation for her own purposes (valid during her life-time) divided into two estates, (1) a life estate enjoyable by the purchaser during her life-time and (2) a reversionary estate to be enjoyed after her life-time, both of which estates or rather the total of which belonged to her husband at his death. So far as her life-interest is, concerned, it became by her alienation not available to the creditors of her husband, but the ownership of the remaining reversionary estate continues in her as part of the estate which she inherited from her husband. That seems to me to be available to her husband's creditors. Mr. T.M. Krishnaswami Aiyar relied upon the cases which have held that a presumptive reversioner has no interest in the property during the widow's life-time which can be attached by his creditor. See the latest case of this Court Kakaralapudi Lakshmi v. Rajah Kandukuri Veera Sarahha 29 Ind. Cas. 241 : 17 M.L.T. 419 : 28 M.L.J. 650. In my opinion, these decisions are irrelevant in the consideration of the question "whether the widow as heir of her husband has still left in her some property-belonging to her husband's estate which could be attached by her husband's creditor after she had made an alienation binding on her during her life-time. No person can claim during the widow's life-time, after the alienation of the widow's life-estate, to be the owner of that reversionary interest, but it does not follow therefrom that no

reversionary interest, in property forming part of the husband's estate, is left after her alienation of her life-estate. If an interest belonging to the husband's estate is left, some legal person must be its owner. If a presumptive and contingent reversioner is not the legal person in whom the reversionary right exists, it must be the widow in whom the whole legal estate vested at her husband's death. If so, the decree-holder, who Obtained a decree against her as fully representing her husband, must be entitled to attach that reversionary interest remaining in her as part of her husband's estate.

3. Section 60, Clause (m) of the CPC and Section 6, Clause (a) of the Transfer of Property Act, are also relied on by Mr. T.M. Krishnaswami

Aiyar. Section 60(m) of the CPC prohibits the attachment of a judgment-debtor's expectancy of succession. Section 6(a) of the Transfer of

Property Act prohibits the transfer of the chance of on heir-apparent's succession by such heir-apparent. These statutory provisions again are, in

my opinion, irrelevant to the consideration of the question before it, because the judgment-debtor here is not the presumptive or contingent

reversioner but the widow representing her husband's estate fully, and the transfer which would be made by the attachment and Court sale of the

reversionary interest is not made by any contingent reversioner or of the rights of the contingent reversioner in execution of a decree against him,

but by the Court acting upon the judgment-debtor's rights and upon the husband's estate vested in the "judgment-debtor (widow).

4. I would, therefore, answer the question which I put to myself in the beginning of the judgment in the affirmative, and setting aside the judgments

pi the lower Courts give a declaration to the plaintiff that the attachment made by him in execution of the decree in Original Suit No. 311 of 1901 is

valid in respect of the reversionary interest in the properties subject to the life-interest of the widow. The parties will bear their respective costs

throughout.

Tyabji, J.

5. I agree. It seems to me that the widow was a party to the proceedings in two capacities, (1) as to a life-interest in her own absolute right and (2)

as to the reversion as the representative of her deceased husband's estate which is to devolve on his reversioner. She had no doubt purported to

convey the property in both capacities, but it has been found that in so far as she purported to alienate the property in her latter capacity she had stepped beyond her legal powers and was not competent to bind the reversioner. She was on that account brought on the record so that the reversionary interest of her husband's estate may also be bound. The authorities to the effect that the presumptive reversioner's interest is such a mere expectancy as is referred to in the Transfer of Property Act, Section 6(a), support this view. For, if the reversionary interest in the widow's husband's estate is a mere expectancy so far as the reversioner is concerned, the only person in whom "the legal estate" (I use that expression for brevity perhaps at the sacrifice of accuracy) can be said to be vested must be the widow.