

(1925) 02 MAD CK 0044
In the Madras High Court

Siva Subramania Pillai (died) and Another	APPELLANT
Vs	
Piramu Ammal	RESPONDENT

Date of Decision : 17-02-1925

Acts Referred:

Citation : AIR 1925 Mad 1111 : (1925) 49 MLJ 128

Judgement

1. The Bench which heard C.M.A. No. 322 of 1919 decided that the surrender by Subbammal in favour of the appellant, if bona fide, would have the effect of divesting the respondent of her right to the property. Having taken this view of the law (we are not at present concerned with deciding whether this view is correct or not), the learned Judges remanded the case for the further question being determined whether the surrender was bona fide or not. The District Judge who has heard the case has recorded a finding that the surrender was not bona fide. The finding is attacked before us in this appeal.
2. The effect of the learned Judge's judgment is this. Subbammal executed a surrender in favour of the appellant who was her son. As a part of the arrangement the appellant undertook to pay and did pay his sister, that is, Subbammal's daughter Arurnugatammal, a sum of Rs. 4,000. The District Judge, mainly from this fact, concludes that the surrender was not in good faith. To use his own words, "'Legally this amounts to a partition of the estate between the surrenderer and surrenderee.
3. The first question to determine in this appeal is : Does the surrender become inoperative by reason of the fact that a provision in favour of Subbammal's daughter was made ? If nothing further appeared than that a sum of Rs. 4,000 was paid to Arumugatammal, we would not be

disposed to hold that the surrender is not valid. It is now authoritatively settled that the mere fact that some provision is made for the benefit of the

surrenderer does not render the surrender invalid. See *Angamuthu Chetti v. Varadarajulu Chetti* ILR (1919) M 854. *Bhagwat Koer v.*

Dhanukdhari Prasad Singh ILR (1919) C 466 and *Sureshwar Misser v. Maheshrani Misraini* ILR (1920) C 100. In this connection it is necessary

to observe that the case put forward by the appellant was not that in fact Rs. 4,000 was paid to his sister as a part of the arrangement and that that

payment would not render the settlement bad, but, on the contrary, he wished to maintain that a debt having been due to the lady, it was

discharged by payment of Rs. 4,000 at the time of the surrender. This contention is palpably false and we do not think it is necessary to add to the

reasons that have been given by the District Judge in support of his finding. The evidence of Draviyam Pillai, as has been observed by the learned

Judge, is utterly unreliable and we cannot act upon it. The very fact that this false contention was put forward indicates to some extent that the

appellant did not regard the surrender as a bona fide surrender ; for his desire to conceal the true facts must in part be due to his conviction that the

transaction was not above board. What then are the circumstances which induce us to take the view that the surrender is not bona fide ? Before

dealing with this question, we shall just refer to a passage in the judgment of the Judicial Committee in *Bhagwat Kaer v. Dhanukdhari Prasad Singh*

ILR (1919) C 466 already referred to. This is how their Lordships state the law:

This voluntary self-effacement is sometimes referred to as a surrender, sometimes as a relinquishment or abandonment of her rights ; and it may be

effected by any process having that effect, provided that there is a bona fide and total renunciation of the widow's right to hold the property.

4. The ultimate question, therefore, to be decided in each case is, was the surrender bona fide or was it not ? But great stress was laid by the

appellant's learned vakil upon another passage in another judgment of the Judicial Committee in *Rangaswami Goundan v. Nachiappa Goundan*

ILR (1918) Mad. 521. That passage runs thus:

But the surrender must be a bona fide surrender, not a device to divide the estate with the reversioner.

5. It is contended that if the Court is satisfied that the transaction is not a device

to divide the estate with the reversioner, it necessarily follows that the surrender is a bona fide surrender. We cannot agree with this contention. If the transaction is a device to divide the estate the surrender is clearly not bona fide ; but the converse is not necessarily true, for want of good faith may be evidenced by other circumstances. Having made these observations, let us now examine the facts of the case in order to ascertain whether the surrender was bona fide or was not. At the date of this transaction Subbammal was about 75 years old, whereas the age of the appellant was only about 55. Subbammal, her son and her daughter were then living together as members of one family. Subsequent to the surrender, it does not appear that the appellant exercised any act of exclusive ownership from which unequivocal enjoyment or possession can be inferred. Subbammal was very old and in the ordinary course on her death the appellant would take the property. This event has since actually happened. What necessity was there for this surrender to come into existence ?

Subbammal was more anxious that her daughter should be provided for than that her son should take immediate possession of the estate and it was fairly certain that on her death the appellant would not carry out her wishes. It was not her intention that she should forthwith divest herself of the estate or that the surrenderee should enter into possession. There is still another circumstance. The compensation money was paid by the Government into Court, and on the 1st of May, 1919, the respondent claimed that money. To defeat her right to that amount and to get immediate possession of the corpus these objects could be achieved by a surrender. A deed was accordingly executed on the 23rd of May, 1919 : and it was followed by an application by the appellant, dated 15th July, 1919, for the payment of this money. We are prepared to draw from these circumstances the inference that the surrender was not bona fide. On the whole, we think the District Judge has come to a correct conclusion and we affirm his judgment and dismiss the appeal with costs.