

(1926) 11 MAD CK 0022
In the Madras High Court

Sonai Karuppa Pillai and Another

APPELLANT

Vs

Irulayee

RESPONDENT

Date of Decision : 16-11-1926

Acts Referred:

Citation : AIR 1927 Mad 429 : (1927) 25 LW 303 : (1927) 52 MLJ 195

Hon'ble Judges : Curgenvan, J

Bench : Division Bench

Judgement

Curgenvan, J.—The question of law which this second appeal raises is whether a gift or gratuitous conveyance executed by a widow is

voidable by a reversioner to whom she subsequently surrenders the whole estate. One Kandaswami Pillai died leaving two widows, Kaliammai

and Rakkayi. The widows and Mahalingam Pillai, Kandaswami's divided brother's son, were parties to a deed of partition under which they

divided Kandaswami's property in accordance with certain oral instructions which he is said to have given before he died. The document provided

that Mahalingam Pillai should enjoy Schedule A property absolutely; that Kaliammai should enjoy Schedule B property till her death, when it

should pass to Mahalingam; and that Rakkayi should similarly enjoy Schedule C property, with remainder to Mahalingam. Mahalingam died in

1907 and Kaliammai in 1918. In 1920, Rakkayi executed a deed of surrender to the reversioner, who has brought this suit to recover

Kaliammai's and Mahalinga's shares. The plaint Schedule D property is not now in question. The case has been argued on the assumption that the

dispositions made by the widows in favour of Mahalinga were without consideration.

2. Two propositions of law which have been referred to in discussing the present question are now well settled. One is that where a widow adopts

a son, he may sue, even during her lifetime, to set aside any alienation not supported by necessity, whether it was an alienation for consideration or

not. That was decided by a Full Bench in Vaidyanatha Sastri v. Savithri Ammal 53 MLJ 387 (FB) overruling Sreeramulu v. Kristamma ILR

(1902) M 143 . The other, for which authority is to be found in Sundarasiva Rao v. Viyyamma ILR (1925) M 933 : 49 MLJ 266. is that an

alienation made by the widow for consideration is good against a surrender, and the property alienated cannot be recovered until the widow dies. I

do not think that the former principle affords any material help in deciding, as I have to decide, whether the fact that consideration is wanting

enables a reversioner to whom surrender has been made to avoid an alienation which would otherwise stand good against the surrender. The two

acts--adoption and surrender--are not fairly comparable. The distinctions between them, if I may say so with respect, have been very justly and

clearly pointed out by Kumaraswami Sastri, J., in Vaidyanatha Sastri v. Savitthiri Ammal. Although a widow cannot be legally compelled to adopt,

the duty to honour her husband's wishes is a solemn obligation imposed by Hindu Law and sentiment, and a person who, knowing this and

knowing or having the means of ascertaining that she has authority to adopt, obtains a transfer of property from her, does so at his peril. In such

circumstances, there is no reason to interfere with the logical consequences of an act which is equivalent, in its legal effects, to the death of the

widow. But no such pious obligation attaches to a voluntary relinquishment by a widow of her estate. Hindu Law-givers hardly contemplated such

an act, and "the whole doctrine of surrender and consequent acceleration of the estate of the reversioner has no basis in Hindu Smritis but has been

evolved by Courts of justice on general principles of jurisprudence.

3. It follows that the Courts, having given the power, may set limits to its exercise. Strict logic requires that if a widow may renounce her rights

upon the theory that she may anticipate her natural death by an act of civil suicide, every consequence that would ensue upon the one death should

ensue upon the other. The doctrine that alienations for consideration are to prevail against a surrenderee has been accepted in defiance of this

logical principle, upon grounds of justice, equity and good conscience. Equity steps in to temper the rigour of a rule which resembles in its inexorableness some old rule of English Common Law.

4. The only question, then is, how far is equity justified in interfering. There appears to be but one reported case in which a gift was in question, the decision of the Calcutta High Court in *Prafulla Kamini Roy v. Bhabani Nath Roy*. The learned Judges who decided that case differed. Page, J., took the view that no alienation, whether for consideration or not, was valid against the surrenderee and since that view is contrary to the current of opinion in Madras it would serve no purpose for me to examine the reasons upon which it was based. Walmsley, J., after referring to *Subbamina*

v. *Subramanyam* 30 MLJ 260 continues:

It is true that in that case the alienation was for value, whereas in the present case the alienation was by gift; but I do not think that the presence of valuable consideration affects the question. The point is that the widow, has made an alienation which she was competent to make, and she cannot reoall it by a voluntary act, which only by fiction has the same effect as her actual death would have.

5. In these two judgments, we have thus the two extreme positions, the one unreservedly applying the fiction, the other discarding the fiction and considering the real import of the transactions. In the Madras case *Subbamma v. Subramanyam* 30 MLJ 260 the headnote speaks of alienations without the qualification "for value" but it was in fact a case of a mortgage. *Sadasiva Aiyar, J.*, in part rested his conclusions upon the reasoning of *Bhashyam Aiyangar, J.*, in *Sreeramulu v. Kristamma* ILR (1902) M 143 : 12 MLJ 197. but as that was a case of adoption, and the law has since been differently interpreted, I am precluded from availing myself of its ratio decidendi. In *Napier, J.*'s judgment there is not a word to show that he would have made the presence or absence of consideration the crucial test, his view being expressed thus:

The theory that change of status of an assignor or a surrender by such assignor can invalidate legal rights obtained by an assignee is in my opinion so contrary to equity and good conscience that it should not be accepted by Courts in this country whatever the ancient Hindu Law on the subject was.

6. It may be that there again the effect of the decision in *Sreeramulu v. Kristamma* 12 MLJ 197. is traceable and must be allowed for.

7. It appears to me that if the point is to be decided upon broad equitable principles the interests of a prior alienee, even without consideration,

ought to be preferred to those of a surrenderee. By making the gift, the widow has so acted as to create an expectation that it will enure for the

time of her natural life, and although the donee may perhaps have to reckon with a possible adoption, or even, in some cases, a possible

remarriage he ought not to have to include within his calculations the chance that the widow, by a purely voluntary act, unsupported by any sort of

obligation, may divest him of the property gifted in favour of a person who, until the widow dies, has no better claim to it than himself. Looking at

the position apart from artificial theory, the widow has parted with her interest in the property and cannot dispose of what she has not got. Page, J.,

in the judgment I have referred to, commenting upon the hardship which would result to alienees, observes that where the law is clear there is no

room for an *argumentum ab inconvenienti*. But that view runs counter to the decision of this High Court, which has recognised the applicability of

principles of equity, and if equity be applied, it seems open to the Court, of two gratuitous transferees, to prefer the earlier in time.

8. My conclusion accordingly is that the plaintiff's claim fails. The second appeal is dismissed with costs.