
(1914) 02 MAD CK 0032
In the Madras High Court

Sundararaja Aiyangar and Another

APPELLANT

Vs

Lakshmiammal through her Husband and Next Friend
Srinivasa Aiyangar

RESPONDENT

Date of Decision : 27-02-1914

Acts Referred:

Citation : AIR 1914 Mad 95 : (1915) ILR (Mad) 788 : 24 Ind. Cas. 943

Hon'ble Judges : Oldfield, J

Bench : Single Bench

Judgement

Oldfield, J

1. The case was tried and has been argued here with reference only to Exhibit I and not to the alleged agreement of May 1908, and the first point taken is that plaintiff who was not a party to Exhibit I cannot sue on it.

2. Schedule E of Exhibit 1, a partition-deed in plaintiff's family, contains the arrangement made for the performance of her nuptial marriage. It is headed "amount due to plaintiff" and sets out that Rs. 100 is to be given by each of the branches between which the property is to be divided, defendants Nos. 1 and 2 taking one share and two sons of 1st defendant by his first wife, the other two.

3. Plaintiff's right to sue is denied mainly on the grounds given for the decision in *Iswaram Pillai v. Taregan* 23 Ind. Cas. 951 : 26 M.L.J. 127. But that case can be distinguished from the present in two ways. Firstly, there was no question in it of a family settlement. In *Kosun Bajagopal Raja v. Datla Radhayya* 13 Ind. Cas. 205 : 22 M.L.J. 159 : 11 M.L.T. 14: (1912) M.W.N. 39. was one in question and it was held that a sister could sue to enforce a provision made for her under, it in pursuance of what is referred to as a moral duty. Secondly, in *Iswaram Pillai v. Taregan* 23 Ind. Cas. 951 : 26 M.L.J. 127. the finding was against the creation of any trust in the plaintiff's favour, because "There was no property transferred to the defendants, of which they agreed to become trustees, but all they agreed to do was to allocate a certain sum in their hands and to make that sum the trust

fund." Here, however, Exhibit I transferred the properties divided under it from the joint ownership of the family to the several ownerships of its members. Though their shares were not charged in plaintiff's favour, they were by mutual agreement accepted subject to an obligation to pay her. It is not alleged that Exhibit I has not had effect or that defendants have freed themselves from the burden imposed by it by any repudiation of it or the benefit it conferred. The trust in the present case has, therefore, been constituted completely. In these circumstances defendants were held liable rightly.

4. In order, however, to obtain this decision, plaintiff has had to define the character of the transaction evidenced by Exhibit I so far as it affected her to an extent which was apparently unnecessary at the trial and to rely on its provisions as creating an express trust in her favour. Her suit is to enforce that trust and, that fact recognised, it is clearly covered by Article 18, Schedule II of Act IX of 1887. It, therefore, is not within the jurisdiction of a Court of Small Causes : *Krishna Ayyan v. Vythianatha Ayyan* 18 M. 252. Without reference, therefore, to the other grounds, for revision which have been argued the lower Court's decision must be set aside and the suit must be remanded with a direction to return the plaint for presentation to the proper Court. The objection to the lower Court's jurisdiction was not taken before it or in the civil revision petition and was mentioned here only after plaintiff's contention had been stated. The parties will, therefore, bear their own costs to date.