
(1924) 11 MAD CK 0037
In the Madras High Court

Vaddadi Kamaraju

APPELLANT

Vs

Kocherlakota Venkatalakshmipathi and Others

RESPONDENT

Date of Decision : 25-11-1924

Acts Referred:

Transfer of Property Act, 1882 — Section 6

Citation : AIR 1925 Mad 1043 : 88 Ind. Cas. 982 : (1925) 21 LW 711 : (1925) 49 MLJ 296

Hon'ble Judges : Victor Murray Coutts-Trotter, C.J.; Srinivasa Iyengar, J

Bench : Division Bench

Judgement

Victor Murray Coutts Trotter, C.J.—By Section 6 of the Transfer of Property Act it is enacted that the chance of an heir-apparent

succeeding to an estate or other mere possibility of a like nature cannot be transferred. It is, therefore, clear that a reversioner in expectancy cannot

validly transfer his spes successionis ; and that doctrine has been carried by this Court a step further in the case reported in Sri Kakarlapudi

Lakshminarayana Jagannada Raju Garu and Others Vs. Sri Rajah Kandukuri Veera Sarabha Varah Lakshmi Narasimha Venkata Jogi Balasurya

Prasada Row Garu and Another, that not only are transfers of expectancies forbidden but that contracts to transfer them when the reversioner

enters into possession are also forbidden on the ground that, were it not so held, the provisions of the Act would be rendered entirely nugatory and

futile. That reasoning of this Court has been accepted by the Privy Council in the case of Annada Mohan Roy v. Gour Mohan Mullick LR (1923)

50 IA 239 : 1923 2 45 MLJ 617. In the present case the plaintiff brought a suit in order to assert his position as reversioner to the estate of one

Subbaraju. He impleaded the widow and various other persons who alleged

themselves to be alienees from her ; and he was confronted with this that in the year 1904 he brought a declaratory suit to have his position as reversioner to Subbaraju's estate declared and that suit had been settled by a compromise and a judgment based on it, the brief effect of which was that the plaintiff withdrew his claim provided that he was given as he was given certain lands which were in dispute between the parties. I intend! to guard myself from deciding this case on any wider ground than is absolutely necessary to this decision. After the very learned and instructive arguments I have heard of I think one may fairly say that the effect of the decisions of the Privy Council referred to, viz., *Amrit Narayan Singh v. Gaya Singh* LR (1917) 45 IA 35 : 1917 34 MLJ 298, *Kanhai Lai v. Brij Lal* ILR (1918) A 487 :1918 35 MLJ 459 (PC) and *Annada Mohan Roy v. Gour Mohan Mullick* LR (1923) 50 IA 239 :1923 45 MLJ 617, to which I have already referred to, is to draw a line of demarcation between the cases and show clearly the principle in the light of which one is to decide, that is to say, on which side of the line a case with a given set of facts is to be decided. The distinction, I mean, can be stated in this way correctly enough for the purpose of this case : that the relinquishment of a reversionary right cannot be the consideration for a compromise. But, while a man cannot relinquish his reversionary right in given properties, he can relinquish his right to say that the properties in dispute form part of the estate to which he is the reversioner ; he may for good consideration admit that the properties never formed part of the estate of the person from whom he claims and therefore he is not relinquishing his reversionary right to that estate but is merely admitting that the properties with which the dispute is concerned were not properties which formed part of the estate to which he was a reversioner. In order to ascertain on which side of the line this case falls one has to note the circumstances and what the words of the agreement are. I need not read the plaint--nothing turns on it but the defence in the suit of 1904 is material. Paragraph 5 of the written statement alleged that the properties in question in both these suits formed the self-acquisition of the 1st defendant and she was entitled to alienate it at her pleasure. Then with regard to the rest of the property paragraph 10 says this:

At the time of his death the 1st defendant's husband gave the remaining half

also of the said house-site to the 2nd defendant for purposes of dwelling with absolute rights. Since then the 2nd defendant has been living there with family. Later on the 2nd defendant's husband built thereon a tiled house which at the time of the marriage of the 2nd defendant's daughter was given away as a katnam (present) to the 3rd defendant.

2. That was the issue that the parties desired to dispose of in that suit; and then somebody intervened and brought them together and a compromise was filed in the suit and the agreement was as follows:

In respect of the 4 acres of land together with the various fruit trees thereon the defendants shall in 30 days time from this date execute a registered deed, with the usual recitals in favour of the plaintiff in view to the enjoyment thereof by plaintiff with absolute rights and that thereupon the plaintiff shall withdraw this suit.

3. That is what he got and it is to be noted that he got not merely an admission that the property was considered to belong to him but a conveyance to him from the defendants as the defendants were but for this agreement the owners of this property. It goes on to say-

That in case the whole of the remaining suit property is enjoyed by the defendants with full rights according to their previous enjoyment, no dispute of any kind will be ever raised by the plaintiff.

4. Then, that is carried out. The compromise was dated the 9th February, 1905, and it was recorded on the 20th March. Meanwhile the parties

had executed another document it is Ex. V in the case--and that is what is described as a release of rights executed on the 8th March, 1905, to the

plaintiff. I quite concede that the language of this document in places affords considerable scope for an argument of the type that has been

addressed to us--that on its true construction it amounts to nothing more than a withdrawal of the plaintiff's reversionary rights. For instance "" As in

accordance with the terms thereof I waived my reversionary right to the scheduled property and by way of consideration therefor the said

Pulugartha Mahalakshamma Garu gave me by document executed this day property worth Rs. 1,000 described hereinbelow out of what was

conveyed to her by the gift deed I have hereby relinquished the reversionary right possessed by me after the death of the said Mahalakshamma

Garu.

5. On the whole I think that the true construction of this document is not that contended for by the appellant. It seems to me that what he really did was to acknowledge the claim of the defendants that this property in dispute formed no part of the estate to which he claimed to be and perhaps was the reversioner. If that be so and it appears to me looking at all the documents, to be the most reasonable construction, having regard to the terms of them, all looked at together then no question arises because nobody could possibly contend that if that was the real effect of the transaction, an agreement come to by this man on the basis of such a state of facts would not be a complete estoppel. I therefore do not propose to consider other grounds on which the same result might be arrived at and which have been argued before us, because I think it is enough to dispose of the appeal. I am of opinion that this appeal must be dismissed with costs.

Srinivasa Aiyangar, J.

6. I agree in the judgment just pronounced by my Lord. I only wish to add a few words. In all such cases when the question arises whether the transaction was really a relinquishment of a spes successionis or a bona fide compromise of disputed rights, it seems to me that the best thing to do would: be to look at the substance of the transaction apart altogether from any form which might have been given to it. If in substance the transaction is found to be only a dealing with the spes successionis, then of course it cannot be recognised and cannot form the basis of any binding obligation. But if, on the other hand, the substance of the transaction is found to be a bona fide settlement between the parties, then in spite of the fact that the same transaction might be represented in one of its aspects as a dealing with a spes successionis, it is none the less a real compromise of disputed rights. In the present case there seems to be really no doubt whatever, having regard to all the circumstances and all the documents, that what the parties did was to recognise the right set up on behalf of the widow to part of the property on the ground that it was her absolute property and hence no part of the property inherited by her from her husband at all and as to the rest of the property to recognise the right claimed by the daughter as under a gift from her father. It is not possible to represent this transaction as in substance being a relinquishment by a reversioner

of a mere expectancy. I therefore agree that the appeal should be dismissed with costs.