
(1917) 11 MAD CK 0023
In the Madras High Court

Vaddadi Sannamma

APPELLANT

Vs

Koduganti Radhabhayi and Others

RESPONDENT

Date of Decision : 21-11-1917

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47
Transfer of Property Act, 1882 — Section 43

Citation : AIR 1918 Mad 123 : 43 Ind. Cas. 935 : (1918) 7 LW 234 : (1918) 34 MLJ 17

Hon'ble Judges : Sadasiva Aiyar, J;Kumaraswami Sastri, J;John Wallis, J

Bench : Full Bench

Judgement

John Wallis, J.—I am clearly of opinion that, when a party has been properly impleaded as one of the defendants in a case and the case as

against him would have proceeded to judgment but for the fact that the plaintiff elected to abandon part of his case and the suit was in consequence

dismissed as against this defendant, he is ""a defendant, against whom a suit has been dismissed,"" within the meaning of the explanation to Section

47, Civil Procedure Code. The case which came before the Court in Krishnappa Mudali Vs. Periasami Mudali, , of a misjoinder of causes of

action and of the plaintiff being required to proceed with one cause of action, only and the suit being dismissed as against the defendants who had

been joined in respect of the other cause of action only, may possibly stand on a different footing, as to hold that the cause of action which the

Court was prohibited from trying may be gone into in execution by virtue of Section 47 goes far to defeat the prohibition of joinder, and such a

construction of S., 47 should therefore be avoided if it is possible to do so. As that question is not before us, I express no opinion upon it, and will

only say that the proper course in these cases appears to be for the Court to exercise the power which it now has under Order 1, Rule 10(2) of

ordering at any stage of the proceedings, the name of a defendant improperly joined to be struck out, instead of dismissing the suit as against him.

That will, as held by the Full Bench in Ramaswami Sastrulu v. Kameswaramma ILR (1900) Mad. 361, have the effect of taking him out of the

operation of Section 47, which ought not to apply to him seeing that he has no real concern with the suit. I would answer the first question in the

affirmative.

2. As regards the second question, u/s 4 of the Madras Hereditary Village-offices Act, 1895, the word ""emoluments"" includes ""lands and

assignments of revenue payable in respect of such lands"" and according to the finding the emoluments in this case included both the lands and an

assignment of revenue arising out of them. u/s 5 these emoluments are ""not liable to be transferred or encumbered in any manner whatsoever,

reproducing in substance the provisions of Regulation VI of 1831 which made such alienations null and void. Section 17 of the Madras Proprietary

Estates" Village Service Act, 1894, provides that, ""if the remuneration of a village-office consists in whole or in part of lands, or assignments of

revenue payable in respect of lands, granted or continued in respect of or annexed to such village-office by the State, the Government may

enfranchise the said lands from the condition of service by the imposition of quit-rent, and such enfranchisement shall take effect from such date as

Government may notify."" Government in this case issued an inam title deed which recited that the inam consisted of an assignment of land revenue

and commuted its right to resume the assignment in consideration of payment to Government of a quit-rent in addition to the existing jodi payable

to the proprietor. It said nothing about the enfranchisement of the inam or the lands from the condition of service and they remained liable as

before, and continued to form the emoluments of the village-office until the issue of the notification which was after the date of the alienation now in

question. The lands therefore continued subject to the prohibition against the incumbrance in any manner whatsoever and the alienation in question

was undoubtedly void at the time it was made. As pointed out in the order of reference, there is a conflict of decisions in this Court as to whether

the subsequent enfranchisement has the effect of validating such alienations. In 1907 it was held by White, C.J., and Miller, J., that, though the transfer was null and void under Regulation VI of 1831, yet after enfranchisement the transferee was entitled u/s 43 of the Transfer of Property Act to require that the transfer should operate on the alienable interest subsequently acquired by the transferor. No authority was cited, and the original illegality of the transfer was not referred to. On the other hand in *Narahari Sahn v. Korithan Naidu* (1913) 24 M.L.J. 162, it was held on similar facts by *Sundara Aiyar and Benson, JJ.*, that Section 43 has no application to cases where the transfer is forbidden by law on grounds of public policy, referring to *Ramasami Naik v. Ramasami Chetti* 17 M.L.J. 201. This case was approved and followed in *Batchu Ramayya v. Dara Satchi* (1913) 14 M.L.T. 430, and *Karri Ramayya v. Villoori Jagannadhan* (1915) 18 M.L.T. 360. The decision in *Ramasami Naik v. Ramasami Chetti* 17 M.L.J. 201, on which reliance was placed has since been followed 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*, . We have not been referred to any English decisions pointing the other way, and on the whole I think the sound position for us to proceed on is that no equities arise out of a transaction which is prohibited by law on grounds of public policy. The present case no doubt differs from the earlier cases because the transfer by way of mortgage purported to be of ""enfranchised mirasi and inam lands"" and was made after execution of the inam deed by which a quit-rent was imposed on the lands, a step which was intended to be followed, and was followed at an early date, by a publication of the notification enfranchising the lands. The transfer was none the less illegal when it was made, and on the whole I do not think there are sufficient reasons for departing from what I understand to be the general rule especially in the absence of English authority in point. In *Bettesworth v. Dean of St. Paul's* Sel. Cas. in Ch. 1 Bro. P.C. 240 which is referred to by Lord Macnaghten in *Tailby v. The Official Receiver* (1888) L.R. 13 A.C. 523, where a covenant in lease to renew for ninety-nine years which was lawful when made was rendered illegal by subsequent statutes, it was held by the House of Lords, that, as the statutes permitted leases for forty years, specific performance by executing a fresh lease for forty years

might be decreed, but in that case the original agreement was lawful, and it does not cover the present case where the transaction was illegal at the time it was entered into. As regards the second question my answer is that the transfer was clearly illegal and inoperative when it was made and did not become operative on the subsequent enfranchisement of the lands.

Sadasiva Aiyar, J.

3. I agree with my Lord in the answers to be given to the two questions referred to us.

Kumaraswami Sastri, J.

4. I agree.