

(1935) 10 MAD CK 0012
In the Madras High Court

Vaddaparti Soorayya

APPELLANT

Vs

Vodoori Sooranna and Others

RESPONDENT

Date of Decision : 18-10-1935

Acts Referred:

Citation : AIR 1936 Mad 252

Hon'ble Judges : Venkataramana Rao, J

Bench : Division Bench

Judgement

Venkataramana Rao, J.—The plaintiff and his brothers Mangayya and Kondayya were members of an undivided Hindu family and owned

considerable properties, among others certain karnam mirasi inams. Mangayya had two sons, Gavvaraju who died in 1904 and another Raju who

died in 1920. At a partition between the three brothers a major portion of the property was divided but the said inams and some jeroyati lands

were kept undivided. It appears that the office of the karnam was held by Mangayya as the eldest member of the family. But even during his

lifetime the said office appears to have been held by his elder son Gavvaraju till 1904 and thereafter by his younger son Raju and the Government

enfranchised the service inams in favour of the said Raju. One Venkataramanamurthi, the son of Kondayya, filed a suit, O.S. No. 39 of 1916, on

the file of the Temporary Subordinate Judge of Cocanada for a partition of the said karnam service inam lands and other property which were not

divided as aforesaid on the ground that the said properties formed part of the joint family properties and he was entitled to a third share therein.

The present plaintiff as defendant 2 therein supported the said Venkataramanamurthi. Mangayya and his son Raju resisted the claim alleging

that

the said property having been enfranchised in the name of Raju formed the separate property of Raju and not joint family property capable of

division between the three branches of the family.

2. The learned Subordinate Judge of Cocanada upheld the defence and dismissed the plaintiff's suit. But on appeal the High Court held that the

Subordinate Judge was wrong in holding that the said property belonged only to Mangayya's branch but it was the common property of all the

three branches capable of division among them and reversed the decree of the Subordinate Judge and remanded the suit for disposal in the light of

those observations. This was on 4th February 1918. On 10th March 1919 the Subordinate Judge of Cocanada passed a preliminary decree giving

a third share to the plaintiff. Against that decision an appeal was preferred by Raju to which the present plaintiff as defendant 2 in that litigation was

also a party. Pending the appeal Mangayya and Raju entered into a compromise with Venkataramanamurthi in and by which they agreed to give

certain properties for his third share. One of the terms of the compromise was that the appeal should be withdrawn and the suit should be

dismissed. The result of this arrangement was that Mangayya and Raju accepted the decision of the High Court that the property was capable of

division among all the three branches. When the said Venkataramanamurthi applied for withdrawal of the suit, the present plaintiff, who was

defendant 2 in that suit as already stated, wanted to be made a party plaintiff, but the learned Subordinate Judge of Cocanada declined to accede

to his request and dismissed his application and allowed the suit to be dismissed. There was an appeal against that order. Pending this appeal

Mangayya entered into a compromise, Raju having died in the meanwhile, with the present plaintiff in and by which six items of property, among

which was the suit property called Garuvu Manyam, which comprised two survey Nos. 26 and 27 measuring 3 acres 95 cents and 7 acres and 11

cents respectively, were agreed to be given to the plaintiff for his share; the terms of the compromise were embodied in a document Ex. E-2 in the

case. The compromise provides that Mangayya should put all the items in possession of the present plaintiff together with the crops thereon. The

razinamah was dated 18th October 1920. In pursuance of the razinamah a

compromise decree Ex. E was passed and Clause (a) of the said decree runs as follows:

(a) that for the share of defendant 2 (appellant) defendant 1 (respondent 2) shall put defendant 2 (appellant) now alone in possession of the property mentioned in the schedule herein below together with the crop thereon out of the properties mentioned in the plaint schedule and shall also get entries made in the accounts.

3. It will be necessary to mention that, while the partition litigation was pending, Mangayya as the guardian of Raju gave a lease to defendant, of all

the six items which included the Garuvu Manyam on a rental of Rs. 900. The lease is dated 15th April 1919. It was to run for three years. Raju

died as already stated on 6th April 1920 and on 4th June 1920 defendant 1 executed a letter Ex. 0, agreeing to pay rent to Mangayya and thus

attorned to him. In pursuance of the razinamah decree the present plaintiff appears to have applied for delivery of possession of the properties. Ex.

A-1, dated 21st November 1921, purports to be a copy of the delivery receipt which mentioned that there were paddy heaps on Garuvu Manyam

and that they were delivered to the plaintiff. The plaintiff's case now is that in spite of his having taken delivery, the defendants have unlawfully and

stealthily thrashed the crop and removed the grain on 16th March 1922 and that its value will be Rs. 1,300, The plaintiff has now brought the

present suit out of which this second appeal arises for recovery of the sum of Rs. 1,300, the value of the crop alleged to have been stolen by

defendant 1, and also for the recovery of Rs. 330 due for arrears of rent for fasli 1320 by defendant 1 under the lease Ex. B executed by him in

favour of Mangayya as guardian of Raju aforesaid. The defendants denied the title of the plaintiff to both the land and the crop and pleaded that the

delivery was not binding on them, that the compromise decree between the present plaintiff and Mangayya was passed in the absence of the legal

representative of Raju who was his widow Sri-devamma and was not binding on her, that defendant 1 attorned to the said Sri-devamma and paid

her the rent for subsequent faslis and that the plaintiff has no right to demand any portion of the suit amount from them.

4. The learned District Munsif was of opinion that the land really belonged to Raju and devolved on his death on his widow Sridevamma, that she

was really his heir, that in the prior partition litigation there was no adjudication of the relative rights of Mangayya and Raju, that the compromise decree was therefore not binding on Sridevamma that the crops were really removed by defendant 1; but as the plaintiff had no title thereto he dismissed the suit. The learned Subordinate Judge on appeal confirmed his decision holding that the decree of the High Court passed without the legal representative of Raju will not bind Sridevamma, the legal heir of Raju, that defendant 1 claiming under Raju had every right to take the paddy heaps and that he was liable to answer only to the proper heir of Raju. It is contended by Mr. Somasundaram before me that the view taken by the lower Courts that the compromise decree was not binding on Sridevamma is wrong and that Mangayya was really the legal representative of Raju and that must be the effect of the decision of the High Court. In my opinion both the lower Courts have not correctly appreciated the effect of the decision of the High Court and the subsequent proceedings in the previous partition litigation. The claim by Venkata-ramanamurthi in O.S. No. 39 of 1916 was on the basis that the suit karnam service inam was joint family property. The present plaintiff supported the plaintiff in that case. The decision of the High Court was that it was joint family property capable of division between them. The effect of that decision was stated by the learned Judges of the High Court when the matter again came up before them in an application for leave to appeal to the Privy Council: vide Mangayya v. Venkataramanamurthi 1918 MWN 844. Whatever may be the rights between Mangayya and his son Raju as between themselves, as between the present plaintiff" on the one hand and Mangayya and Raju on the other there was a binding adjudication that the said karnam service inams were joint family property. The said decision will be clearly res judicata in a subsequent litigation between the parties. In Maung Sein Done v. Ma Pan Nyun 1932 10 Rang 322 one of the daughters of a widow of a Chinaman claimed administration of her mother's estate impleading her sister and her two brothers claiming a one fourth share therein. The sister supported the plaintiff but the brothers resisted the claim. The suit was dismissed on the ground that the brothers were entitled. Subsequently, the sister who was defendant in that case sued to recover a fourth share. The prior decision was held to be res judicata. Their Lordships observed:

In a word, the question to be determined was one between the sisters on the one hand and the brothers on the other. The rights of each sister in

regard to the mother's estate were identical; they were either both of them coheirs with their brothers or neither of them was entitled to any share;

and the decision on that question would be *res judicata* within the meaning of their earlier decision in *Munni Bibi v. Tirloki Nath* 1931 53 All 103.

In this case there was a conflict of interest between defendant 2 on the one hand and Mangayya and Raju on the other; it was necessary to decide

that conflict in order to give Venkataramanamurthi the relief he claimed and the question between Mangayya and Raju on the one hand and

defendant 2 on the other was finally decided. This position was accepted both by Mangayya and Raju when they entered into the compromise with

Venkataramanamurthi. Thus as between Mangayya and Raju on the one hand and defendant 2 on the other, it was not open to either Raju or any

heir of Raju to state that Mangayya was not the legal representative of Raju, i.e. that the property was not taken by Mangayya and Raju as joint

family property. Mangayya and Raju being admittedly undivided, the property would in that view not devolve on Sridevamma. But this does not

dispose of this case. At the time of the *Razi-namah* with the present plaintiff on 18th October 1920 the lease in favour of defendant 1 was valid and

subsisting and defendant 1 was not a party to the said *Razinamah* or the *Razinamah* decree and his rights as lessee would not be affected thereby

and it would not be open either to Mangayya or to the plaintiff to enter into any arrangement regarding the crops which would in any way affect the

interests of defendant 1. But it is contended by Mr Somasundaram that defendant 1 on his own admission having stated that he attorned to

Sridevamma, must be deemed to have denied the title of Mangayya and therefore that of the present plaintiff, and his rights as lessee became

forfeited and he was in the position of a trespasser and therefore the claim for paddy heaps was sustainable on that ground. It is true that a lessee

by denying the title of the lessor incurs forfeiture, but it is at the option of the landlord to take advantage of the forfeiture or not, and if he elects not

to do so, the forfeiture is waived; the election may be express or implied.

5. This principle is recognised in Section 112, Transfer of Property Act, which provides that a forfeiture is waived by any act on the part of the

lessor showing an intention to treat the lease as subsisting. In this case Mangayya and the present plaintiff both elected to treat the suit lease as subsisting by their conduct. Mangayya filed a suit, O.S. No. 428 of 1922, on 4th October 1922 for recovery of arrears of rent in respect of lands comprised in the lease other than Garuvu Manyam from defendant 1, alleging that the lease expired only on 29th March 1922, the three years" period provided in the lease, and that defendant 1 was bound to pay arrears of rent as per terms of the lease. This suit was continued by the present plaintiff as the legal representative of Mangayya. This litigation is clear and unmistakable evidence that Mangayya treated the lease as subsisting in respect of the lands comprised in the suit and it is not open to a landlord to treat the tenancy as forfeiture in part and subsisting as to the remainder. Therefore even the lease in respect of Garuvu Manyam must be treated as having subsisted and the forfeiture, if any, incurred by the denial of title was waived. I therefore overrule the contention of Mr. Somasundaram on this point.

6. The question now remains, what is the relief which the plaintiff is entitled to ? No doubt be claimed a larger relief, i.e. the entire value of the paddy heaps of fasli 1321. The fact that he claimed a larger relief would not preclude the Court from granting a lesser relief, if he is entitled to it. I think the plaintiff will be entitled to claim the proportionate rent for fasli 1321 for Garuvu Manyam less any tax paid by defendant 1 for that fasli attributable to the said land. I therefore reverse the decree of the Subordinate Judge and remand the case for disposal on the question as to what will be the proportionate rent payable on Garuvu Manyam under the lease Ex. B., and for giving a decree to the plaintiff for the amount so determined deducting any tax or other outgoings paid by defendant 1 and attributable to the suit land. It will not be open to defendant 1 to plead that he paid any rent to Sridevamma or incurred any other expenditure in relation thereto. In the circumstances, I direct each party to bear his or their own costs of this appeal. The plaintiff will be entitled to costs on the amount decreed in the lower Courts. Leave refused. The appellant will get a refund of the court-fee.