

(1955) 02 MAD CK 0023
In the Madras High Court
Case No : Second Appeal No. 1680 of 1950

Valliammal and Others

APPELLANT

Vs

Palani Goundan

RESPONDENT

Date of Decision : 03-02-1955

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11

Citation : AIR 1955 Mad 533 : (1956) ILR (Mad) 224 : (1955) 68 LW 424 : (1955) 2 MLJ 211

Hon'ble Judges : Rajamannar, C.J;Rajagopala Ayyanger, J

Bench : Division Bench

Advocate : S.T. Srinivasagopalachariar and S.V. Venkatasubramanian, for the Appellant; K.S. Desikan and K. Raman, for the Respondent

Final Decision : Allowed

Judgement

Rajamannar, C.J.—This second appeal involves a question of res judicata. It arises out of a suit for possession brought by the respondent claiming to be the reversioner to one Subbanna Goundan alias Subbaraya Goundan, who died in 1916. Subbaraya Goundan left behind him his widow, Pavayi Ammal, a son Nachimuthu, and a daughter, Valliammal, the first defendant. The 2nd defendant is the son, and the third defendant, the husband of . the first defendant. Nachimuthu died unmarried on 6-12-1928, and on his death his mother Pavayi Ammal succeeded to the properties left by Subbanna Goundan. Pavayi died in 1947. The suit was brought in July 1948. There could be no doubt whatever that in accordance with the provisions of Act II of 1929, the 1st defendant would be entitled to succeed to the exclusion of the plaintiff. The plaintiff, however, claimed that he would be entitled to succeed because of the decision in a prior suit, O. S. No. 933 of 1932 brought by him in the following circumstances:

On 22-9-1932 Pavayi executed a deed, in and by which she purported to convey the suit property to her daughter, the 1st defendant in the suit and her son, the 2nd defendant. The plaintiff brought a suit for declaration that as Pavayi was

entitled only to a widow's estate in the properties under the Hindu law, the deed dated 22-9-1932 would not be binding on Nachimuthu's reversioners alive at the time of the death of Pavayi. Pavayi and her daughter resisted the plaintiff's suit on two grounds, viz., (1) that the plaintiff was not the nearest reversioner of the deceased Nachimuthu, and (2) that the settlement deed operated as a surrender by Pavayi to defendants 2 and 3. The learned District Munsif, who tried the suit held that the plaintiff was the nearest reversioner of Nachimuthu, having regard to the decision in-- Krishnan Chettiar (died) and Another Vs. Manickammal and Another, . He also held that as Pavayi had only a limited estate in the properties, she was not competent to convey them to the first defendant.

The suit was, therefore, decreed. On appeal, the decision of the District Munsif was confirmed by the learned District Judge. He held that on the existing state of law, that is, in accordance with the decision in Krishnan Chettiar (died) and Another Vs. Manickammal and Another, ", the plaintiff was the nearest reversioner, that the settlement deed was beyond the competence of Pavayi as limited owner and therefore it would not be valid and binding on the reversioner. The learned Judge observed that though ordinarily no court would give a declaration that a particular person is the nearest reversioner as it was impossible to predict until the succession opened who would be the reversionary heir entitled to succeed, yet in certain circumstances it may be necessary to give an incidental finding whether the plaintiff in a particular suit was the nearest reversioner.

2. It is on the decision in the said suit that the plaintiff relies, as supporting his plea of *res judicata*. His plea was not accepted by the learned District Munsif. He found that the cause of action for the earlier suit was different from the cause of action for the present suit and the capacity of the plaintiff was also different. The question who would be entitled to succeed to the estate of the deceased Nachimuthu on the death of Pavayi did not arise for consideration in the earlier suit. Therefore, a mere finding that the plaintiff was the nearest reversioner on the date of the prior suit could not preclude the first defendant from claiming to succeed to the properties as the heir to her deceased brother.

On appeal, however, the learned Subordinate Judge took a different view. He held that in order to decide whether the settlement deed was a valid surrender it was necessary to decide who was the nearest reversioner, and therefore the finding on that issue was necessary for the disposal of that suit and would operate as "*res judicata*" in the present suit. The fact that the prior decision was rendered on an erroneous construction of Act II of 1929 according to him, would not prevent the application of the rule of "*res judicata*". He, therefore, allowed the appeal and granted a decree for possession to the plaintiff. Defendants 1 to 3 are the appellants before us.

3. We have no hesitation in holding that the learned District Munsif was right, and the learned Subordinate Judge was wrong on the question of "*res judicata*". It is true that "co nomine the plaintiff in the present suit was the plaintiff in the

previous suit, and the first and 2nd defendants in this suit were parties to the prior suit. But in law, the plaintiff had brought the previous suit in a capacity different from that on the basis of which he has instituted the present suit. In the prior suit, he claimed to be the nearest presumptive reversioner to the estate on the death of Pavayi. In the present suit, on the death of Pavayi, he claims to be the nearest reversioner entitled to succeed. A finding that on the "date of the previous suit the plaintiff was the nearest presumptive reversioner, even though rendered in the presence of the present first defendant, cannot operate as "res judicata" in this suit for possession brought by the plaintiff, after the death of Pavayi Animal. The issue who is the reversioner entitled to succeed on the death of Pavayi falls to be decided in this litigation. It is common ground that as the law stands at present the first defendant would be the person entitled to succeed on the death of Pavayi.

4. A case in which the facts were very similar to the facts in the present case came up for decision before Viswanatha Sastri J., in -- Samavedam Sarangapani Ayyangar Vs. Kandala Venkata Narasimhacharyulu and Another, . There, a person who claimed to be the presumptive reversioner of the last male owner filed a suit for a declaration that a settlement deed executed by the daughter of the last male owner claiming to be entitled to the properties absolutely was not binding on him and other reversioners. Both the daughter and the alienee were impleaded. The suit was decreed. A subsequent suit for recovery of possession of the lands was brought on the death of the daughter. Reliance was placed on the decision in the previous suit as constituting *res judicata*". It was held that the earlier decision to the extent it declared that the settlement was not binding on the plaintiff and other reversioners was "*res judicata*". But it was not "*res judicata*" so as to bar the defendant from raising the question whether the plaintiff was the next heir entitled to succeed to the estate on the death of the daughter. The learned Judge pointed out that the title put forward by the plaintiff was different from or independent of the title put forward by him in the earlier suit and therefore the bar of "*res judicata*" would not apply. We are in entire agreement with this decision of the learned Judge, and in particular with the following observations: "It is true that in the prior suit there was an issue as to whether the plaintiff was the nearest reversioner entitled to maintain the suit for a declaration of the invalidity of the settlement deed as against the reversioners. This issue was found in favour of the plaintiff, negating the claim of a rival reversioner who claimed priority to the plaintiff. But the question then was whether the plaintiff was the then presumptive reversioner and the question now is whether the plaintiff is now the next heir of the last male owner. A decision on the former question cannot conclude the latterThe title now put forward by the plaintiffs is different from and independent of the title put forward in the earlier suit, and the bar of "*res judicata*" would not apply. The present claim of the plaintiff is based on his own individual right as heir which he could not possibly have included in the earlier Suit filed as a presumptive reversioner. The prior decision cannot, therefore, be relied upon as "*res judicata*" on the question

of the plaintiff's title to the property as heir-at-law." (page 387).

5. It follows from the above view that the plaintiff's suit must be dismissed. The second appeal is allowed and the suit is dismissed with costs throughout.