
(1904) 04 MAD CK 0004
In the Madras High Court

Vedanayaga Mudaliar

APPELLANT

Vs

Vedammal

RESPONDENT

Date of Decision : 12-04-1904

Acts Referred:

Specific Relief Act, 1877 — Section 42

Citation : (1905) ILR (Mad) 591 : (1904) 14 MLJ 297

Judgement

1. The plaintiff, as the paternal aunt's son or bandhu of the deceased Sankaramoorti Mudaliyar, sues for a declaration of his right to the property

left by the deceased, on the ground that the defendant, the deceased's mother, is not entitled to the property, she having been a party to his

murder, but that the plaintiff, as the next in succession, is the person that has the right thereto. The defendant and a Muhammadan by name Shaik

Abdul Kadir Ravutban, with whom she is alleged to have been criminally intimate prior to the death of her son, were tried for the murder in the

Sessions Court of Tinnevely. She was, however, acquitted while her alleged paramour was convicted of the offence.

2. The Subordinate Judge, without trying the question whether the defendant was concerned in the murder, dismissed the suit.

3. The first question for consideration is whether the plaintiff can ask for mere declaration; and if so, whether, as urged for the defendant, the Court

should, in the circumstances to be referred to, refuse the relief prayed for. Now as to the first point. Prior to the death of Sankaramoorti, he having

been a minor, proceedings regarding the appointment of a guardian for him had been taken under the Guardian and Wards Act. Pending those

proceedings, the District Court of Tinnevely appointed the plaintiff as Receiver and put him in actual possession of the properties of the minor,

removing the defendant from the charge thereof. This Court held that the District Court had no power to appoint a Receiver in the course of the

guardianship proceedings and directed that possession of the property should be handed back to the defendant. This order for re-delivery to the

defendant was no doubt passed subsequent to the death of her son, but it had not been carried out to any extent at the date of the suit.

4. Consequently the possession of the property was, at the time, neither with the defendant, nor with the plaintiff, the property having been in

custodia legis and in the hands of an officer of Court, it being of course a mere accident that that officer was the plaintiff himself. The defendant not

having been in possession, the plaintiff could not as against her, have claimed as consequential relief an order for delivery and if, as alleged, he is

the person entitled, nothing more was required to be done to secure to the plaintiff all his rights, than the revocation of the order of this Court

referred to above directing delivery of the property to the defendant; and that would have enabled the plaintiff to retain possession in his own right.

In these circumstances, it must be held that the proviso to Section 42 of the Specific Relief Act is not applicable to the case and that the suit is not

open to objection on the ground that nothing more than a mere declaration of the plaintiff's right is sought for.

5. As to the next point it was contended for the defendant that the plaintiff had been guilty of contempt in not obeying the order of this Court

directing delivery of the property to the defendant, that such contempt remained unpurged at the date of the suit and consequently that the relief

sought for should, in the proper exercise of the discretion vested in the Court, in cases like the present, be refused to him. The facts bearing upon

this contention are briefly these. In an appeal preferred in connection with the guardianship proceedings the plaintiff, in his capacity of Receiver,

had been made a party respondent. In that appeal, while the defendant's son was still alive the plaintiff's appointment as Receiver was set aside,

but no order about the possession of the property in his charge was then made. That question came up for consideration in October 1900 and the

fact of the son's death having been brought to the notice of the Court, it was ordered that possession be given to the defendant, the prima facie

heir. Even prior to such order the defendant had moved the District Court to call upon the plaintiff to surrender possession of what was held by him

as Receiver and upon notice issued in consequence of such application the plaintiff, in September 1900, delivered up to the Court all the documents and papers connected with the estate and which were in his custody, intimated to the Court that the moneys realized by him had been duly lodged in the public treasury to the credit of the guardianship cause and prayed that the security taken from him as Receiver be cancelled and discharged. But, until the 13th of March next, nothing further appears to have been done in the matter. This was doubtless due to the defendant having been implicated in the charge of her son's murder, which took place on the 25th August 1900. Having been arrested in consequence she remained in custody until the termination of the proceedings by her acquittal in the Sessions Court, which was on 11th March 1901. She thereupon moved the District Court with reference to her getting possession of the estate. On the 29th of March, however, the present suit was instituted and the plaintiff having therein prayed for an injunction restraining her from taking possession of the property the same was granted and in consequence of such injunction the District Court stayed further proceedings. In these circumstances it cannot be held that the plaintiff was in contempt. His request to the Court in September 1900 to be discharged, accompanied with the deposit of the documents and money connected with the estate, was, so far as it went, a compliance with the direction of the Court. What prevented the defendant taking possession was not any disobedience on the part of the plaintiff as Receiver, but the prohibition by the Subordinate Court issued no doubt at the instance of the plaintiff in his suit. But in asking for such a prohibition he only exercised the right of every litigant in his position and it is impossible to treat such an application and the order thereon as a refusal by him to perform any of his duties as Receiver or to involve any contempt requiring to be purged.

6. The real point for our decision is. assuming the defendant was a party to the murder, whether it in any way affected her succeeding to his estate.

On behalf of the plaintiff one argument was, that the commission of such a sin by a Hindu rendered the person committing it a "" patita"" or degraded

person and that the degradation involved among other consequences, a loss of the""right of inheritance. Acts or omissions which entailed

degradation under the Hindu system of law were indeed many. They included not only heinous sins and crimes but numerous other things which are

looked upon as innocent or are tolerated in these times. It may well admit of doubt whether the injunctions connected with degradation were ever enforced otherwise than by expulsion from caste now relieved against by legislation. However this may be it is quite certain that even so far back as the days of the Dayabhaga Commentator, Srikrishna Tarkalankara, loss of proprietary rights as an incident to degradation had begun to disappear. (See Tagore Law Lectures for 1884-85, page 426). Since the establishment of British Rule in this country, no one seems to have ventured to suggest in judicial proceedings that the sin attaching to the commission of even such serious crimes as robbery, murder &c. entailed by itself forfeiture of civil rights as a matter of Hindu Law, for though innumerable persons have from time to time been convicted by the Courts of such offences, the reports contain no case recognizing any such doctrine. Plaintiff's case, therefore, derives no support from the rules dealing with the matter of degradation which, even assuming that they were at one time more than mere moral injunctions, cannot now be treated as otherwise than obsolete.

7. It will next be convenient to dispose of the American cases referred to in the argument with reference to the effect of murder on the right of the murderer to take as heir or legatee of the murdered person. In *Biggs v. Palmer* 115 N.Y. 506 : 13 Am. 819 decided by the New York Court of appeals in 1889, the facts so far as they are material for the present purpose were these. One Francis B. Palmer possessed of personal and real property had made his will giving certain legacies to his two daughters and the remainder of his estate to his grandson Elmer E. Palmer with a gift over to the daughters in case Elmer should survive him and die unmarried and without issue. Elmer who knew of the provisions made in his own favour in the will, murdered the testator by poisoning him in order to prevent the testator from revoking those provisions (which he had manifested some intention to do) and in order that he might obtain the immediate possession and enjoyment of the property. A majority of the Court held that the devise and bequest to Elmer should be treated as revoked by reason of the crime of the devisee (notwithstanding that the statute of wills in force in the state, made no express mention of the commission of such a crime as a fact operating to revoke a will), that the daughters were the true

owners of the real and personal estate left by the testator and restrained the administrator and Elmer from using any of the personalty or real estate

for Elmer's benefit. The majority in effect held it is competent to a Court to import into a statute, on grounds of public policy, what the plain and

unambiguous words of the enactment do not in any way cover. The next case was that of *Schellenburger v. Ransome* 31 Neb. 61. 28 Am. St. 500

which came before the Supreme Court of Nebraska first in 1891 and then on review three years later. There a female child of tender years was

entitled to a certain estate in fee simple subject to her father's life interest. The father who, had the child died a natural death at the time she was

murdered, would have been her heir, killed her in order that the fee simple might then and there vest in him as such heir. The Court in 1891 held on

the analogy of *Biggs v. Palmers* 115 N.Y. 506; 12 Am. 819 that the transferees from the murderer acquired no interest in the estate which had

been owned by the deceased child, as the transferor himself had nothing to convey since one could take by inheritance the estate of a person

whom he murders for the purpose of removing the life standing between him and that estate. But on the review the Court went to the opposite

extreme by holding that the transferees were entitled to the estate of the murdered child notwithstanding it was found that they had taken with the

knowledge that their transferor was the murderer. The last case was *In re Carpenter's Estate* 50 Am. 765 that came before the Supreme Court of

Pennsylvania in 1895 and in which a majority of the Court held that a son who had murdered his father for the purpose of securing the latter's

estate, nevertheless took the estate as heir under the statute of descents and distributions.

8. None of these rulings has, as might be expected, given entire satisfaction in that country. (See *Harvard Law Review* vol. IV p. 394 and vol. VIII

p. 170). Notwithstanding that the Judges who took part in the second decision in *Schellenburger v. Ransome* 31 N EB. 61 as well as those who

formed the majority in *In re Carpenter's Estate* 3 felt, as they could not but do, that the conclusion reached by them was not what (was?) to be

desired, they seem to have considered themselves bound to arrive at it lest otherwise they would be importing into the statutes they had to deal

with, viz., the statutes relating to descent and distribution of property in force in the states respectively, exceptions which it was beyond the

legitimate bounds of judicial interpretation to introduce. Whether without infringing established canons of construction of statutes, the Nebraska and

the Pennsylvania Courts could not have avoided the result admitted by them to be undesirable and whether even a more satisfactory conclusion

than that arrived at by the majority of the Court in *Biggs v. Palmer* 115 N.Y.506 from the point of view of those who object to the latitude claimed

by that majority in the matter of interpreting written laws, by following the course suggested in? the periodical already cited . e., by fastening a trust

upon the guilty party on whom the statutes cast the legal estate, is well worthy of consideration (see 4 Har. L.U., vol. 394 Har. L.R. 170.

9. Be this as it may, how does the matter stand with reference to the law to be administered by this Court in cases like the present? No doubt the

personal Law of the parties to the dispute is the Hindu Law of Succession." If that law lays down any definite rule with reference to the question to

which the facts of the present case give rise, it is of course not open to this Court to decline to enforce that rule on the ground that it would be

more equitable in its opinion so to decline. If however in regard to such a question the Hindu Law is altogether silent, the rule to be applied would

be that of equity, justice and good conscience. Now does the Hindu Law lay down any rule in regard to the precise point at issue viz., whether a

person murdering another for the purpose of accelerating the succession to him is or is not entitled to the succession? If the well-known text of

Yajnavalkya, "" The wife; and the daughters also, brothers likewise; and their sons, gentiles, cognates, a pupil and a: fellow student; on failure of the

first among these the next in order is indeed heir to the estate of one, who departed for heaven leaving no male issue"" (Stokes Hindu Law Books p.

427), which is the foundation of the Mitakshara law of inheritance to the property of a male dying separated, is to be read as containing an

explanatory clause negating every possible exception, then doubtless the defendant must succeed. That however is indisputably not the case. For

take the very first instance mentioned in the text, that of the wife. Supposing she had been unchaste during the lifetime of her husband, it cannot of

course be argued that by-virtue of the text she would be his heir, in spite of her misconduct. Idiocy, lunacy, certain incurable diseases, entry into

the order of yati &c, are like unchastity in the case of the wife, circumstances that would in the case of those with regard to whom they are

predicable preclude the operation of the rule embodied in the text. No doubt such cases are provided for by rules of Hindu Law to be found in

other texts. But that does not derogate from the soundness of the view that the text under which the defendant claims enunciates but a general rule

whose effect is liable to be nullified more or less by facts other than the two postulated therein, viz., the demise of a male owner of property

without co-parceners and the survival of the relation specified in the text. What such facts are have to be ascertained either with reference to the

rules embodied in other Hindu texts or with reference to principles which it is the duty of the Court to follow as a tribunal bound to administer the

law of justice equity and good conscience in cases not provided for specifically. Consequently whether the fact that a person who would be heir by

virtue of that text murders him to whom he would thus be heir detracts from his right of succession is a question to be decided in the first place with

reference to the provisions, if any, of the Hindu law to be found elsewhere than in that text and in the absence of such provisions according to

recognised general principle, which it is legitimate for the Court to resort to in such a contingency.

10. In the argument addressed to us our attention was not drawn to any Hindu authority that may be said specifically or directly to bear upon the

matter. Texts relating to degradation attaching to a person by reason of the sin involved in the commission of murder which is a crime of the highest

degree according to the classification of Hindu Lawyers cannot, for reasons adverted to in a previous part of this judgment, avail in the discussion

of this question. The text purporting to exclude from the succession a son "" hostile to the father"" undoubtedly shows how repugnant to the spirit of

the Hindu law must be the contention that the estate of a deceased person passes to the heir who murders him, as if it were a reward for his

unnatural act. But whether from the extreme generality of the expression, which has been interpreted by different commentators to include a variety

of things from abuse of to murderous attacks on the father and even what takes place after his death " such as failure to offer the customary

oblations, (see Jolly's Narada, vol. XXXIII Sacred books of the East, p. 194, Note on verse 21), or on some other ground, this text has never

been acted upon and it also must be considered obsolete. Even were it otherwise, relating as the text does to the case of father and son there

would be no warrant for treating the words importing that relation as merely illustrative and virtually comprehending all cases of heritable relations,

the foundation of the rule being most probably the special reverence and regard to the father as head of the family inculcated by the Hindu Sastras.

11. The point under consideration is clearly therefore one untouched by the Hindu law. Turning then to the general law how does the matter stand?

The answer is absolutely plain, for the principle expressed by among others the maxim "" nemo ex suo delicto meliorem suam conditionem facere

potest"" is one almost of universal law. Some of the comments of Bronchorst on this maxim in his work on the rules of the Roman law (p. 106)

seem to have peculiar appositeness here. "" This rule,"" he writes "" is replete with justice and equity, for it is not agreeable to reason that any one

should derive advantage from that which deserves punishment. Thus if a husband shall have agreed in the marriage articles that the dowry of the

wife, shall be restored to him in ""the event of her death and if he shall contrive to bring about that event either by destroying her or by not calling in

a physician when she is sick or by fraudulently employing an unskilful one in order to hasten her death he shall not be entitled to the restitution of

the dowry. For it is not agreeable to equity that the husband should thus benefit by his crime."" The case dealt with in the above extract is no doubt

one of contractual relation. That the application of the maxim is, however, not confined to such a relation only is manifest from the decision of the

Queen's Bench in *Cleaver v. Mutual &c, Life Insurance Co.*, (1902) 1 Q.B. 147 where the Court refused to enforce a trust in favour of one who

had brought about the conditions essential to its fulfilment by killing the person whose death made it operative. The principle of this decision has

been extended in this country with reference to the legal relation of decedent and heir in the case of *Shah Khanam v. Kalhandharkhan* 1. Rep. 455

where the Chief Court of Punjab held that a Mahomedan who had murdered his half brother could not be allowed to claim the deceased's

property as his heir. This decision cannot but commend itself as right considering that the legal relation to which the maxim in question was thus in

effect extended is one pre-eminently calling for such extension, implying as it does reciprocal affection and kindness attributable to the natural tie

subsisting between persons so connected and that to hold otherwise would be to outrage every feeling of humanity.

12. This being so, the only question is as to the proper theory of giving effect to the maxim in cases like the present) that is to say, whether the wrongful act of the person standing in the position of heir is to exclude him from the inheritance so as to prevent the very vesting in him thereof, or is it to be treated as a fact that should merely disentitle him to any beneficial interest in the inheritance. It is the latter view that would seem to be supported not merely by the analogy of the Civil Law but also by a provision of our own legislature in a not dissimilar case. It has also a practical advantage which the theory of non-vesting of the inheritance does not possess and which makes it therefore the more acceptable from the point of view of a tribunal administering both law and equity.*

13. Now according to the Civil Law the killing of the decedent by the heir intentionally or even negligently was among the causes which rendered the heir unworthy of the inheritance. This doctrine of unworthiness was, however, not given effect to by intercepting the vesting of the inheritance itself. In Mackeldy's work to which reference was made in the course of the argument the law on the point is thus succinctly stated : ""There are a number of cases in which the heirs or legatees are deprived for unworthiness of the property left to them. In these cases which are termed cases of unworthiness (indignity) the law says *heres veb leaga-tariun Capere non potest* (the heir or legatee is incapable of taking) or *ei eripitur* (wrested from)."" (Dropsie's Translation of Mackeldy's Roman law p. 550). This last phrase of the learned author points to the view that in such cases what really happens is not that the vesting of the succession is prevented but that what was vested in accordance with the law is wrested away on ground of justice and equity. And Sohm in his Institutes (p. 472) says ""The unworthiness does not prevent either *delatio* or *acquissitio*. But the law declares that the property which has vested in an *indignus* shall be divested again (*eripi*) either in favour of the *fiscus* or in favour of a third party entitled (*bona ereptoria*). He is considered unworthy to keep the inheritance."" The unmistakeable clearness and directness with which the matter is stated in the passage just quoted render it superfluous to refer to other authorities, citing some of which it was pertinently pointed out in regard to the references to the civil law made in *Riggs v. Palmer* 115 N.Y. 506 that *ereptio propter indignitatem* is a case not of revocation but of restitution. 8 .

L. Rev. 170.

14. The provision of the legislature alluded to above is Section 85 Of the Indian Trusts Act, para. 2, which says "" where property is bequeathed

and the revocation of the bequest is prevented by coercion the legatee must hold the property for the benefit of the testator's legal representative.

Such being the theory adopted by the law in the case of coercion used for the purpose of preventing revocation of dispositions under a will, that

must necessarily be the theory to be followed when the same end is compassed by tt urder as also when the succession secured by the same

unlawful means is intestate instead of testamentary.

15. The practical advantage attending the view under consideration to which also allusion was made above is this. It is not impossible especially in

cases where the murder is secret that the guilty prima facie heir may succeed in passing himself off for a time as an innocent possessor and make

transfers to third parties without notice. In such cases if the doctrine of exolusion were to prevail bona fide purchasers from him would be

unprotected. The theory of trust, however, while saving the law from the reproach of permitting a person to retain the fruits of an act superlatively

wrongful or of enabling purchasers with notice to take from him with impunity, would amply protect bona fide purchasers.

16. It only remains to add that the beneficial interest in the inheritance vests in those who would be entitled to it were the guilty heir out of the way,

on the manifestly equitable ground stated by Domat that those who would come in by reason of his exclusion should not be affected by his

wrongful act. (Domat's Civil Law, Part II, Book I, see III iđ½ 2547).

17. The question of conviction or acquittal on which some stress was laid on behalf of the defendant would no doubt be relevant were the matter

one of punishment for a crime, but here the Court is concerned only with private rights of parties as affected by a wrongful act, though such

wrongful act may from the point of view of the Criminal law, be a punishable act. Attainder for murder under the English Law to which allusion was

made in the argument, no doubt, presupposes a conviction, but this Court cannot possibly resort to so special and peculiar a doctrine of that law in

laying down a. rule of justice, equity and good conscience, as it is here called upon to do.

18. In the view taken by us the lower Court ought to have tried the question whether the defendant did commit the wrongful act imputed to her.

The decree of the lower Court is reversed and the suit remanded for disposal according to law. The costs will abide the event.