
(1933) 01 MAD CK 0016
In the Madras High Court

Vellayammal and Others

APPELLANT

Vs

N.P. Palaniyandi Ambalam

RESPONDENT

Date of Decision : 06-01-1933

Acts Referred:

Transfer of Property Act, 1882 — Section 43

Citation : AIR 1933 Mad 856 : 147 Ind. Cas. 381 : (1933) 38 LW 955 : (1933) 65 MLJ 772

Hon'ble Judges : Krishnan Pandalai, J

Bench : Division Bench

Judgement

Krishnan Pandalai, J.—This was a suit by a Hindu reversioner to set aside alienations by the female heirs. Of two such alienations which

formed the subject-matter of this second appeal, "one which affected the appellants 1 and 2 has been settled and all that now remains is the

alienation which affects the other appellants, viz., appellants 3 and 4, which concerns item No. 1 in B Schedule, 19 cents of land. The Court of first

instance upheld this alienation and dismissed the suit. In the Court of appeal to which the plaintiff appealed, the learned Judge deals with this

property in paragraph 13. The 6th defendant's father bought this property so long ago as (1886) from Velliammal, mother of the last male-holder

and her daughter, one Thungi. The then reversioners, the last male-holder's paternal uncle Palaniyandi and his son the present plaintiff then brought

suits to set aside the alienation and succeeded. But after that decree the two families, that is of the purchasers and the vendors, who were relations,

settled their disputes. The net result of the settlement was that one-half of the property sold was restored to the reversioners and the other half

consisting of this item 1 of B schedule was retained by the purchaser, the 6th

defendant's father. This settlement was effected so far as this property was concerned by two deeds, Exs. II and II-a. Ex. II-a is a sale deed purporting to be executed by Palaniyandi for himself and on behalf of his sons including the present plaintiff. It recites that they have received Rs. 85 in cash and that the purchaser, the 6th defendant's father, is to enjoy the land as his. Ex. II purports to be the deed of release six days later by the same people to the same person and says that the executants have relinquished such rights as they had in the property, that is, 19 cents now in dispute, by reason of the decree which had been previously obtained. All this was long before the succession in favour of the plaintiff opened by the death of Velliammal who lived on till 1921. This suit was brought in 1923.

2. It appears to me that the Court of first instance was right and the Court of appeal wrong about the plaintiff's right by this suit to recover this property. Whatever may have been the merits of the original alienation and the title conveyed thereby, the plaintiff must lose on one of two grounds. First, u/s 43 of the Transfer of Property Act the plaintiff's father having sold this property by Ex. II-a, as if it belonged to him and to the plaintiff, at a time when they had admittedly no title thereto, the plaintiff cannot now be heard to set up that fact after acquiring the title as reversioner in 1921.

3. Secondly, treating the old alienation as still the subject for consideration, the act of the plaintiff's father acting on his own behalf and on behalf of the plaintiff in surrendering whatever rights they had by the decree and in purporting to sell the property to the 6th defendant's father was as emphatic an affirmation of the transaction as it is possible to imagine. The fact that at that time they were not the actual reversioners but only the presumptive reversioners is not in my opinion sufficient to deprive that act of its due force and effect; because as stated by the Privy Council in 23 CWN 777 (Privy Council) it is possible for presumptive reversioners even before the succession opens by a sufficient act of affirmation to do something which disables them from questioning the alienation after they are in titulo. The learned Judge in appeal does not seem to have either perceived or given any proper answer to these points. But he contents himself with saying that the release deed does not bind the plaintiff since he

cannot be literally said to be claiming under his father. Here he ignores the fact that it was not by the act of the father -alone but by the act of the plaintiff himself by his guardian -that he is bound. In the circumstances in which these documents were executed there can be no little doubt that the acts of the plaintiff's father were eminently prudent and beneficial and the plaintiff cannot now be heard to question them. The appeal so far as the appellants 3 and 4 are concerned succeeds and the decree of the lower appellate Court so far as it concerns item 1 in Schedule B must be reversed and that of the first Court restored. The appellants 3 and 4 must have their costs both here and in the Court below proportionate to the value of the property concerned in their appeal.