

(1926) 12 MAD CK 0066
In the Madras High Court

(Venka) Ramayya

APPELLANT

Vs

(Venka) Narayya and Others

RESPONDENT

Date of Decision : 09-12-1926

Acts Referred:

Citation : AIR 1927 Mad 530

Judgement

1. The facts are these. The plaintiffs are reversioners to the estate of one Venkayya. When he died, his widow Papadu succeeded to his estate and alienated certain of his properties. Item No. (1) was purchased by the 1st defendant from the father of the Defendants Nos. 2 to 5 to whom Papadu had sold it. Item No. (3) was sold to Defendants Nos. 2 and 3 by Papadu herself. Papadu died more than 25 years ago. Her daughter Manickkam who then succeeded to the properties of her father executed a surrender deed, Ex. A, dated 29th January 1919, in favour of the present plaintiffs and they have sued for recovery of possession of these properties from the defendants.

2. The plaintiffs' case is that the alienations are not binding on the reversioners and their right to succeed by inheritance is accelerated by the surrender effected by Manickkam. The District Munsif held that the surrender was neither valid nor bona fide. The learned Subordinate Judge, holding that the surrender is valid, remanded the suit for a fresh consideration of the question whether the surrender was real and bona fide. The 1st defendant appealed,

3. Mr. Justice Jackson dismissed the appeal in a short judgment stating that it does not appear

that the point now argued was taken in the lower Court, though it may well be taken in future.

4. The point argued before the learned Judge was that according to the decisions of this Court, it was not open to the plaintiffs to institute their suit for possession of the properties during the lifetime of Manickkam. The same point has again been argued before us in Letters Patent appeal. It appears to us that this

question must have been argued before the lower Courts, since the decisions bearing upon it are referred to in the appellate judgment. We must, therefore, allow the appellants' learned vakil to argue this question before us.

5. In this Court, it has been held that when a reversioner obtains the estate through the surrender by the life-estate holder of her estate, he is not entitled to question her alienations during her lifetime but must wait till her death to do so: see Subbamma v. Subramanyam [1916] 39 Mad. 1035 and Sundarasina Rao v. Viyamma A. 1925 Mad. 1267 The reason for the rule is that an alienee for consideration from a widow is reasonably entitled to calculate that the alienation which she has made to him will hold good at least during her life time. In this case, Manickkam never filed any suit for a declaration that the alienations of Papadu would not bind her nor did she file a suit for possession of these properties. It was long after the period of limitation that Ex. A was executed. It is clear from the recitals in Ex A that the express object of the surrender was to enable the plaintiffs to sue for possession. The enforcement of the rule just referred to will entail a dismissal of the plaintiffs' suit; but Mr. Somayya contends that the rule should be applied only in cases where the surrender has been made by the widow and not by her daughter as in this case, and that, being a rule of equity, it should never be given effect to in favour of transferees (like the defendants here) who by force of law of limitation are in the position of trespassers who have become owners of property.

6. We cannot accept this contention. The alienations by Papadu in favour of the defendants were voidable. Manickkam who had the right to complain against the alienations did not take any steps to do so; in fact she allowed her right of action to become barred. Not having sued in time we think she must be deemed to have acquiesced in the alienations made by her mother and treated them as if they were her own. In these circumstances, the alienees are reasonably entitled to expect that during Manickkam's life time also the alienations will not be questioned. The reason for the enforcement of the equitable rule exists in this case also. The suit by the plaintiffs is, therefore, premature. We allow the Letters Patent appeal and dismiss the plaintiffs' suit with costs throughout except of the second appeal.