

(1946) 04 MAD CK 0011
In the Madras High Court

V.T. Elaya Pillai

APPELLANT

Vs

Ramasami Jadaya Goundan

RESPONDENT

Date of Decision : 26-04-1946

Acts Referred:

Madras Impartible Estates Act, 1902 — Section 4

Citation : AIR 1947 Mad 165 : (1946) 59 LW 677 : (1946) 2 MLJ 373

Hon'ble Judges : Rajamannar, J

Bench : Division Bench

Judgement

Rajamannar, J.—The first defendant in O.S. No. 44 of 1944 in the District Court of South Arcot seeks to revise an order of the learned

District Judge of South Arcot allowing an application for amendment (I.A. No. 169 of 1945) made by the respondent. The suit was not originally

filed by the respondent but was filed by one Muthuswami Jadayya Koundar who was the holder of an impartible estate known as Jadaya Goundan

Hills Jagir. The suit was inter alia for a declaration that a promissory note bearing date nth September, 1942, and a lease deed bearing date 16th

September, 1942, obtained by the defendant from the plaintiff are not binding on or enforceable against the plaintiff. The ground on which this relief

was sought was that the execution of the promissory note and the deed of lease was vitiated by coercion, undue influence and fraud. The original

plaintiff died on 13th May, 1945, and the present respondent, one Ramaswami, his younger brother, was brought on record as his legal

representative and successor to the impartible estate. The respondent now seeks to amend the plaint filed by his predecessor by the addition of a

paragraph which raises a contention that the promissory note and the lease deed are not binding on the estate as it was not competent to his

predecessor, who was only a qualified owner, to alienate it beyond his lifetime in the absence of necessity. This plea is based evidently on Section 4 of the Madras Impartible Estates Act. There is a reference in the paragraph sought to be added to Section 6, of Madras Act II of 1904 but the other allegations in the paragraph do not justify a reference to that section. The application for amendment was opposed by the first defendant, his main objection being that the respondent ought not to be allowed to put forward a claim which was not available to the deceased. This was not seriously disputed before the learned District Judge, nor has it been disputed before me. The learned District Judge held that the original plaintiff, Muthuswami could have asked for a declaration that the alienation was not binding beyond his lifetime and that therefore the respondent could be allowed to obtain an amendment which sought to raise such a plea.

2. Mr. K. S. Sankara Aiyar, the learned Advocate for the petitioner before me formulated his objection to the amendment sought from two aspects : (1) he contended that it would not have been open to Muthuswami, the respondent's predecessor, to have raised the plea now sought to be raised by amendment, and (2) even if it were permissible for Muthuswami to have raised that plea originally at the time of the filing of the plaint the Court ought not to allow him at a subsequent stage to have the plaint amended by the addition of this plea based upon a cause of action different from that on which the suit was originally laid.

3. I agree with him and I am of opinion that both his grounds of objection are well founded. So far as I am aware the only observations directly in point on the question whether the holder of an impartible estate was entitled to institute a suit for a declaration that an alienation made by him was not binding on his successor are to be found in the decision in Venkatarama Rao v. Venkatalingama Nayanam Bahadur Varu (1921) 42 M.L.J. 43.

I may mention that that decision is also most apposite to the present case. In that case a suit was filed by the Rajah of Kalahasti on a mortgage executed by him. The plaintiff died pending suit and a successor to the zamindari was brought on record as the third plaintiff. He applied to amend the plaint by adding an allegation that the transaction set out in the plaint even if true would not bind him as successor to the estate as the moneys raised thereunder were not utilised for purposes binding on the estate. The lower

Court allowed the amendment to be made. On an application for revision Kumaraswami Sastri, J., set aside the order of the lower Court on the ground that the respondent in that case as legal representative could

not set up a plea that he was not bound by the transactions of the deceased plaintiff. The learned Judge said:

In cases where there is a conflict of interests between the deceased plaintiff and his legal representative and where the latter claims that he is not

bound by the transactions of the deceased plaintiff, I think the proper course is for the legal representative to file a separate suit to enforce his

rights, and that it is not open to the legal representative in his capacity, as such, to repudiate the transactions, which have been admitted by the

deceased to be valid and on the footing of the validity of which the deceased claimed certain reliefs in the plaint.... But where the amendment

sought is one which the deceased himself could not have asked, it seems to me difficult to see how his legal representative could ask for it.

It therefore became necessary for the learned Judge to determine whether it was open to the holder of an impartible estate to question the

propriety of his own alienation or to seek a declaration that the alienation made by him was not binding on his successor. The opinion of the

learned Judge on this point is expressed in unambiguous terms thus:

It is clear that in the present case it was not open to the deceased zamindar to question the propriety of his own alienation or to seek a declaration

that the alienations made by him and which in terms are not limited to his own life interest in the zamindari are not binding on his successors.

On the authority of this case there can be no question that the amendment allowed by the lower Court was wrong. The learned Advocate-General

however maintained that the holder of an impartible estate can on grounds of public policy be allowed to bring a suit for a declaration that an

alienation made by him is not binding on his successors. For this position he relied on the decision in *Raja Rama-chandra Saru Harischandra Deo*

Garu v. Akella Venkatalakshminarayana (1918) 37 M.L.J. 65. Having regard to the facts of that case, I am of opinion that it was not decided by

the learned Judges in that case that the holder of an impartible estate was entitled to obtain from the Court a declaration that the alienation which he

had made would not bind his successors. In that case the suit was brought on a

mortgage of an impartible estate which was executed by the first defendant, the then proprietor. The prospective successor to the estate was also joined as the second defendant. It does not appear from the facts set out in the opening of the judgment whether the first defendant definitely alleged that there was no necessity for the mortgage. The second defendant, however, did allege that there was no necessity for the mortgage and that it did not bind the estate. The suit was however compromised, the razinamah being to the effect that the first defendant should pay the sum agreed upon in certain instalments, that the debt was binding on the estate and that on failure of payment, the mortgaged property would be sold. There was default in payment and the plaintiff made an application for a final decree and for sale of the mortgaged property. Both the first defendant and the second defendant by their counter-petitions preferred objections mainly on the ground that the estate was an impartible and inalienable estate and that it could not be sold in pursuance of the compromise decree. The second defendant urged a further ground that the first defendant had no necessity to borrow the amount for which the mortgage was executed. The learned District Judge overruled the objections and passed a final decree. There was an appeal to this Court. The first defendant died pending the appeal. Abdur Rahim, J., who delivered the leading judgment therefore defined the scope of the controversy before this Court thus:

As already stated, the first defendant has since died and the only question now is whether by reason of the statements in the petition of compromise and the decree passed in accordance therewith the second defendant is precluded from raising the question as to the binding character of the debt or whether the question should be tried.

Several contentions were raised to preclude the second defendant from raising such a plea. One of such contentions was that the first defendant, the then holder was a party to a consent decree and it must be held that by reason of the compromise the debt must be deemed to have been incurred for a proper purpose. The learned Judge at page 69 of the report says dealing with this contention,

As regards the last, it should be pointed out that in his written, statement the first defendant questioned the validity of the mortgage, and the

statements in the razinamah petition as to the character of the debt can at the most be treated as evidence against the first defendant. It is difficult to

see how it estops him from asking for an enquiry on this issue. It is well known there is no estoppel against a statute.

The learned Advocate-General says that the observations made by the learned Judge in this connection deals with, the right of the first defendant

and not with the second defendant. Though I must confess that there is some ambiguity in the language, having regard to the statement of the case

at the outset to which I have already referred and having regard to what follows which I shall presently refer to, the learned Judge throughout was

only considering the case of the second defendant. Immediately following the passage which I have reproduced above the learned Judge deals with

another contention raised as regards the second defendant, namely, that it was open to a mortgagee seeking to enforce a mortgage against an

estate in the possession of a Hindu widow to implead the next reversioner in the suit so that a decree obtained in his presence would bind the

estate, and on the same analogy the compromise decree could be held to bind the second defendant who was eo nomine on the record. Dealing

with this contention the learned Judge says:

But I am not satisfied that the position of an owner of an impartible estate and of an heir to such an estate is analogous in all respects to that of a

Hindu widow and the next reversioner. An heir to an impartible estate has no sort of right in it for the time. His interest in the estate is a mere

spes successionis and any attempt therefore by the first defendant to deal with his chance of succession must be held to be void.

Even the next contention that the compromise should be considered to be a family settlement has reference only to the second defendant. In these

circumstances I am not inclined to agree with the learned Advocate-General that this decision is an authority for the position that it is open to the

holder of an impartible estate to institute a suit for a declaration that an alienation made by him is not binding on his successors after his lifetime.

Apart from this decision no other decision has been cited to me in support of this contention of the respondent.

4. The learned Advocate-General raised a contention that the original plaintiff could be deemed to have two capacities, one an individual capacity

and another -a representative capacity representing the estate for the time being and in his representative capacity he could file a suit for a

declaration that the alienation was not binding on the estate after his lifetime. Though it is quite true that a person who happens to be the holder of

an impartible estate may have other capacities and transactions in that capacity, so far as the provisions of the Madras Impartible Estates Act are

concerned they have reference only to his transactions as the holder of an impartible estate and in respect of such an estate. I fail to see how there

is a dual capacity in respect of the alienation of an impartible estate by the holder for the time being of that estate.

5. The decision in *Sundaresan Chetty alias Sundaram Chettiar Vs. Visvanatha Pandarasannadhi Avergal and Another*, which is a case of public

trust cannot obviously have any application to the facts of the present case.

6. The other contention of Mr. Sankara Aiyar is equally substantial. The suit as originally laid was on the specific ground that the transactions

referred to, namely, the promissory note and the lease deed, were vitiated by undue influence and fraud. The cause of action has definite reference

to the exercise of undue influence and coercion by the first defendant. Having instituted the suit to obtain a relief on those grounds I am of opinion

that a Court should not permit the plaintiff to amend the plaint by the addition of a new plea based on quite a different ground, namely, that though

the suit transactions were valid they would not be binding on the successors to the plaintiff or binding on the estate after the lifetime of the plaintiff.

The result of allowing such an amendment would be to introduce a completely new element unconnected with and in essence even inconsistent with

the grounds originally alleged in support of the plaintiff's claim. Authority is not needed that there are limits to the discretion of a Court when

permitting an amendment to be made to the plaint. The leading judgment in *Ma Shwe Mya v. Maung Mo Hnaung* (1921) L.R. 48 IndAp 214 :

ILR 48 Cal. 832 (P.C.) enunciates in clear terms such limitation. I am therefore of opinion even assuming that the original plaintiff would have been

entitled to institute a suit for a declaration that the suit transactions were not binding on his successors and on the estate after his lifetime, it is not

proper to permit such a plea to be raised by way of amendment even if the amendment had been applied for by the original plaintiff himself.

7. For both these reasons I must hold that the learned District Judge was in error in granting the amendment. I set aside his order and dismiss I.A.

No. 169 of 1945 with costs throughout.