Privy Council Appeal No. 5 of 1940

Mathukumalli Ramayya and others – – – *Appellants*

v.

Uppalapati Lakshmayya – – – – – *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 21ST APRIL, 1942

Present at the Hearing:

LORD THANKERTON

SIR GEORGE RANKIN

SIR MADHAVAN NAIR

[*Delivered by* SIR MADHAVAN NAIR]

These are two appeals from a decree of the High Court of Madras dated the 1st October, 1937, on appeals from the Additional Subordinate Judge of Guntur which have been consolidated and heard together.

The appeals arise out of a suit instituted by the plaintiff for recovery of possession of immovable properties, as the nearest reversioner to the estate of one Ramachandrudu on the death of his widow Achamma in 1926, on the ground that the properties appertaining to the estate had been wrongfully alienated partly by his mother and partly by his widow.

The defendants are the alienees or their successors in title. Generally stated, they may be roughly grouped as those claiming under alienations made by the mother, and those claiming under alienations made by the widow.

The suit related to 16 items of properties of which items 11 to 14 and 16 were claimed on the footing that they had been acquired with the income of the estate subsequent to Ramachandrudu's death and must be treated as accretions to that estate. The High Court dismissed the plaintiff's claim to those items as unsustainable. The case as regards them is not now before the Board; nor is the case as regards item 1, 3 and a portion of item 7, which was compromised by the parties in the trial Court.

Ramachandrudu was a Hindu governed by the Mitakshara law. He died, as has now been found, in 1859, leaving surviving him his mother Bengaramma, a young widow Achamma and a sister Ramamma. Bengaramma died in 1878. Soon after Ramachandrudu's death there appears to have been an arrangement effected on the 16th October, 1859, between Achamma and Bengaramma under which Achamma was given Rs. 100 and a remainder in inam lands in two villages after Bengaramma's death and the latter took absolutely the rest of the properties of Ramachandrudu.

On the 17th March, 1866, Bengaramma executed a registered deed conveying the properties which she obtained under the above arrangement to her daughter's son Subbaramayya. This deed recited the terms of the arrangement of 1859, and Bengaramma stated in it that she had delivered that deed to her grandson " so that it might serve as a title deed." This deed has not been produced. Defendants 1 to 8 are the descendants of Subbaramayya and of his brother Velugondarayudu.

Subsequently, disputes were raised by Achamma regarding the title to the properties in the possession of Subbaramayya, and as a result, a settlement was effected between them by mediators, by the execution of two documents on the 13th August, 1867, under which Achamma got absolute title to a 1/3 share of the properties covered by the deed of the 17th March, 1866, and Subbaramayya to a 2/3 share.

In 1876 Achamma sold away her 1/3 share and the defendants now in possession of those properties hold them under the title derived from her.

In their written statements the defendants disputed the relationship of the plaintiff as the nearest reversioner and contended that Ramachandrudu was not the last male holder, he according to them having predeceased his father. On both points the Additional Subordinate Judge of Guntur found in favour of the plaintiff. He also found that Ramachandrudu died in or about the middle of 1859. These findings were accepted in the High Court and have not been questioned before the Board. The High Court expressed the view that Ramachandrudu must have died on some date between May and October, 1859.

The defendants also contended in the course of arguments that immediately on the death of Ramachandrudu, Bengaramma took possession of all his properties which had legally vested in Achamma, that the possession thus taken was hostile to Achamma, that " she and her transferees were in possession for over 12 years before the Limitation Act of 1871 took effect, i.e., before the 1st April 1873 " and " so under the Provisions of section 1, rule 12 of the limitation Act xiv of 1859, the right of Achamma as also the right of persons representing the reversion became barred and the right which became extinct prior to 1st April, 1873, cannot be revived under the Act of 1871." The plea in this form was not pointedly raised in the written statements. In conformity with this plea the issue on the question of limitation was amended and the plea was accepted by the Additional Subordinate Judge with the result that he dismissed the plaintiff's suit as barred under Act xiv of 1859, but only with regard to 2/3 of the suit properties; as in his view " possession which started as hostile to Achamma immediately after her husband's death as regards all the properties became restricted to a 2/3 from the date of Ex. III "—the settlement effected with Achamma.

As regards the 1/3 share allotted to Achamma, subsequently alienated by her, the plaintiff was given a decree on the ground that the alienations were not justified by any legal necessity.

It may be mentioned here that issue iv in the case raised the question " whether the family settlement of 1859 and 67 pleaded by the defendants are true, valid and binding on the plaintiff." As in his opinion the suit was not in time, the Additional Subordinate Judge held it was unnecessary to find on this and some connected issues except as to the genuineness of the settlements of 1859 and 67 which he stated was " beyond cavil." Their genuineness has been accepted throughout; but the correct inference to be drawn from them, as will be shown presently, has been the subject of considerable arguments before the High Court as well as before the Board.

From the Additional Subordinate Judge's decree, two appeals were filed before the High Court, one by the plaintiff and the other by the contesting defendants affected by the decree relating to 1/3 of the properties.

In the plaintiff's appeal, the learned Judges held differing from the finding of the Additional Subordinate Judge that the evidence does not establish that Bengaramma took possession of Ramachandrudu's properties prior to the arrangement of October 1859, that consequently Achamma had no cause of action to sue Bengaramma for possession on the footing of dispossession; that the cause of action for the plaintiff to sue the alienees arose only on Achamma's death and that therefore the Additional Subordinate Judge was wrong in holding that the remedy of the estate to recover possession of the property in Bengaramma's possession had become barred under Act iv of 1859. The High Court further held that the settlement of 1859—which is referred to as an " undoubted arrangement "—did not amount to a " surrender " of the estate by the widow in favour of the

mother, and that the transfer of 1867 was in no sense a family settlement which would bind the reversioner. The appeal by the plaintiff was therefore allowed by the High Court.

The appeal by the contesting defendants as regards the 1/3 share alienated by Achamma was dismissed on the ground that legal necessity to justify the alienations was not made out by the appellants.

In the result, the plaintiff was given a decree by the High Court for possession of all the suit properties except the so-called accretions to the estate and those with respect to which a compromise was effected between the parties.

From this decree of the High Court, the contesting defendants—the alienees—have filed these appeals to His Majesty in Council.

In support of the appeals, Mr. Parikh, the learned Counsel, first submitted that the arrangement of 1867 is in the nature of a bona fide settlement of family disputes in respect of Ramachandrudu's estate between the widow and Subbaramayya which in law would bind the reversioner though he was not party to it. No doubt, under this arrangement the disputes between Achamma and Subbaramayya, to whom Bengaramma had transferred in 1866 whatever she had got under the arrangement of 1859, were settled by Subbaramayya taking a 2/3 and Achamma a 1/3 share of properties; but what is important to notice is this, that Subbaramayya had no rights to the properties except what he derived by the gift made in his favour by Bengaramma. Since it has not been shown that Subbaramayya had any competing title of his own in respect of the properties in dispute, there can be no basis in their Lordships' opinion for a valid family settlement between the parties which would bind the reversion. In *Khunnin Lal* v. *Gobind Krishna Narain* (L.R. 38 I.A. 87 at p. 102) their Lordships pointed out that " the true test to apply to a transaction which is challenged by the reversioners as an alienation not binding on them is, whether the alienee derives title from the holder of the limited interest or life tenant." In the present case it is clear that what title Subbaramayya had to the properties was acquired under the compromise from the widow since he had no antecedent title of his own to them. In the circumstances, their Lordships agree with the High Court that the claim of the contesting defendants to a 2/3 share of the properties cannot be sustained on the basis of the arrangement of 1867.

Nor could that claim be sustained under the arrangement of 1859—the plea next urged in support of it. As the defendants deliberately suppressed the document the High Court beyond accepting the arrangement as genuine refused to draw " particular inferences as to the nature and effect of it from the recitals' contained in the deed of 1867 " or " to speculate as to its exact form or purport merely to support the defendants' contentions." The plea that this arrangement amounted to a family settlement put forward in the trial Court was abandoned in the High Court. where it was contended for the first time that the transaction might fairly be regarded as a " surrender " by the widow in favour of the mother and that limitation against the reversioners started in 1878, when the mother Bengaramma died. See *Vytla Sitanna* v. *Marivada Viranna*, L.R. 61 I.A. 200. This argument cannot be accepted. In the absence of the document evidencing the arrangement it is unsafe to infer the true nature of the transaction from the bare reference to its terms contained in the deed of 1866. So far as their Lordships can gather from the recitals it would appear that the transaction was something in the nature of a division of the estate between Bengaramma and Achamma. The reference to the transaction as a " *vibhaga* ", and also the use of the word *farikath* (partition deed) would show that the transaction was treated by the parties themselves as partaking of the nature of a division. It may well be, as pointed out by the High Court, that for reasons not disclosed in the evidence the mother-in-law took a larger portion of the estate than the daughter-in-law, but that cannot convert what is referred to as partition in the deed of 1866 into a " surrender." Further, the reservation to herself by Achamma after Bengaramma's death of an interest in remainder in two of the villages, which has not been explained, would make it difficult to hold that the

" surrender " is effective as it has not been of the widow's entire interest in the properties. Their Lordships therefore reject the plea that the arrangement relied on amounts to a surrender which in law would accelerate the succession.

The next point to consider on this part of the case is whether the plaintiff's suit is barred under cl. 1, rule 12 of the Indian Limitation Act XIV of 1859. Ordinarily, the suit would be governed by the Limitation Act IX of 1908, which is the law in force when the suit was instituted; but if the defendants are able to show that the right of action had become barred under the Act of 1859 then the title that they had acquired could not be defeated by the subsequent Limitation Acts.

The relevant portions of cl. 1 of the Act of 1859 run as follows:

> " No suit shall be instituted in any Court of Judicature . . . in India . . . unless the same is instituted within the period of limitation made applicable to a suit of that nature . . . and the suits to which the same shall apply, shall be the following, that is to say,"

and then Rule 12 states as follows:

> " To suits for the recovery of immovable property or any interest in immovable property to which no other provision of the Act applies—the period of 12 years from the time the cause of action arises."

As already stated, the defendants contend that as immediately after the death of Ramachandrudu in 1859 Bengaramma took possession of his properties and held them adversely against Achamma in whom the inheritance had vested, they, claiming through her, have a perfect title to the properties by efflux of time before the Act IX of 1871 came into effect in April, 1873; and that if the widow was thus barred before the new Act came into force then the reversioner is also barred.

A reversioner who succeeds to the property has *now* 12 years to bring his suit from the time " when the estate falls into possession." Under the Act of 1859 the limitation for the suit was " the period of 12 years from the time when the cause of action arises." In *Nobin Chunder* v. *Ishur Chunder* (9 Suth. W.R. p. 505) it was held that " the cause of action " for the widow to recover the properties arose at the time when she was dispossessed, and limitation which barred her rights would bar the rights of the reversionary heirs also. The reasoning of the decision was that the reversioner had no " new and independent " cause of action from that which was available to the widow at the time of her dispossession. Referring to the decision, their Lordships in *Aumirtolall Bose* v. *Rajongeekant Mitter*, 2 L.R. I.A. 113 at 121, observed as follows:

> " It has been held by a full bench of the High Court of Calcutta that in the case of a succession by a reversionary heir after the death of a widow, who takes by inheritance from her husband, and is dispossessed, the period of limitation as against the reversionary heir, in the absence of fraud, is not to be reckoned from the time when he succeeds to the estate but from the time at which it would have been reckoned against the widow if she had lived and brought the suit (see 9 Suth. W.R. p. 505). That rule has been acted upon in other cases and it appears to their Lordships that the principle of that decision is correct."

The crucial point of time with regard to limitation being the dispossession of the widow, it follows that the question for consideration is whether or not Achamma had a cause of action against Bengaramma on the ground that she was dispossessed by her. The evidence on the point is scanty; it consists mainly of a few entries in a few revenue papers, the inferences to be drawn therefrom and the general circumstances of the case. The arrangement of the 16th October, 1859, being undoubted, the defendants in order to succeed in their contention that Achamma had a cause of action against Bengaramma will have to prove that Bengaramma entered into actual possession of lands prior to that date, but there is no satisfactory evidence to support that contention. The earliest date that can be invoked in favour of the defendants is the 6th February, 1860, entered in the

cist book for fasli 1269 which shows that an instalment of cist with respect to dry land in one of the villages was paid " through Bengaramma," but as appears from the headnote on the page, " Receipt for fasli 1269 was granted to Upalapali Ramachandrudu pattadar of the village . . ." Evidently patta continued to remain in the name of the deceased Ramachandrudu. It would appear that patta was transferred to Bengaramma's name in fasli 1271 (1861-62) for we find from the cist receipt book that receipt was granted for that fasli to Bengaramma described as " pattadar " of the village of Upilapadu though along with another, Lakshamayya. These dates are all subsequent to the arrangements of October, 1859 and cannot therefore help the defendants. This sums up the evidence that has been brought to their Lordships' notice on this point. There is nothing in this evidence to establish that Bengaramma did take possession of Ramachandrudu's property prior to the arrangement of 1859. As shown by Ex W (8th May, 1866) when she knew that lands standing in the name of her husband were registered in the name of her mother-in-law, Achamma submitted a petition to the Collector wherein she stated that " while she is the rightful owner of the fields that were standing in the name of her husband, they were since his death registered in the name of Bengaramma, her mother-in-law." The Tashildar took some action on this petition, but evidence does not show how the revenue authorities ultimately disposed of the matter. As the properties had been by this time conveyed by Bengaramma to her grandson, Achamma divided the properties with him, stating in her deed, referring to the document executed by Bengaramma that " I contended I too had rights to the property mentioned in the said document . . ." In this connection it is well to remember that Achamma never joined her husband after her marriage but always lived with her parents in a different village. It is clear from her conduct that acts of dispossession, if any, on the part of Bengaramma known to her would have been objected to by Achamma, but as stated already there is no evidence of any such act of dispossession. Therefore no cause of action to sue on the footing of dispossession accrued to Achamma. Bengaramma's possession of the lands after the arrangement of October, 1859, is to be referred to that arrangement and cannot amount to dispossession giving Achamma a cause of action to institute a suit against Bengaramma for the recovery of the properties: hence the question of adverse possession barring the rights of Achamma, the widow and consequently the rights of the plaintiff, does not arise and the latter's cause of action would only accrue after the death of Achamma, and would be a right to set aside the arrangement under which Bengaramma took possession of the lands as not binding on him. Their Lordships agree with the High Court that the Additional Subordinate Judge was not right in holding that the remedy of the estate to recover the properties in the possession of Bengaramma became barred under the Act XIV of 1859.

As regards the 1/3 share of the properties alienated by Achamma, the lower Courts have found on the merits that the evidence does not establish that there was legal necessity to support the alienations. No case has been made out in this appeal to persuade their Lordships to depart from the usual practice of not interfering with concurrent findings of facts.

In the result their Lordships will humbly advise His Majesty that these consolidated appeals should be dismissed with costs.

(18738) Wt. 8028—151 150 5/41 D.L. G. 335

In the Privy Council

MATHUKUMALLI RAMAYYA and OTHERS

v.

UPPALAPATI LAKSHMAYYA

DELIVERED BY SIR MADHAVAN NAIR

Printed by His Majesty's Stationery Office Press,
Drury Lane, W.C.2.

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