

ANDHRA PRADESH HIGH COURT

Gaddam Venkayamma

Vs.

Gaddam Veerayya

Appeals Nos. 80 of 1950 and 801 and 802 of 1951

(Viswanatha Sastri and Satyanarayana Raju, JJ.)

27.12.1949. 31.08.1956

JUDGMENT

Viswanatha Sastri, J.

1. These three appeals arise out of suits instituted by the plaintiff Gaddam Veerayya, the paternal uncle of Sambayya, deceased, for a declaration that certain sales of Sambayya's lands effected by his widow and mother were not binding on his reversioners. It is not now disputed that the plaintiff is the nearest male reversioner of Sambayya. The sales impugned in these appeals are Exhibits B-5, B-14 and B-12 effected by the widow and mother of Sambayya claiming to be absolutely entitled to the properties sold under Sambayya's will Exhibit B-1 dated 19th September, 1937. The widow and the mother of Sambayya as well as the vendees from them were made defendants to the suits. The Court below held that Exhibit B-1 had not been proved to be the will of Sambayya and that the widow of Sambayya had inherited his properties as his heir-at-law. The sales were not sought to be supported by the vendees on the ground of any necessity of the estate and the only issue of fact arising in these appeals is as regards the truth and genuineness of the will, Exhibit B-1. At the hearing before us it was argued that even if Exhibit B-1 was not proved to be the last will and testament of Sambayya, the suits were not maintainable by reason of section 14 of the Hindu Succession Act (XXX of 1956) which enlarged the limited interest of a Hindu widow into an absolute estate with retrospective effect and thereby put an end to the rights of reversioners to sue for the protection of the estate of the last male owner during the lifetime of his widow.

2. Section 14 (1) of the Hindu Succession Act (XXX of 1956) enacts that

"any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner".

3. For the purposes of this section, "property" includes both movable and immoveable property acquired by a female Hindu by inheritance. This section provides that, subject to certain

exceptions where a limited estate has been created by a written instrument, whatever property is in the possession of a Hindu woman, whether it has been acquired before or after the commencement of the Act, shall be regarded as her absolute property. The previous law allowing only a Hindu woman's limited estate to a widow inheriting her husband's property has been abrogated. Though section 14 of the Act is retrospective in so far as it enlarges a Hindu woman's limited estate into an absolute estate even in respect of property inherited or held by her as a limited owner before the Act came into force, its operation is confined to property in the possession of the female when the Act came into force. The word "possessed" in section 14 refers to possession on the date when the Act came into force. Of course, the possession referred to in section 14 need not be actual physical possession or personal occupation of the property by the Hindu female, but may be possession in law. The possession of a licensee, lessee or mortgagee from the female owner or the possession of a guardian or trustee or agent of the female owner would be her possession for the purpose of section 14. The word "possessed" is used in section 14 in a broad sense and in the context "possession" means "the state of owning or having in one's hands, or power". It includes possession by receipt of rents and profits. Even if a trespasser is in possession of land belonging to a female owner on the date when the Act came into force, the female owner might conceivably be regarded as being in possession of the land, if the trespasser had not perfected his title by adverse possession before the Act came into force. It is not however necessary for us to express an opinion on this point. Where, however, before the Act came into force, the female owner had sold away the property in which she had only a limited interest and put the vendee in possession, she should in no sense be regarded as "possessed" of the property when the Act came into force. The object of the Act was to confer a benefit on Hindu females by enlarging their limited interest in property inherited or held by them into an absolute estate, with retrospective effect, if they were in possession of the property when the Act came into force and therefore in a position to take advantage of its beneficial provisions. The Act was not intended to benefit alienees who, with eyes open, purchased property from female limited owners without any justifying necessity before the Act came into force and at a time when the female vendors had only the limited interest of a Hindu woman. On a transfer of property, it is only the transferor's interest that would pass to the transferee, the general principle being that a person cannot transfer to another more than what he or she is entitled to and a transferee cannot therefore have a better title than what the transferor had to the property transferred. If the transferor held the property only under limitations, the transferee would take it subject to those limitations, except in the case of a *bona fide* purchaser for value without notice from a person who had himself acquired title under a voidable sale. Before the Act came into force, a Hindu widow had power to convey an absolute interest in property inherited by her from her husband only under particular circumstances. She could however have conveyed her limited interest in the property in the absence of any necessity, and a transfer by her in the absence of such necessity cannot convey anything more than her own limited interest. A Hindu female limited owner who, before the coming into force of the Act, had sold property inherited by her retains no right to or interest in the property on the date of the coming into force of the Act. Section 14 merely charges her limited interest into an absolute estate in the property held by her when the Act came into force and does not enlarge the rights of a purchaser of her limited interest before the Act came into force. The rule of "interest feeding the estoppel" exacted in section 43 of the Transfer of Property Act on which reliance was placed for the appellant, would not avail the vendees because the female vendor does not get an absolute estate under section 14 of the Act in property of which she was not in possession at the date when the Act came into force. For these reasons, the appellant's objection to the maintainability of the suits by reason of

the enactment of section 14 of the Act XXX of 1956 must be overruled.

4. A further legal objection is taken to the maintainability of the suits O. S. No. 138 of 1949 and : 198 of 1949 which form the subject of A. S. No. 80 of 1950 and A. S. No. 802 of 1951. It is argued that these suits were instituted by a remote reversioner more than six years from the dates of the sales under Exhibits B-5 and B-12 effected by the widow of the last male owner. It is urged that Article 120 and not Article 125 of the Limitation Act applies to the case. There has been a divergence of judicial opinion on this point among the several High Courts and among the Judges of the Madras High Court. In *Chiruvolu Punnamma v. Chiruvolu Perrazu*¹ a Full Bench of the Madras High Court was of the opinion that Article 125 was intended rather to describe the character of the suit than to strictly limit the persons who might bring such suit. In the opinion of the Full Bench, though the point did not directly arise for decision, having regard to the fact that the presumptive reversioner sues not on his own behalf alone but on behalf of all other possible reversioners as well, the language in which a suit of that nature is described in column 1 of Article 125 is wide enough to include a suit in which, in exceptional circumstances, a reversioner other than the nearest reversioner, is allowed to be the plaintiff and have the conduct of the suit. In this view Article 125 would apply to all suits by reversioners to question alienations during the widow's lifetime. In *Varamma v. Gopaladasayya*² a later Full Bench of the Madras High Court went much further and following *Venkatanarayana v. Subbama*³ and *Janaki Ammal v. Narayanaswami Iyer*⁴ held that a suit by a reversioner to set aside an alienation by a Hindu widow was a representative suit on behalf of all reversioners, then existing or thereafter to be borne, and that all of them had but a single cause of action which arose on the date of the alienation. Wallis, C. J., in his order of reference and Sadasiva Aiyar and Seshagiri Aiyar, JJ., sitting in the Full Bench were of the opinion that Article 125 was the only Article applicable to suits by reversioners, presumptive or remote, for setting aside alienations of the widow during her lifetime. *Rajagopala v. Ramanuja*⁵ *Kuppuswami v. Thangavelu*⁶ and *Yagnanarayana v. Lakshminarayana*⁷ were decisions of single Judges of the Madras High Court. In 44 Mad LW 208, and 1946-2 Mad LJ 214, it was assumed that Article 120 of the Limitation Act would apply to a suit by a reversioner other than the presumptive reversioner for setting aside an alienation by the widow during her lifetime. In AIR 1952 Madras 495 at p. 498, to which one of us was a party, it was observed :

"Though a literal interpretation of the first column of Article 125 would make it applicable to a suit only by a presumptive reversioner, a wider interpretation has been put upon it so as to make it applicable even to a suit by a remoter reversioner in view of the fact that a suit by a reversioner to set aside an alienation by a limited owner is a representative one brought on behalf of all the reversioners and that all of them have only a single cause of action. At any rate, this is the view of a Full Bench of this Court in ILR 41 Mad 659 ."

¹ ILR 29 Mad 390

³ ILR 38 Mad 406

⁵44 Mad LW 208

² ILR 41 Mad 659

⁴ ILR 39 Mad 634

⁶1946-2 Mad LJ 214

⁷ AIR 1952 Mad 495 at p. 498

5. The above considerations apply with greater force where, as in this case, the nearest reversioner is a female entitled only to a limited interest. In such a case it has been uniformly held by the Madras High Court that without proof of fraud or collusion between the widow and the female reversioner, the nearest male reversioner is competent to sue to set aside an alienation

by the widow during her lifetime - see *Raghupati v. Tirumalai*⁸ *Chidambara v. Nallammal*⁹ There is also the further fact that in the present case the widow has alienated the property jointly with the mother of the last male owner and the next reversioner who is a male and who is not a party to the alienation seeks to have it set aside during the lifetime of the widow and the mother. In such a case it has been held in *Widyavati v. Nand Lal*¹⁰ that Article 125 of the Limitation Act would apply, even though the mother who joined with the widow in the alienation was the person who would have succeeded if the widow had died at the time of the institution of the suit. The view of the Full Bench of the Madras High Court has been doubted in *Das Ram v. Thirthanath*¹¹ and *Janakinath v. Jyotish Chandra*¹², In the last case it was held that Article 120 of the Limitation Act governed a suit by a remote reversioner for a declaration of the invalidity of the surrender by a Hindu widow in favor of the nearest reversioner. The Limitation Act makes no express provision for these cases in which a declaratory suit is permitted to be brought by a remote reversioner and therefore Article 120 of the Limitation Act was applied to such a suit in ILR (1941) 1 Cal 234 . The question as to when a remote reversioner is to be allowed to sue, is merely a question as to which reversioner should have the conduct of the suit which is instituted on a cause of action common to all and the rule that a suit to set aside an alienation by a female limited owner must be brought by the presumptive reversioner is not an inflexible one but is subject to exceptions - see *Sethurayar v. Karuppayammal*¹³ The weight of authority in the Madras High Court is in favour of the view that Article 125 of the Limitation Act though in terms applicable only to suits by presumptive reversioners, applies equally to suits by remote reversioners who have the conduct of the litigation for the benefit of persons entitled to the estate when the succession opens on the death of the limited owner. Following the view of the Madras High Court we overrule the contention of the appellants that the suits are barred by limitation.

6. The last question that remains for our consideration is, whether the defendants have proved the will, Exhibit B-1, alleged to have been executed by Sambayya on 19th September, 1937. Sambayya died on 24th September, 1937. The will was presented, by his mother, the second defendant, for registration on 8th December, 1987. The genuineness of the will was contested by the plaintiff but eventually the will was registered on 21st March, 1938. The Court below which had the advantage of seeing the scribe and the attestors of the will in the witness-box has come to the conclusion that their evidence is unacceptable and that it had not been established that Exhibit B-1 was executed by Sambayya.

7. After discussing the evidence adduced on the question of genuineness of the will and considering the circumstances of the case, His Lordship concluded as follows :- For these reasons, we are of the opinion that Exhibit B-1 has not been proved to be

⁸ ILR 15 Mad 422

¹⁰ AIR 1937 Lah 760

⁹ ILR 33 Mad 410, and AIR 1952 Mad 495

¹¹ ILR 51 Cal 101

¹² ILR (1941) 1 Cal 234

¹³ 1945-2 Mad LJ 442

the true and genuine will of Sambayya. The result is that these appeals fail and are dismissed with costs of respondents 4 and 5 in A. S. No. 80 of 1950 and respondents 5 and 6 in A. S. No. 801 of 1951 and respondents 3 and 4 in A. S. No. 802 of 1951.

Appeals dismissed.