

Obala Kondama Naicker Ayyan and another - - - *Appellants*

v.

Kandasamy Goundar - - - - - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 13TH NOVEMBER, 1923.

Present at the Hearing :

LORD DUNEDIN.

LORD PHILLIMORE.

SIR JOHN EDGE.

MR. AMEER ALI.

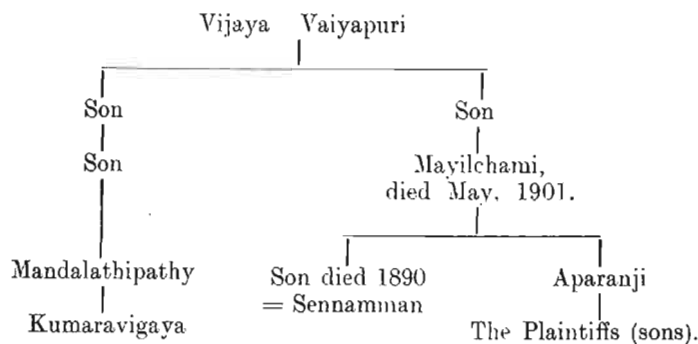
SIR LAWRENCE JENKINS.

[*Delivered by* SIR LAWRENCE JENKINS.]

This is an appeal from a decree of the High Court of Judicature at Madras, dated the 2nd May, 1919, which varied a decree of the Subordinate Judge of Madura, dated the 23rd December, 1916. The plaintiffs are the reversionary heirs of their maternal grandfather Mayilchami, who died in May, 1901, and was succeeded by his daughter, Aparanji Amman, the mother of the plaintiffs. The defendants are (among others) Aparanji Amman, Kumaravigaya, the son of the late Mandalathipathy, Sennamman Avergal, and Kandasmy Goundar.

The purpose of the suit is to establish the plaintiffs' title as reversioners.

To explain this title it will be convenient to set out the following pedigree:—



On Mayilchami's death Sennamman commenced proceedings under the Criminal Procedure Code for possession of the estate of her father-in-law. Her application substantially failed. She then instituted a suit on the 14th February, 1902, against Aparanji and Mandalathipathy seeking to establish a will alleged by her to have been executed by Mayilchami and praying that possession should be given to her of one-third share of the property left by him.

Both defendants to that suit filed written statements and the litigation closed with a compromise in 1903.

It provided that 10 *kulies* of the property therein described and a house should be delivered by the defendants to Sennamman. To this extent it was within the scope of the suit, and ultimately a decree was passed in accordance with this stipulation.

But the compromise also purported to define the rights of the defendants to that suit as between themselves. By clause 8 it provided that the properties described in the plaint (other than what was given to Sennamman) should be divided into moieties and that each of those defendants should take one. On the 23rd February, 1907, a partition deed was executed in accordance with the terms of the compromise. On the 2nd July, 1910, Mandalathipathy executed a mortgage on property taken by him under the compromise to secure Rs. 10,600 advanced to him by the respondent Kandasamy Goundar, and on the 7th January 1915, a decree for Rs. 17,257 was passed on it in the mortgagee's favour.

The plaintiffs, as reversioners under their maternal grandfather, have instituted this suit on the 2nd March, 1915, seeking to establish the invalidity as against them of the respective titles claimed by Kumaravigaya, the son of Mandalathipathy, deceased, and by the mortgagee.

It has been held by the High Court, and their Lordships adopt the finding, that Mayilchami and Mandalathipathy were separate and not joint, and there can be no doubt that this was known to Mandalathipathy at the time of the compromise.

But the compromise was based on the supposition that there was a question as to whether there had been a separation between the two lines of the family.

The High Court has further found that there is no evidence that Aparanji, with full knowledge that there was no truth in the

claim put forward by Mandalathipathy, agreed to the compromise from ulterior motives and that there is not sufficient evidence to show that in assenting to the terms of the compromise she was not acting bonâ fide in the light of the circumstances then brought to her notice. Their Lordships do not dissent from this appreciation of the evidence. Aparanji at the time of the compromise stood in need of especial protection. She was a purdanashin lady recently widowed, the mother of infant sons, and, so far as the evidence discloses, without any adult male relation except Mandalathipathy to advise her.

But it was under his advice and influence that she acted in the litigation with Sennamman and in the compromise by which Mandalathipathy took to the detriment of herself and her infant sons the benefits to which, as he well knew, he had no honest claim.

In these circumstances the High Court rightly came to the conclusion that as against defendant No. 2, Mandalathipathy's son and heir, the plaintiffs established the invalidity of the compromise after their mother's death. From this part of their adjudication no appeal has been preferred, and the only contest now is with the mortgagee in whose favour the High Court decided.

The ground of this decision is that the mortgagee is a bonâ fide transferee for value, and so stands in a better position than his transferor, whose title was held to be bad.

The High Court appears to have thought that justification for this view was to be found in the provisions of the Trust Act. In their Lordships' opinion this was erroneous: the Act has no direct relevance to the circumstances of this case, and it was properly realized in the argument here that if the High Court's conclusion can be supported it must be on other grounds.

It has thus been contended that the High Court acted without jurisdiction in remanding the case as it did, and that the true view of the facts is that taken by the first trial judge. But though the High Court's procedure may invite criticism, this is of no importance in view of that Court's ultimate findings of fact which, as already indicated, their Lordships accept.

They therefore do not think it necessary to discuss further the propriety of the remand.

It is then contended that the plea of purchaser for value without notice assists the respondent.

But an initial difficulty in applying this doctrine is that on the face of the title the mortgagee had notice that his mortgagor took from one who only had a limited and conditional power of disposal. And so the enquiry comes back to this: what was the daughter's interest and power, bearing in mind that the case comes from the Madras Presidency? It is now settled beyond dispute that a daughter as heiress of her father takes a restricted interest similar to that taken by a widow with a similar power of disposal. This power is conditional; she can dispose of the inheritance for legal necessity, but it lies on the alienee to prove

the existence of this necessity, and this is so even though the absence of necessity be not pleaded by the reversioner. Thus it was laid down in *Sham Sunder Lal v. Achhan Kunwar*, L.R. 25, I.A., at p. 191: "In a suit like the present, on a bond made by a person with restricted power of alienation, the defendants are not required to plead the absence of legal necessity for the borrowing. It is for the plaintiffs to allege and prove the circumstances which alone will give validity to the mortgage." And later it was said the "touchstone of the authority is necessity." It may be conceded that even though there may not be legal necessity in fact, the alienee would be equally protected if he honestly did all that was reasonable to satisfy himself that the required necessity existed.

But here there is no proof either of necessity or of enquiry validating the compromise.

The inheritance therefore was not transferred so as to bind the reversioners. On the contrary, the reversioners on the mother's death can treat it as a nullity without the intervention of any Court. (*Bijoy Gopal Mukerji v. Kishore Mahishi Debi*, L.R. 34, I.A. 87.)

Nor in their Lordships' opinion does it alter the position that the dealing with Mandalathipathy purported to be a compromise and an acknowledgment of an existing title. Even so, it was improperly induced and equally vitiated.

As against the reversioners in this case, it was not within the power of Mandalathipathy to transfer a larger legal title than he himself had, nor have the reversioners by any act or omission debarred themselves from insisting on this contention. It is true that the reversion is still an expectancy, but an expectant reversioner's right to sue for a declaration has statutory recognition, and for the purpose in hand it is legitimate to consider what their position would be on their mother's death in their lifetime. They would in that event have the immediate title without the intervention of any Court, and there would in their Lordships' view be no principle of justice, equity or good conscience that would empower the Court to deprive them of that legal title or to impose any restriction in derogation of it.

Their Lordships therefore are unable to agree with the High Court's decision in the mortgagee's favour, and they will accordingly humbly advise His Majesty that the appeal be allowed, and that the decree of the High Court be varied so far as it dismissed the appeal as against the 4th defendant and ordered that the plaintiff should pay to the 4th defendant Rs. 621.2.6 for his costs, by directing in lieu thereof (a) that it be declared that the mortgage of the 2nd July, 1910, and the decree thereon are inoperative against the plaintiffs beyond their mother's lifetime, and (b) that the 4th defendant pay to the plaintiffs their costs in the lower Courts so far as attributable to his claim against them, the amount of such costs to be assessed by the High Court. The 4th defendant must pay to the plaintiffs their costs of this appeal.



In the Privy Council.

OBALA KONDAMA NAICKER AYYAN AND
ANOTHER

v.

KANDASAMY GOUNDAR.

DELIVERED BY SIR LAWRENCE JENKINS.

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