

GURUNATHAM
CHETTY
v.
RAGHAVALU
CHETTY.

In the present case the evidence is not in our opinion sufficient to warrant us in holding that the failure by the third defendant to account as an administrator, amounted to a criminal offence.

In our opinion the evidence in the case before us is not sufficient to bring the case within the rule of Hindu Law on which the decision in *McDowell & Co. v. Ragava Chetty*(1) was based.

We think this case falls within the principle of the decisions in *Natasayan v. Ponnusami*(2) and in *Kanemar Venkatappayya v. Krishnacharya*(3).

The appeal is dismissed with costs payable by the next friend of the plaintiffs.

M. K. Ramasami Iyer—Attorney for the respondents.

APPELLATE CIVIL.

*Before Sir Arnold White, Chief Justice, and
Mr. Justice Sankaran-Nair.*

OLATI PULLIAH CHETTI (PLAINTIFF), APPELLANT,

v.

VARADARAJULU CHETTI AND OTHERS (DEFENDANTS),
RESPONDENTS.*

1908
August 14,
17, 25.

Compromise—Claim not frivolous or vexatious—Right to set aside—Transfer of Property Act, s. 6 (a)—Release of Reversionary right—Succession Act, s. 82.

A compromise entered into between parties, litigating on doubtful rights under a document, cannot be impeached by one of the parties to it on the sole ground that the party whose right is admitted by the compromise had in fact no such right under the document, when it is not shown that such right was set up frivolously or vexatiously or that there was misrepresentation or surprise.

Where the compromise is deliberately entered into and the party admitting the right receives valuable consideration for recognising such right, he will be bound unless he can show that such compromise was illegal or void.

A compromise between a widow and a reversioner, by which the latter admits that the former takes an absolute interest under the will of her deceased husband, does not effect a *transfer* by the latter of his reversionary

(1) I. L. R., 27 Mad., 71.

(2) I. L. R., 16 Mad., 99.

(3) 2 M. L. T., 529.

* Original Side Appeal No. 14 of 1906, presented against the decree of Mr. Justice Boddam in Civil Suit No. 223 of 1904.

right, as the existence of any such right is negatived by the compromise and the transaction does not fall within, section 6 (a) of the Transfer of Property Act, as a transfer of a mere *spes successionis*.

The acceptance by the widow of a release from the reversioner, in accordance with the terms of the compromise is not an acknowledgment by her of any right in the reversioner but an arrangement by which she gives something to avoid disturbance.

In the case of wills by Hindus to which the provisions of section 82 of the Succession Act apply, a gift, *simpliciter*, of immovable property by a husband to his wife will convey the whole interest of the husband, unless it appears that only a restricted interest was intended for her.

THE facts of this case are sufficiently stated in the judgment

The Hon. Mr. V. Krishnaswami Ayyar and G. Krishnaswami Ayyar for appellants.

P. Anandicharu for second respondent.

Mr. C. E. Odgers for third to tenth respondents.

JUDGMENT.—The suit was brought by one Olati Pulliah to recover possession of certain properties which belonged to his father's elder brother Olati Lakshmiah. Lakshmiah died in 1892 leaving a will. It is the plaintiff's case that under that will the testator's adopted grandson Kuppiah and his widowed daughter-in-law Ranganaikammal took a joint life interest in the properties left by him, and that on the death of Kuppiah without any issue in April 1893, Ranganaikammal took the whole property only as a tenant for life; that in any event the will did not give her anything more than a widow's estate under Hindu law; and on her death, therefore, in April 1904, the plaintiff and his deceased father Veeriah became entitled to the property left by Lakshmiah.

The defendants who claim under a will executed by Ranganaikammal answer that it is not open to the plaintiff to rely upon the will as the nature of the interest taken by her under it was in dispute in a suit brought by her against the plaintiff's father, Veeriah to which the plaintiff was also made a party, and the dispute was settled by a razinamah between the parties which was embodied in the decree passed in that suit.

They also deny that Ranganaikammal took only a widow's interest as alleged by the plaintiff. That suit (Civil Suit No. 124 of 1893) was brought by Ranganaikammal as the "sole owner of the whole" of the testator's property under his will, with the exception of a certain portion left for charity, against the plaintiff's father and a son-in-law of the testator who were her

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co-executors under the will, for a declaration that she had become "solely entitled to and to the possession of the property" and for other reliefs. Those defendants denied her claim to the sole ownership. The parties having agreed to settle their dispute, the plaintiff then a minor and the daughter of the testator were made parties to the suit, and leave of the Court having been obtained to enter into the compromise on the plaintiff's behalf a razinamah was entered into by which the property in suit was acknowledged to be the absolute property of Ranganaikammal in accordance with the terms of the will; she also obtained the right of adoption, and in return she gave the plaintiff and his father a house and a sum of Rs. 3,500, and to the daughter of the testator a house and a sum of Rs. 1,000. She also agreed to pay to the plaintiff, as directed by the will Rs. 500 for his marriage. A decree was passed in accordance with the terms of the razinamah, and a deed of release was also executed by the plaintiff and his father. After the death of Ranganaikammal and his father, the plaintiff now sues to recover possession from the respondents before this Court who claim under a will left by her.

The plaintiff alleged that the razinamah is invalid for misrepresentation and coercion. Mr. Justice Boddam disbelieved the evidence to prove the same; and we see no reason to differ from him on that point.

Mr. Justice Boddam also held that the estate given to Ranganaikammal by the will was a widow's estate only; if it is open to us to go into that question we should be inclined to take the same view; but we have no doubt that this case is one of compromise of a doubtful right.

There is a bequest of half the property to Ranganaikammal and the other half to the adopted grandson Kuppiah Chetty, and on the death of either of them, the survivor was to take that share; and, under section 82 of the Indian Succession Act, Ranganaikammal was therefore, on the death of Kuppiah Chetty, entitled to take the whole interest of the testator unless it appeared that only a restricted interest was intended for her. The provision that she was to take in a certain event Rs. 40 per mensem for her maintenance and that her jewels were to go on her death not to her heirs but to Kuppiah is no doubt a strong indication that the testator intended that she should take only a widow's estate. But in the face of the other provisions referred to it is impossible to

say that the claim was not *bonâ fide* or that it was frivolous or vexatious.

Ranganaikammal's claim under the will was thus brought into controversy in a Court of Justice; by way of compromise her full ownership was recognised by the plaintiff and his father who received valuable properties for such recognition. Can they now turn round and repudiate the entire transaction for the purpose of claiming those properties on the ground that she was not the full owner ?

As the right must always be on the one side or the other, the fact that the right is on his side is not by itself sufficient for a party to set aside a compromise entered into by him on the supposition of a doubtful right. In the case before us there was no misrepresentation, no surprise. The terms of the compromise were under discussion for many days Counsel's opinion was taken on both sides. The compromise was sanctioned by Mr. Justice Subramania Ayyar in the interests of the plaintiff who was then a minor; about a year after the compromise, the plaintiff and his father executed a release deed in pursuance of its terms; they got a house and a sum of Rs. 3,500 from the widow in consideration of their acknowledgment of her full ownership under the will. She paid another sum of Rs. 1,000 to the daughter as a part of the same transaction. The plaintiff's father never repudiated the transaction, and it is repudiated by the plaintiff only many years afterwards after the widow's death when it has become impossible to restore the parties to their former position.

Under these circumstances we have no doubt that the plaintiff is bound by the razinamah unless, as contended on his behalf, the razinamah and the decree are illegal and void.

It is argued before us that, on the true construction of the will, Ranganaikammal took only a widow's interest in the property and as the interest of the plaintiff's father in the property was at the date of the compromise only a chance of succession, the razinamah should be treated as effecting a transfer of such interest to the widow, that such a chance or mere possibility being incapable of transfer by virtue of section 6 (a) of the Transfer of Property Act, such transfer is illegal and invalid, and as the Court cannot empower the parties to do what they are otherwise prohibited from doing on grounds of public policy, the razinamah decree cannot

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be held to effect such transfer to the widow, and the cases of *Ramasami Naik v. Ramasami Chetty*(1), *Nagappa v. Venkat Rao*(2), *Lakshmanaswami Naidu v. Rangamma*(3), and *Raja of Vizianagram v. Dantivadachelliah*(4) were relied upon.

It will be noticed that the argument proceeds upon the supposition that there was a transfer by the alleged reversioners of their chance of succession.

We are unable to agree to this view. The widow never acknowledged that the plaintiff or anybody else had any reversionary interest in the property; she claimed full ownership herself. The plaintiff and his father never purported to convey any interest to her for the very good reason that they admitted they had no reversionary interest.

The razinamah and the decree in terms state that Ranganaikammal is to have absolute powers as regards the estate of the deceased Lakshmiiah "which is the absolute property of the plaintiff (widow) in accordance with the terms of the will." These words rebut the idea of any transfer of any reversionary right by the plaintiff and his father by distinctly negating the existence of any such right in them.

The acceptance of the release deed in this case is not an acknowledgment that any right existed in the release. The words in exhibit M, the release deed, on the other hand, distinctly allege that the full ownership vested in the widow under the will. As Lord Redesdale observed in a similar case about a release "It amounts only to this. I give you so much for not seeking to disturb me." *Underwood v. Lord Courtown*(5).

The cases cited which would only apply if there was a transfer by the reversioners do not therefore apply.

There is, of course, nothing illegal in a widow acquiring full ownership in any property under a will; and a razinamah or decree recognising that right is not therefore illegal.

We agree with the learned Judge therefore in his view of the compromise and disallow this contention.

Messrs. *Branson & Branson*—Attorneys for third and tenth respondents.

(1) I. L. R., 30 Mad., 256.

(3) I. L. R., 26 Mad., 31.

(2) I. L. R., 24 Mad., 265.

(4) I. L. R. 28 Mad., 84.

(5) 2 Sch. & Lefr., 68.

The decree is confirmed, and the appeal is dismissed with the costs of the respondents, the Trustees of Pacheappa's Charities.

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APPELLATE CIVIL.

Before Mr. Justice Benson and Mr. Justice Wallis.

SUBBIAH IYER (PLAINTIFF), APPELLANT,

vs.

SUBRAMANIA AIYAR AND OTHERS (DEFENDANTS

Nos. 2 TO 5), RESPONDENTS.*

1908
May 7.

Civil Procedure Code, Act XIV of 1882, ss. 520, 522—Appeal against decree on fresh award made after order of remittal under s. 520 of the Code of Civil Procedure.

Where the Court remits an award under section 520 of the Code of Civil Procedure and the arbitrators submit a fresh award, and the Court passes a decree in accordance with such revised award under section 522 of the Code of Civil Procedure, no appeal lies against such decree on the ground that the order of remittal under section 520 was wrong and that the original award ought to have been accepted and acted upon.

Suit for a declaration and injunction. On the agreement of parties the dispute was referred to arbitration, and an award was submitted by the arbitrator. The plaintiff put in objections to the award praying that it may be remitted and the fifth defendant opposed the plaintiff's application on the ground that the award was legal and ought not to be remitted. The District Munsif remitted the award under section 520, and the arbitrator put in a supplemental award which not only dealt with the objections for a consideration of which it was remitted, but went much further and reviewed his former award on points not objected to.

The fifth defendant took objection to the revised award. The Munsif overruled the objections and passed a decree in accordance with the revised award. The fifth defendant appealed against this decree on the ground *inter alie* that the order remitting the

* Second Appeal No. 1110 of 1905, presented against the decree of M. R. Ry. T. Sadasiva Ayyar, Subordinate Judge of Tinnevely, in Appeal Suit No. 512 of 1904, presented against the decree of T. Munro French, Esq., District Munsif of Tinnevely, in Original Suit No. 257 of 1903.