

## APPELLATE CIVIL

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

CHALLA SUBBIAH SASTRI AND OTHERS  
(DEFENDANTS Nos. 2, 5 AND 6), APPELLANTS,

v.

PALURY PATTABHIRAMAYYA AND ANOTHER  
(PLAINTIFF AND FIRST DEFENDANT), RESPONDENTS.\*

1908.  
February 20.  
April 23.

*Hindu Law—Conveyance by a widow to reversioner of whole life estate, validity of.—Conveyance not invalid by reason of contemporaneous agreement between the widow and reversioner.*

Where a widow conveys the whole of her limited estate to the next reversioner in consideration of an undertaking by such reversioner that he would reconvey a portion of such property to a person named by the widow, the conveyance is valid and is not vitiated by such agreement. The title of such reversioner and that of the person to whom the property is reconveyed in pursuance of such agreement cannot be impeached by other reversioners.

*Rangappa Naick v. Kamti Naick*, (I.L.R., 31 Mad., 366), referred to and explained.

*Hem Chunder Sanyal v. Sarnamoji Debi*, (I.L.R., 22 Calc., 354), referred to and distinguished.

*Per SANKARAN-NAIR, J.*—The validity of the renunciation by the widow is independent of the validity of the agreement as to the subsequent disposal of the property by the alienee.

The surrender by the widow of her life estate to the next reversioner is analogous to the case of a widow divesting herself of her estate by adoption; and as an adoption cannot be questioned on the ground of improper motive in the widow, so the validity of the surrender cannot be affected by her motives or by any conditions that may be imposed by her,

SUIT to set aside an alienation of land made by the first defendant.

The first defendant was the widow of one Yoganna. She succeeded to his properties on his death, and conveyed the entire estate inherited by her to V the father of the fourth defendant who, at the time, was the nearest reversioner, for a nominal consideration of Rs. 500. V resold the greater portion of the properties two days later to defendants Nos. 2 and 3 who were

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\* Second Appeal No. 878 of 1905, presented against the decree of F. H. Hamnett, Esq., District Judge of Godavari, in appeal suit No. 620 of 1903, presented against the decree of M.R.Ry. D. Raghavendra Rao, District Munsif of Rajahmundry, in original Suit No. 536 of 1902.

brothers of the first defendant for a nominal consideration of Rs. 600. *V* died and the plaintiff, as the next reversioner, brought this suit for a declaration that the aforesaid sales were collusive and did not affect his reversionary rights.

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It was found that no consideration passed for the sale-deeds and that the consideration for the first sale-deed was the undertaking by *V* to reconvey a portion of the lands comprised therein to defendants Nos. 2 and 3.

The Munsif passed a decree for plaintiff which decree was confirmed on appeal.

The defendants Nos. 2, 5 and 6 appealed to the High Court.

*T. V. Seshagiri Ayyar* for appellants.

*P. Anandacharlu* for first respondent.

JUDGMENT.—SIR ARNOLD WHITE, C.J. — In this case a Hindu widow conveyed the whole of her limited estate to her husband's brother the then nearest reversioner. Two days later the latter conveyed the greater portion of the property which the widow had conveyed to him to the widow's brothers reserving for himself a portion which has devolved on his daughter the fourth defendant.

A consideration of Rs. 500 is recited in the conveyance by the widow to her husband's brother, but the finding is that this consideration was not paid. A consideration of Rs. 600 is recited in the conveyance by the husband's brother to the widow's brothers. The finding is that this Rs. 600 was not paid.

The question is, do these transactions create a good title in the widow's brothers and her husband's brother as against the plaintiff, the present reversioner to the widow's husband?

It would seem that the real consideration for the first conveyance was an undertaking by the husband's brother that he would reconvey the greater portion of the property to the widow's brother. This undertaking was carried into effect by the second conveyance.

In my judgment in *Rangappa Naick v. Kanti Naick* (1) which came before a Full Bench, I expressed the opinion that the Privy Council in their judgment in the recent case of *Bayrangji Singh v. Manokarnika Bahlish Singh* (2), did not intend to hold that reversioners could give to a widow a general release of their reversionary rights with the view of enabling her to give an absolute title to

(1) I.L.R., 31 Mad., 366.

(2) I.L.R., 30 All., 1.

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property inherited from her husband ; I stated that I did not think that the decisions of this Court in *Manickam Pillai v. Ramalinga Pillai*(1), and in *Narasimham v. Madhavarayudu*(2), were affected by the recent judgment of the Privy Council.

In the two Madras cases, there was no conveyance as in the present case by the widow of her limited estate to the reversioners. In *Manickam Pillai v. Ramalinga Pillai*(1), the conveyance was a conveyance by the reversioner of his interest in reversion to a third party. In *Narasimham v. Madhavarayudu*(2) the conveyance was by the reversioner to the widow. In *Hem Chunder Sanyal v. Sarnomoyi Debi*(3) there was a conveyance by the widow of the whole of her limited estate to the then reversioner and a reconveyance by him to the widow of a moiety. The Court held that these transactions were ineffective for the purpose of giving the widow an absolute estate in the moiety reconveyed to her ; but that the reversioner's title to the other moiety could not be impeached by the reversioner who brought the suit. As to whether it could be impeached by the widow the Court expressed no opinion.

In the present case we have a conveyance by the widow to the reversioner of the whole of her limited estate, and this being so, in accordance with the view which I expressed in the Full Bench case, I think the conveyance is good. It is not necessary for me to consider what would be the effect of a conveyance of this nature followed by a reconveyance to the widow with the view of vesting the absolute estate in her. Here the widow's limited estate having been conveyed to the reversioners, the entire estate vested in them and they could, in my opinion, give a good title to a third party. With reference to the deeds in question in *Hem Chander Sanyal v. Sarnamoyi Debi*(3), the learned Judges said (p. 363). "The two deeds that are sought to be declared invalid after the widow's death must, so far as they relate to the moiety of the estate that the widow has retained for herself, be regarded as a mere contrivance to convert the qualified estate of the widow into an absolute estate to be enjoyed by her free from all restraints on alienation." In the present case there was an out and out conveyance by the widow to the then reversioner. The widow's estate became extin-

(1) I.L.R., 29 Mad., 120.

(2) 13 M.L.J., 323.

(3) I.L.R., 22 Calc., 354 at p. 363.

guished and all her powers of dealing with the property became vested in the then reversioner. The validity of the transaction does not seem to me to be affected by the fact that it was carried out in pursuance of an undertaking that the reversioner should retain a portion of the property for himself and convey a portion to a third party.

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In the Full Bench case I construed the document in question as a release to the widow by the reversioners of their reversionary interest in consideration of the widow conveying to them her interest in a portion of the property. In the present case there is no release by the reversioner, but a conveyance to him by the widow.

I am of opinion that the husband's brother, on the strength of exhibit I, obtain a good title to the portion of the property, which he retained for himself and which has now devolved upon his daughter the fourth defendant, and that defendants Nos. 2 and 3 have a good title to the property conveyed to them by exhibit II.

I think the appeal should be allowed and the suit dismissed with costs throughout.

SANKARAN-NAIR, J.—I agree. Following my judgment in *Rangappa Naick v. Kamti Naick*(1) I hold that the relinquishment by exhibit I and the subsequent transfer (exhibit II) are valid and binding on the other reversioners. To carry out the object of transferring the property to defendants Nos. 2 and 3, it was necessary for the widow to transfer the entire estate to the fourth defendant's father, and, as the instrument in terms carries out that intention, it appears to me to be impossible to hold that the entire property did not vest in the fourth defendant's father, and, if the entire property vested in him, it was open to him to deal with it in any way he liked, and the transfer by him to defendants Nos. 2 and 3 must be upheld.

Does it then make any difference that the property was given to the fourth defendant's father on the condition that he was to convey a portion thereof to defendants Nos. 2 and 3? No contract which limits the interest of the fourth defendant's father in the property is alleged; and in my opinion the validity of the renunciation is quite independent of the validity of any agreement as to the disposal or enjoyment of the property by the alienee.

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(1) I.L.R., 31 Mad., 366.

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I am unable to agree with the view that the validity of the surrender of her interest or title to the reversioner depends upon the motive of the widow or upon any question of any benefit that may accrue to her or to any other person. Such might have been the case if the widow were holding the property in trust for any purpose or for the benefit of the actual reversioner at the time of her death.

We may compare the case of the surrender of her estate by the widow and the consequent vesting of the estate in the presumptive reversioner with the case of an adoption by the widow which has the effect of divesting her of her estate and vesting it in the adopted son, her husband's heir, the effect of both the transactions being the same so far as the widow and the actual reversioner at the time of her death are concerned. Can it be maintained that the actual reversioner is entitled to dispute the validity of the adoption, on the ground that the widow made the adoption on condition of the adopted son conveying to her or some other person a portion of the entire property which the Hindu law vests in him on adoption or for the reason that she was actuated by malicious motives: even in the case of a minor adopted son an agreement of that nature is not void, and its validity would depend upon other considerations. In the case of an adoptee of full age—say an unmarried Sudra—that agreement would clearly bind him. But whether the agreement is binding or not, I do not see how the adoption can be invalid. As the Privy Council pointed out in *Bhaiya Radhibai Singh v. Maharani Indar Kumari*(1) “the analogy, such as it is, presented by the doctrines of equity in this country relating to the execution of the powers of appointment would rather suggest that, even in that case, the adoption would have been valid and the conditions void.”

Similarly as to motive the discussion of a widow's motive has been held to be irrelevant by a Full Bench of the Bombay High Court (*Ramchandra v. Mulji Nanabhai*(2). An admittedly sinful and irreligious act as the adoption of an only son, has been held to be valid by the Privy Council (*Sri Babusu Gurulingaswami v. Sri Babusu Ramalakshamma*(3). It is difficult to see how the validity of a surrender by a widow which stands on a higher footing can

(1) L.K., 16 I.A., 53 at pp. 55, 59. (2) I.L.R., 22 Bom., 558.

(3) L.R., 26 I.A., 113

therefore be affected by her motives or by any such conditions that may be imposed by her as referred to above.

Further, there is nothing in the reason of the law to support this contention. Supposing this succession is accelerated by the widow becoming a sanyasi or remarrying, can it be contended that the actual reversioner at the time of her death is entitled to claim the property on the ground that her renunciation of the world or remarriage was made in order to vest the property in a favourite presumptive reversioner, or that it was made under an arrangement by which he was to convey a portion of the property to another? On her renunciation of the world, or remarriage, the Hindu Law vests the property in the reversioner and it is not the less his property because he has promised the widow to give a portion of that property to some stranger who himself could not enforce that agreement.

The right to surrender the property to the next reversioner by deed is based on this capacity of renunciation. In the case of a reconveyance to the widow it may be suggested that the deeds of surrender and reconveyance must be treated as one transaction and therefore there was no surrender or extinguishment of the entire estate. The decision in *Hem Chunder Sanyal v. Sarnamoyi Debi*(1), may be supported on this ground. But whether this is so or not where the alienation is to strangers as in the case before us, I fail to see how it can be said that her entire interest has not become extinguished or has not vested in the alienee.

I am therefore of opinion that the entire estate of the widow was extinguished by exhibit I and that the suit must therefore be dismissed with costs throughout.

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(1) I.L.R., 22 Calc., 354.