RAJA OF KALAHASTI v. MAHARAJA OF VENKATAGIRI.

BENSON AND SUNDARA AYYAR, JJ.

auction-purchaser has no absolute right to its being confirmed where there are irregularities in the Court's action. There is a considerable difference between an auction-purchaser's rights before and after the confirmation of the sale. Where there has been substantial irregularity in publishing or conducting a sale and material injury has been suffered by the judgment-debtor in consequence, the auction-purchaser has no right to the confirmation. We must therefore reverse the order of the lower Court and set aside the sale. The case is not one in which we should make any order as to costs either in this or in the lower Court. The purchase money should be refunded to the auction-purchaser.

APPELLATE CIVIL.

Before Mr. Justice Sankaran Nair and Mr. Justice Sadasiva Ayyar.

1912. December 9 and 1913 April 30.

NARAYANA AIYAR AND THREE OTHERS (DEFENDANTS NOS. 3 TO 6), APPELLANTS,

v.

RAMA AIYAR AND TWO OTHERS (PLAINTIFF AND DEFENDANTS NOS. 1 AND 2), RESPONDENTS.*

Limitation Act (XV of 1877), arts. 120 and 125, applicability of—Suit by one adopted later to set aside his maternal grandmother's alienation after her death—Attestation and ratification by next presumptive reversioners to a female's alienation, effect of.

A Hindu widow sold the suit properties in 1881 and 1889 and died in 1899. Her daughter adopted the plaintiff in 1903 and he sued in 1907 to set aside the sales during the life-time of his adoptive mother.

Held, that (*a*) the suit was not barred, (*b*) that article 120 and not 125 of the Limitation Act was applicable and (*c*) that the cause of action for the plaintiff to question the sales arose only from the date of his adoption when alone he became a reversioner.

Of the two sales in this case, the first was assented to by the daughters and attested by the next male reversioner; the second was acquiesced in by the daughters and in 1894 ratified by the then presumptive male reversioner.

Held, that the plaintiff was estopped under the circumstances from questioning the sales as a reversioner.

For the application of article 125 of the Limitation Act, (*a*) the suit must be one brought during the life-time of the alienating female and (*b*) the plaintiff

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* Second Appeal No. 62 of 1912.

must be the person entitled to the possession of the land if the female died at the date of the institution of the suit.

Chiruvolu Punnamma v. *Chiruvolu Perrazu* (1906) I.L.R., 29 Mad., 390 (F.B.), explained and distinguished.

Gajjala Veerayya v. *Gajjala Gangamma* (1912) M.W.N., 912, *Abinash Chandra Mazumdar* v. *Harinath Shaha* (1905) I.L.R., 32 Calc., 62 at p. 71 and *Govinda Pillai* v. *Thayammal* (1905) I.L.R., 28 Mad., 57, followed.

Per SADASIVA AYYAR, J.—Consent to an alienation by the next reversioner and a ratification of past alienations stand on the same footing.

Effect of attestation by a reversioner to a female's alienation considered.

SECOND APPEAL against the decree of F. D. P. OLDFIELD, the District Judge of Tinnevelly, in Appeal No. 654 of 1910, preferred against the decree of S. SUBBAYYA SASTRI, the Additional District Munsif of Tinnevelly, in Original Suit No. 19 of 1909.

The defendants Nos. 3 to 6 who are the alienees of the suit properties preferred this second appeal. The other facts of the case appear from the judgment of SADASIVA AYYAR, J.

T. R. Ramachandra Ayyar for the appellants.

C. V. Ananthakrishna Ayyar for the respondents.

SADASIVA AYYAR, J.

SADASIVA AYYAR, J.—The defendants Nos. 3 to 6 are the appellants before us. The suit was by a reversioner for a declaration that the two alienations of 1881 and 1889 made by a widow, Aramvalarthammal, under Exhibits I and II (*b*) respectively, are invalid against the minor plaintiff. Aramvalarthammal died in 1899, and the next reversioners are her daughters, defendants Nos. 1 and 2. The plaintiff is the adopted son of the first defendant, having been adopted in May 1903. The suit was brought in 1907 within five years of the plaintiff's adoption but more than 12 years from the dates of the alienations by the plaintiff's maternal grandmother, Aramvalarthammal. The Lower Appellate Court decreed the plaintiff's suit on the following findings and reasonings :—

(*a*) The alienations under Exhibits I and II (*b*) were not made for purposes binding on the reversioner.

(*b*) Though the sale under Exhibit I was attested by the next presumptive male reversioner (Aramvalarthammal's brother) and though the next presumptive female reversioners, the daughters, assented to the alienation, and though the male reversioner, Chinna Aiyavu Ayyar, who attested Exhibit I, owned the land next to the alienated land and was using the well on the land sold, it cannot be held that there is anything to show

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affirmatively that Chinna Aiyavu Ayyar understood or considered the merits of the sale-deed, Exhibit I, and hence his mere attestation is useless to show that he consented to the alienation.

(*c*) Exhibit II (*b*), the alienation of the plaint properties in 1889 by Aramvalarthammal, is not attested by the next male reversioner though acquiesced in by the female reversioners, the daughters. But the alienee under Exhibit II (*b*) resold the land and a house-site to Aramvalarthammal and her daughter, the second defendant, in 1893 under Exhibits B and II (*a*), and the site alone was sold under Exhibit II in 1894 by the second defendant to the third defendant. The plaintiff's first witness who was the male presumptive reversioner on the date of Exhibit II has attested it. He has been examined as a witness and the learned District Judge remarks that the inference from his attestation is stronger than the inference from the attestation of Chinna Aiyavu Ayyar to Exhibit I and that nothing directly impairing the effect of this attestation was suggested to him by the plaintiff or elicited from him. The attestation of Exhibit II, which alienates only the site, by the plaintiff's first witness does not however involve an inference that the plaintiff's first witness ratified the previous alienation under Exhibit II (*b*) of both the land and the site mentioned in the second schedule to the plaint. Even as regards the site it is not established that his consent was with full notice and appreciation of the facts. Hence even as regards the site in the second schedule, the alienation is invalid.

The Lower Appellate Court did not deal with the question of limitation, but the District Munsif held—

(*a*) that article 125 of the Limitation Act does not apply because it relates to a suit filed during the life of a female alienor by the nearest reversioner and in this case, Aramvalarthammal had died before this suit was brought ;

(*b*) that the article applicable is article 120, which prescribes a period of 6 years from the date on which the right to sue accrues ;

(*c*) that though the alienations took place in 1881 and 1889, the right to sue accrued to the plaintiff only when his adoption took place and he became the daughter's son and next male reversioner in 1903, and that the suit brought in 1907, within 6 years, is therefore not barred. The District Munsif further remarked that the plaintiff derived his title as reversioner directly

from the last male owner (his maternal grandfather) and not through his adoptive mother, the first defendant.

The defendants Nos. 3 to 6 who are the appellants before us contend—

(1) that the suit is barred by limitation as the cause of action for all reversioners, even though they may not have been in existence, arose on the date of alienation and all had only either 12 years or 6 years from the date of alienation to bring their suit,

(2) that the attestation of the next presumptive reversioner in Exhibit I in 1881 should, in the circumstances, be treated as his having consented to the alienation and hence the alienation is valid against the reversioner,

(3) that the attestation of Exhibit II by the plaintiff's first witness validates the alienation under Exhibit II (*b*) of both the site and the land mentioned in the second schedule, and

(4) that such attestation of Exhibit II in any event validated the alienation of the site sold under Exhibit II (and alienated under Exhibit II (*b*) along with another land) as against the plaintiff.

First on the question of limitation; this divides itself into three sub-heads—

(*a*) whether article 125 is applicable,

(*b*) whether article 120 is applicable, and

(*c*) when did the cause of action arise to the plaintiff, whether under article 125 or under article 120.

As regards the first sub-head, it is clear that the plaintiff does not come under the designation of a person who sues to have an alienation of a land made by a Hindu female declared to be void, *while being himself the person who, if the female died on the date of instituting the suit, would be entitled to the possession of the land.* Article 125 therefore does not apply to the present case on two grounds, viz., that the suit is not brought during the life of the alienating female and again that the plaintiff was not entitled to the possession of the land at the date of instituting the suit, as his mother and his aunt were alive. The next question is what other article applies to the plaintiff's suit. As no other specific article applies, article 120 must apply. The last question under this heading of limitation is, when does the right to sue accrue under the third column of article 120?

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Now it has been finally decided that (unless, as in the exceptional case of *Muthuswami Mudaliar* v. *Masilamani*(1), the presumptive reversioner brings the suit *expressly on behalf of all the reversioners*), no succeeding presumptive reversioner claims under a deceased earlier presumptive reversioner and that each reversioner has got his own separate cause of action to set aside the widow's alienation. The latest case in which many of the authorities have been considered and the above proposition has been re-affirmed is *Gajjala Veerayya* v. *Gajjala Gangamma*(2). But it is argued that there is a dictum in the Full Bench case of *Chiruvolu Punnamma* v. *Chiruvolu Perrazu*(3), that "an unauthorised alienation by a qualified owner gives rise to a cause of action for a declaratory suit from the date of the alienation to *all the reversioners*." In the first place, the dictum is clearly *obiter* because the question referred to the Full Bench in that case was only whether the decree in a suit by the presumptive reversioner *to set aside an adoption is res judicata* against succeeding presumptive reversioners. In the second place, the dictum that an unauthorised alienation by a qualified owner gives rise to a single cause of action to all the reversioners cannot be considered to mean that it gives a cause of action to remote or presumptive reversioners *who were not in existence on the date of the alienation*, though, as regards remoter reversioners who *were* alive on the date of alienation, their causes of action also might have arisen on such date. In *Gajjala Veerayya* v. *Gajjala Gangamma*(2), SUNDARA AYYAR, J., and myself held that, as the remoter reversioner was a minor on the date of the alienation, though he was in existence, he had three years from his attaining majority (reading article 125 and section 7 of the Limitation Act together) to bring his own suit to set aside the alienation by the widow, though his father, who was the next presumptive reversioner on the date of the alienation, might have been barred from bringing such a suit. As said by MUKERJEE, J., in *Abinash Chandra Mazumdar* v. *Harinath Shaha*(4), "It is only reasonable to hold that the right of any reversioner to sue for a declaration cannot accrue before he is born. This view is in accord with that taken

(1) (1910) I.L.R., 33 Mad., 342.
(2) (1912) M.W.N., 912.
(3) (1906) I.L.R., 29 Mad., 390 at p. 411.
(4) (1905) I.L.R., 32 Calc., 62.

in *Govinda Pillai* v. *Thayyammal*(1)." Thus even holding that the *obiter dictum* of the Full Bench in *Chiruvolu Punnamma* v. *Chiruvolu Perrazu*(2) should be followed, it might properly be restricted to cases where the reversioner who brings a suit to set aside the alienation *was in existence on the date of the alienation.* See also *Govinda Pillai* v. *Thayammal*(1), which followed *Bhagwanta* v. *Sukhi*(3). It might be argued that, if each presumptive reversioner who was *not* in existence on the date of the alienation had six years from the date when his right to sue accrued (*i.e.*, when he came into existence) to set aside the alienation, numerous suits might be brought as each such presumptive reversioner came into existence. Practically, however, it is very unlikely that, during the remainder of a widow's lifetime after the date of her alienation, more than a very few distinct sets of presumptive reversioners who were not in existence on the date of her alienation would come into existence. As I have said in *Garikapatti Paparayudu* v. *Rattammal*(4) : "The very object of allowing a suit by a contingent reversioner has been unfortunately (if I may be permitted to say so) defeated to a very large extent by the decisions which are binding on us to the effect that the decree passed in favour of, or against such, a reversioner is not binding on a remoter reversioner. I might be permitted to hope that the Legislature might see fit to enact that the decree in a suit *bonâ fide* brought and litigated by the then nearest reversioner is binding on the remoter reversioners." But so long as the law treats each presumptive reversioner as having a separate right to sue in respect of setting aside alienations by the widow, the inconvenience of allowing different suits by separate sets of reversioners cannot be avoided. We must therefore hold that the plaintiff's suit is not barred by limitation.

The next question which I shall take up is whether the attestation of Exhibit II by the plaintiff's first witness validated the alienation of only the site to which it relates or whether it also validated the alienation of the land which along with the house site had been alienated under Exhibit II (*b*). This, of course, assumes that the attestation by the plaintiff's first witness is proof of ratification by him of the alienation under Exhibit II (*b*) of the site alone or of the site and the land. The question of

(1) (1904) I.L.R., 28 Mad., 57 ; s.c. 14 M.L.J., 209.
(2) (1906) I.L.R., 29 Mad., 390. (3) (1900) I.L.R., 22 All., 33.
(4) (1912) M.W.N., 1176 at p. 1179.

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the effect of an attestation will be reserved for consideration later on. In *Raghupathi* v. *Kamamma*(1), decided in August 1912, I considered the Full Bench case of *Rangappa Naik* v. *Kamti Naik*(2), and *Kuppier* v. *Kotta Chinnaramier*(3), and came to the conclusion that consent to an alienation by the next reversioner and a ratification of past alienations stand on the same footing. In this case, the plaintiff's first witness by attesting Exhibit II could be held to have ratified the alienation of only the house site affected by Exhibit II and cannot be held to have ratified the alienation of the land not affected by Exhibit II, though the alienations of both the site and the land were made by a single document, Exhibit II (*b*) in 1889 to Meenakshisundaram Ayyar who afterwards sold the site alone under Exhibit II in 1894. The only remaining questions left for consideration are whether the attestations of the next presumptive reversioners in Exhibits I and II are sufficient proof under the circumstances of their consent to and ratification of the alienations of the respective properties dealt with in those two documents. In *Kandasami Pillai* v. *Rangasami Nainar*(4), it is said "that, having regard to the ordinary course of conduct of Indians in this Presidency, attestation by a person who has or claims any interest in the property covered by the document must be treated *primâ facie* as a representation by him that the title and other facts relating to title, recited in the document, are true and will not be disputed by him as against the obligee under the document." I do not think that the above observation is against the dictum laid down by the Privy Council in *Raj Lukhee Dabea* v. *Gokool Chunder Chowdhry*(5). In that case, their Lordships clearly found that it was *not* proved that, at the date of the execution of the deed in question, the attestor Juggut Ram was the next heir and reversioner, and they further state that the defendant who relied upon the alleged concurrence of Juggut Ram "did not by any suggestion in his written statement or otherwise put forward the concurrence of Juggut Ram" in the alienation sought to be supported. They treated Juggut Ram as merely a remote relation not proved to have any interest in the property alienated and their Lordships said that

(1) Second Appeal No. 507 of 1911. (2) (1908) I.L.R., 31 Mad., 366.
(3) (1912) M.W.N., 758. (4) (1912) 23 M.L.J., 301 at p. 306,
(5) (1869) 13 M.I.A., 209 at p. 229.

"the mere attestation of such an instrument by a relative does not necessarily import that he attested in order to give consent or concurrence to the alienation." On the contrary, in the later case of *Vadrevu Ranganayakamma* v. *Vadrevu Bulli Ramayya*(1), the Privy Council approvingly say, "but it frequently occurs in native (Indian) documents that a man signs as a witness to show that he is acknowledging the instrument to be correct." I may respectfully add that, in my pretty long experience as a Judicial Officer, if the attestor of the document has an existing interest in the property dealt with in the document, it has been always the case that this attestation has been taken in order to bind him as to the correctness of the recitals therein. In *Gopaul Chunder Manna* v. *Gour Monee Dossee*(2), the learned Judges clearly decided that a reversioner attesting a conveyance by a Hindu widow cannot impeach the sale afterwards, thus treating the attestation as tantamount to assent. In short, they say that the effect of his being an attesting witness to the conveyance shows the acquiescence on his part in the act of the widow. This case is a direct authority upon the point now being considered. In *Matadeen Roy* v. *Mussodun Singh*(3), the judgment of two very learned Judges Sir BARNES PEACOCK, C.J. and DWARAKUNATH MITTER, J., contains the following observations: "When the plaintiff put his name as a witness to his brother's signature to a deed conveying the whole of the property, the Court might reasonably infer that he knew that his brother was selling the whole of the property. If he knew that his brother was selling the whole of the property as his own, and allowed him to do so without objection, it would be evidence against him either that the whole property did belong to his brother or that he was acquiescing in his brother's act of selling the whole." This again is a clear authority for the proposition that attestation *by a person*, who has an interest, raises the *primâ facie* presumption that he knows the contents and acquiesces in the disposition of the property by the deed he attests. In *Abhoy Churn Ghose* v. *Attarmoni Dassee*(4), STEPHEN, J., refused to treat the attestation of the presumptive reversioner as acquiescence on the ground that the attestor "was a mere boy studying at college and had no idea of the effect of the deed in question" and that the boy's evidence, that, till he saw the deed

(1) (1879) 5 C.L.R., 439 at p. 447.
(2) (1866) 6 W.R. (C.R.), 52.
(3) (1868) 10 W.R. (C.R.), 293.
(4) (1908) 13 C.W.N., 931.

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in Court, he did not know that he had attested the document, should be believed in the circumstances. In *Ahmedabad United Printing and General Agency Company, Limited* v. *Ardesir Kavasji*(1), the learned Judges say "We have, however, the fact that he (Eruchsha) was an attesting witness. He was a Government servant who must have understood the effect of the deed which he was attesting and which was executed by his brother who was in *vahivat* of all the family properties." And then the learned Judges held that, considering the surrounding circumstances, he was bound by the mortgage-deed which he had attested. The effect of the attestation was also considered in *Chunder Dutt Misser* v. *Bhagwat Narain Thakur*(2), and the learned Judges held that, under the circumstances of that case, the party's attestation may support the inference that he was a consenting party, the attestor in that case not being a mere remote relative as in *Raj Lukhee Dabea* v. *Gokool Chunder Chowdhry*(3), but the next presumptive reversioner.

On the whole, I see no sufficient reason to recede from the opinion I expressed in *Kandasami Pillai* v. *Rangasami Nainar*(4), that a presumption is raised, when an adult man of full mental capacity attests a deed *and when such a man has admittedly a tangible interest in the property affected by the deed,* that his attestation has been taken as a proof of his consent to and knowledge of the correctness of the recitals in the deed and it lies upon the person, who contends that such an attestor did not know all the recitals in the deed and did not consent to the alienation made by the deed, to prove the contrary. I do not intend to lay down that the attestation of a *casual* witness *who had then no interest in the property affected by the deed* must estop him for all time and when he afterwards acquires an interest in the property affected by the deed. In the present case, the circumstances clearly raise the presumption that the next reversioners did consent to the respective alienations under Exhibits I and II. As regards Exhibit II, the reversioner who attested it has been examined in the case and the District Judge says "the inference from the attestation is so far stronger as regards Exhibits II and II(*b*) that the attestator has been examined and that nothing directly impairing the effect of

(1) (1912) I.L.R., 36 Bom., 515.
(2) (1898) 3 C.W.N., 207.
(3) (1869) 13 M.I.A., 209.
(4) (1912) 23 M.L.J., 301.

his attestation was suggested to him or elicited." Instead of, however, giving the natural effect to the attestation, the learned District Judge says that it was for the fourth defendant to have elicited that the attestation also involved the conscious assent on the part of the attestor. I think the burden of proof lay on the other side. Not only this, the learned District Judge overlooked the fact that the attesting witness, the plaintiff's first witness, says: "The third defendant asked me to attest Exhibit II and I attested it *as he said that he would build a house thereon next to mine which would be a security to my house.*" This conclusively shows his knowledge of the contents of the deed and that he gave even his consent to a substantial house being built upon the site alienated by Exhibit II. I therefore hold, differing from the District Judge, that the alienation of the property in the first schedule and of the site in the second schedule to the plaint cannot be questioned by the plaintiff as those alienations were consented to and ratified by the then presumptive male reversioners and by the female reversioners. The District Judge's decree should be modified by allowing the plaintiff's claim only as regards such of the plaint properties as are not covered by Exhibits I and II. As it appears that there are no properties in the plaint schedules not covered by Exhibits I and II, the suit will stand dismissed. The parties will bear their respective costs in all the Courts.

SANKARAN NAIR, J.—I agree. The reversioner who is really prejudiced by the widow's alienations will be ascertained only after the death of the widow and on the death of the last surviving daughter. Nevertheless it has now been settled that all persons who may possibly live to succeed her have a right of suit, under certain circumstances, to declare the alienation invalid and that one possible reversioner does not represent another in such suits. The plaintiff is admittedly such a reversioner and his right to sue as such is not denied, though he became a member of this family by adoption only after the alienations. If he has the right of suit, it is obvious that limitation can run against him only when he could sue.

As to the effect to be given to attestation by a witness, it will depend upon the facts of each case. In this case I agree with my learned colleague as to the inference to be drawn from it.