

PRIVY COUNCIL.*

JANAKI AMMAL (DEFENDANT),

v.

NARAYANASAMI AIYER (PLAINTIFF).

[On Appeal from the High Court of Judicature
at Madras.]

Hindu Law—Reversioner—Right of presumptive reversionary heir to declaration of his right—Suit against widow in possession of her husband's estate for waste and wrong dealing with property—Failure to prove charges—Right of reversioner to sue for protection of the husband's estate.

A plaintiff who brought a suit as presumptive reversionary heir against a widow in possession of her husband's estate, in order to protect the property, and made charges against the widow of waste, misappropriation and other wrong dealing with the property, none of which charges were established, was held not entitled to a declaration of his right as reversionary heir, even though his title had been disputed, in the suit. It is not legitimate to give such a plaintiff, under cover of a prayer for "further relief," and after the substantial heads of his claim have failed, any greater right to obtain such a declaration than he would have had if it had been asked for directly, and unaccompanied by other and unfounded claims.

Jaiyal Kunwar v. Indar Bahadur Singh (1904) I.L.R., 26 All., 238; s.c., L.R., 31 I.A., 67 and *Venkatanarayana Pillai v. Subbammal* (1915) I.L.R., 38 Mad., 408; s.c., L.R., 42 I.A., 129 distinguished.

APPEAL 105 of 1914 from a decree (23rd August 1912) of the High Court at Madras, which varied a decree (28th October 1907) of the Subordinate Judge of Mayavaram.

The suit which gave rise to this appeal was brought by the respondent for an injunction to restrain the appellant from dealing with the assets of the estate of her deceased husband, and for the appointment of a receiver, alleging misappropriation and waste.

The appellant was the widow of one Ramaswami Aiyer who died in 1906 intestate leaving property of considerable value. She had a widow's interest in the property, and the mother of her deceased husband was entitled to succeed to it on the widow's death.

The respondent was a distant kinsman of the deceased and was admittedly his nearest male relative living.

* Present:—LORD SHAW, LORD PARMOOR and MR. AMEEB ALI.

1916.
June 22
and July 10.

31 M. L. J.
225

The suit was instituted on 18th October 1906, the plaintiff thinking that certain dealings of the appellant with the property were prejudicial to his rights as the reversioner presumptively entitled to it. The plaint set out the facts as above and the acts of waste alleged, and prayed for a decree to protect his interest as reversionary heir, and for further relief. The widow and Lakshmi Ammal the mother of the deceased were made defendants.

JANAKI
AMMAL
v.
NARAYANA-
SAMI AYYER.

The widow as first defendant denied the allegations of wrong dealing and waste, and challenged the plaintiff's title as next reversionary heir to the property.

The Subordinate Judge found that the widow had not committed acts of waste or wrong dealing as alleged, made a decree declaring that the plaintiff was the next reversionary heir of the deceased, and that the alienation of a sum of Rs. 10,000 by the widow to Lakshmi Ammal was not binding on the plaintiff, but granting no other relief.

Both parties appealed, and the High Court (MILLER and ABDUR RAHIM, JJ.) upheld the Subordinate Judge's finding that the acts of waste and misappropriation alleged were not proved and dismissed the plaintiff's appeal. On the widow defendant's appeal the High Court varied the decree of the Subordinate Judge by omitting the declaration as to the alienation of the Rs. 10,000. As to the first declaration in the decree the High Court said:—

“ We think it may remain in the decree. The question whether the plaintiff was entitled to sue as next reversionary heir was fought out in the suit and much evidence taken. The Subordinate Judge decided it on the evidence and though the declaration was not essential, and he might have dismissed the suit, yet the peculiar circumstances of this class of suits seem to make it not undesirable that it should remain to prevent further litigation on the question between the plaintiff and the first defendant, should the former find it necessary to attack again the latter's management of the estate.”

On this appeal.

Kenworthy Brown, for the appellant, contended that in the absence of any proof of waste, or other wrong dealing by the widow with the assets of her husband's no suit for a declaration of his title could be maintained by the respondent as the next presumptive reversionary heir. He had no vested right in the estate, but only a *spes successionis* to it if he survived the

JANAKI
AMMAL
v.
NARAYANA-
SAMI AIYER.

appellant and her mother-in-law. Reference was made to *Venkatanarayana Pillai v. Subbammal*(1). The present suit had been brought in a representative capacity, and it was therefore contrary to principle that there should be such a declaration of the respondent's right as the Courts below had given. There was no right to such a declaration during the lives of the widow and the mother of the deceased : *Kathama Natchiar v. Dorasingha Tever*(2). Reference was also made to *Davis v. Angel*(3), *Hamilton v. Earl Dysart*(4) and Mayne's Hindu Law, 7th edition, paragraphs 605, 624 and 647. The case did not come within section 42 of the Specific Relief Act (I of 1877) which was practically the same as section 8 of Act VIII of 1859, the Civil Procedure Code in force at the date of the decision in *Kathama Natchiar v. Dorasingha Tever*(2). The suit should have been dismissed with costs.

E. B. Raikes for the respondent contended that the appellants' defence was a denial that the respondent was the next reversioner: she therefore challenged his title which he proved to the satisfaction of both the Courts below. As next reversioner he was the proper person to sue for the protection of the estate, and he therefore had, it was submitted, a "legal right as to property" within the meaning of section 42 of the Specific Relief Act. The lower Courts had a discretion to make a declaratory decree which they had exercised in the respondent's favour; and this Board would be reluctant to interfere with the discretion of the High Court so exercised: see *Jaipal Kunwar v. Indar Bahadur Singh*(5).

Kenworthy Brown said he had nothing more to add.

LORD SHAW. The judgment of their Lordships was delivered by Lord SHAW:—

This is an appeal from a decree of the High Court of Judicature at Madras of the 23rd August 1912, modifying the decree of the Subordinate Judge of Mayavaram, dated the 28th October 1907.

(1) (1915) I.L.R., 38 Mad., 406; s.c., L.R., 42 I.A., 129.

(2) (1875) L.R., 2 I.A., 169 at pp 172, 174 and 181.

(3) (1862) 4 D.E. Ges. F. & J., 524 at p. 529.

(4) (1914) 1 Ch.D., 834; affirmed (1916) A.C., 57.

(5) (1904) I.L.R., 26 All., 238; s.c., L.R., 31 I.A., 67.

The suit was brought with reference to the estate of one Ramasami Iyer, of Konerirajapuram, who died intestate on the 24th June 1906. It is not disputed that the widow holds the property under the Hindu law as "a widow's estate." The mother of the late owner is the person entitled to succeed should she survive this widow. On the expiry of these lives the estate will descend to the next reversionary heir of the deceased.

The rule of the Hindu law with regard to the nature of the widow's estate may have been subject to various forms of expression, but in substance it is not doubtful. Her right is of the nature of a right of property; her position is that of owner; her powers in that character are, however, limited; but, to use the familiar language of Mayne's "Hindu Law," paragraph 625, page 870, "so long as she is alive no one has any vested interest in the succession." These propositions were not disputed.

The law as to the situation of the reversionary heirs is also in substance quite clear; there is, as stated, no vesting at the date of the husband's death, and it follows that the questions of who is the nearest reversionary heir or what is the class of reversionary heirs fall to be settled at the date of the expiry of the ownership for life or lives; that is to say, in the present case, at the death of the survivor of the appellant and her late husband's mother. Even where the Courts have proceeded, prior to the opening of the succession, to give any declaration, that has been done for special reasons only, as in *Jaiपाल Kuniwar v. Indar Bahadur Singh*(1), and—to use the language of Sir Arthur Wilson (page 70)—it is made clear that "whenever the succession opens by the death of the widow the present decision will have settled nothing as to who should succeed."

It follows from this state of the law that it is impossible to predicate at this moment who is the reversionary heir of the deceased proprietor. If a Court of Law proceeded to make any declaration of right upon that subject such a declaration would be subject to being rendered valueless by the development of events. It would not, after events had developed, be even of authority in regulating or declaring the rights of the present respondents as against any other claimant to the character of

JANAKI
ANMAL
v.
NARAYANA-
SAMI AIYER.
—
LORD SHAW.

(1) (1904) I.L.R., 26 All., 238 at p. 244; s.o., L.R., 31 I.A., 67 at p. 70.

JANAKI
AMMAL
v.
NARAYANA-
SAMI AIYER.
—
LORD SHAW.

reversionary heir. *A priori*, accordingly, a declaration of right granted at the present stage would appear to be stamped with something in the nature of futility.

It is also true that a reversionary heir, although having only those contingent interests which are differentiated little, if at all from a *spes successionis*, is recognised by Court of Law as having a right to demand that the estate be kept free from waste and free from danger during its enjoyment by the widow or other owner for life.

But a reversionary heir thus appealing to the Court truly for the conservation and just administration of the property does so in a representative capacity, so that the *corpus* of the estate may pass unimpaired to those entitled to the reversion. The law on this subject was recently expounded in the judgment of this Board delivered by Mr. AMBER ALI in *Venkatanarayana Pillai v. Subbammal*(1).

This representation is in law founded upon a different set of considerations from those which would seek to stamp the character of reversionary heir upon one individual. The latter operation attempted during the enjoyment of the life estates would necessarily be premature, and might, as stated, be futile. The former is justified by the considerations of keeping the estate intact for the persons to whom as reversioners it shall ultimately and at the proper time be determined that the estate shall go.

The suit in the present case was brought by the plaintiff against the defendant and appellant, making charges of a serious character against the conduct and management of the estate by the deceased's widow. Collusion, concealment, maladministration, malice, and fraud were charged, and the statement was made that heavy loss would be incurred, if the properties were left in her possession—subject to waste by her. The appointment of a receiver upon the estate was prayed for, and an injunction was asked restraining the widow from doing any act injurious to the plaintiff's reversionary interest. The third prayer of the plaint was for "granting such further relief as to the Court may seem fit and proper."

It may be at once said that, of the serious charges made, none were held to be well founded in fact: and no reason was

found by the Courts below either for the appointment of a receiver or the granting of an injunction. By the decree of the Subordinate Judge, however, of date the 28th October 1907, the following order was made, namely, "that plaintiff is declared to be the next reversionary heir of the deceased Ramaiyar after the lifetime of defendants Nos. 1 and 2" (his widow and mother). This was done under the third prayer just referred to. For the reasons above set forth it is plain that such a declaration is unavailing as well as premature. It appears to have arisen on account of a dispute as to whether the plaintiff's relationship to the deceased had been made out, and the Courts below may have been misled by the circumstance of that dispute into permitting the question of a declaration to enter the decree. The form of the declaration was that the plaintiff was "the next reversionary heir."

JANAKI
ANMAL
v.
NARAYANA-
SAMI Aiyer.
—
LORD SHAW.

In their Lordships' opinion the plaintiff-respondent was not entitled to such a declaration. Had waste of, or danger to, the estate been established, the title of the plaintiff to bring those matters before the Court in his representative capacity as a possible reversionary heir would have been allowed, and a decree following upon the finding of fact of such waste or danger would have followed. But the whole of that part of the case has failed. And in their Lordships' opinion the case must accordingly be treated as if the suit had been directed *simpliciter* to a declaration of the plaintiff's individual right. In the view of the Board it is not legitimate to give a plaintiff, under cover of a request for "further relief," after all the substantial heads of a claim have failed, greater right to obtain a declaration than he would have had if such a declaration had been asked directly and unaccompanied by other and unfounded claims.

Their Lordships will humbly advise His Majesty that the appeal should be allowed, that the suit should be dismissed, and that the respondent do pay the costs before the Board and in the Courts below.

Appeal allowed.

Solicitor for the appellant: *Douglas Grant.*

Solicitors for the respondent: *Chapman-Walker and Shephard.*

J.V.W.