PRIVY COUNCIL.*

1930, June 30.

NARAYANASWAMI AYYAR AND OTHERS (DEFENDANTS), APPELLANTS,

v.

RAMA AYYAR AND OTHERS (PLAINTIFFS), RESPONDENTS.

[ON APPEAL FROM THE HIGH COURT AT MADRAS.]

Hindu Law—Widow—Relinquishment of estate—Intervening reversionary interest of daughters—Structures erected on another's land—Belief in validity of title—Transfer of Property Act (IV of 1882), sec. 51.

A transfer by a Hindu widow of her husband's estate to two sons of daughters cannot be justified as a valid surrender or relinquishment of the estate, if at the time of the transfer, the daughters are alive and have reversionary interests, and are not proved to have consented to the transfer.

Rangasami Gounden v. *Nachiappa Gounden*, (1918) I.L.R., 42 Mad., 523; L.R., 46 I.A., 72, referred to.

[It was not necessary to consider whether consent by them would validate the transfer.]

Decree affirmed giving a transferee, who had effected improvements believing in good faith that he was owner, the alternative rights mentioned in section 51 of the Transfer of Property Act, 1882, and in respect of improvements effected at a later date, when he had not proved that he so believed, liberty to remove the materials subject to conditions.

APPEAL (No. 1 of 1928) from a decree of the High Court, Madras, (October 15, 1925) reversing a decree of the Subordinate Judge of Mayavaram (September 30, 1921).

The principal respondents, as reversioners of their grandfather after the death of his last surviving daughter who was their mother, sued the appellants alleging that an alienation in 1867 of their grandfather's property by his widow to the sons of his daughters was

* *Present*:—Lord THANKERTON, Sir LANCELOT SANDERSON, AND Sir GEORGE LOWNDES.

invalid, and claiming possession. The principal defendants by their written statements pleaded that the alienation was binding as a surrender of the estate, and that it had been accepted and acted upon by all the surviving members of the family, including the plaintiffs; alternatively, they alleged that they had made improvements to buildings upon the alienated land in the *bona fide* belief that they were owners, and were entitled to compensation under section 51 of the Transfer of Property Act, 1882.

The Subordinate Judge dismissed the suit holding that the alienation was valid as a surrender to all the grandsons, also as a family arrangement made *bona fide*.

Upon an appeal by the plaintiffs to the High Court, the judgment of the Court was delivered by RAMESAM, J., REILLY, J., concurring, on August 15, 1924. The learned Judges held, for reasons which appear from the judgment of the Judicial Committee, that the alienation was not valid as a surrender by the widow; also that it could not be justified as a family arrangement. They remitted the case for findings as to the claim for compensation, and upon the findings, made a decree setting aside the judgment, decreeing that the defendants were entitled to Rs. 5,800 compensation in respect of the improvements made in 1898, that the plaintiffs, within a time to be fixed, should either pay that sum and take the land and buildings, or sell the land to the defendants for Rs. 1,500 the agreed value of the land, and that if the improvements made by the defendants in 1903 could be definitely ascertained, and could be removed without diminution in the value of the remainder, the defendants should be at liberty to remove them within a month of their being so ascertained.

DeGruyther K.C., and *Narasimham* for appellants.—The transfers of 1867 were valid surrenders of the estate. Although

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the daughters did not join in the transfers, the evidence shows that they acquiesced in them; the effect was that their reversionary interests were included in the transfers. Although the transfers were only to the eldest son of each daughter, the evidence shows that the intention was that all the grandsons should benefit. Reference was made to *Nobokishore Sarma Roy* v. *Hari Nath Sarma Roy*(1), *Rangasami Gounden* v. *Nachiappa Gounden*(2), *Sureshwar Misser* v. *Maheshrani Misrain*(3); and on the question of compensation, which it was contended was insufficient, to the Transfer of Property Act, 1882, section 51, and *Vallabhdas Naranji* v. *Development Officer, Bandra*(4).

Dube for respondents was not called upon.

The JUDGMENT of their Lordships was delivered by

SIR LANCELOT SANDERSON.

SIR LANCELOT SANDERSON.—This is an appeal by the defendants (1 to 8 and 10 in the suit) from a decree, dated the 15th October 1925, and two judgments, dated the 15th August 1924, and the 15th October 1925, of the High Court of Judicature at Madras, reversing a decree, dated the 30th September 1921, made by the Subordinate Judge of Mayavaram. The first four respondents are plaintiffs in the suit and the remainder of the respondents are *pro forma* defendants.

The suit was brought by five surviving sons of one Lakshmiammal. Since the institution of the suit one of the sons, Subrahmanya Ayyar, died; the third and fourth plaintiffs are his legal representatives.

The two questions in this appeal are whether a transaction entered into by Thayammal, the widow of one Ananthakrishna Ayyar, in the year 1867, constituted a valid "surrender" under the Hindu Law, and if not, what would be the proper compensation payable to the

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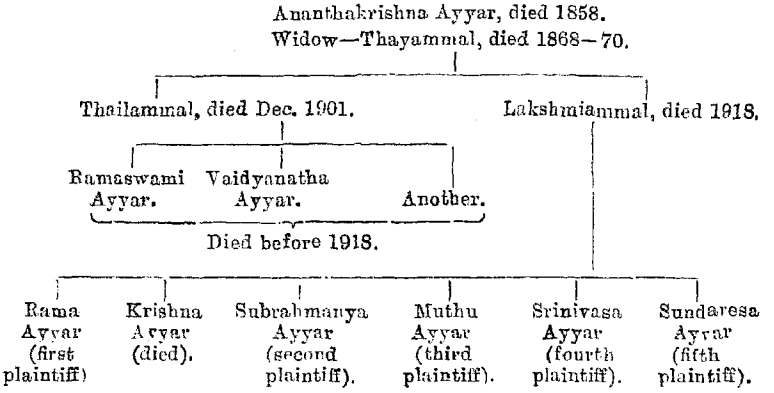
(1) (1884) I.L.R., 10 Calc., 1102.
(2) (1918) I.L.R., 42 Mad., 523; L.R., 46 I.A., 72.
(3) (1920) I.L.R., 48 Calc., 100; L.R., 47 I.A., 233.
(4) (1929) I.L.R., 53 Bom., 589, 593, 594; L.R., 56 I.A., 259, 263.

defendants 1, 3 and 4 in respect of a building which had been erected by the vendees on part of the land.

The suit was brought by the plaintiffs as reversioners of Ananthakrishna Ayyar for possession of his properties after the death of the last intermediate female in 1918. The material facts are as follows:—

Ananthakrishna Ayyar died in 1858 leaving a widow Thayammal and two daughters Thailammal and Lakshmiammal. The widow died about 1868—70. Her first daughter died in December 1901. She had three sons, all of whom died before 1918 leaving no issue. The second daughter died in 1918 leaving the five plaintiffs surviving her. They are, therefore, reversioners to the estate of Ananthakrishna Ayyar and are *prima facie* entitled to his properties. The following pedigree shows the relationship of the parties:—



The facts on which the defendants resist the suit are as follows:—On the 22nd July 1867, the widow Thayammal executed four documents (Exhibits III, IV, V, VI). By Exhibit III, she purported to sell her house to her eldest grandson, Ramaswami Ayyar, for Rs. 400. The object of this sale was ostensibly to pay off Rs. 300 promised to Lakshmiammal at the time of her marriage and Rs. 100 similarly to Thailammal. By Exhibit V, she conveyed lands in Radhanallur worth Rs. 380 and movables of the value of Rs. 20 to the same Ramaswami

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Ayyar in consideration of his having performed the funeral ceremonies of Ananthakrishna Ayyar and of his undertaking to perform her funeral ceremonies. In Anaithandavapuram she had half *pangu* of lands. She gave away one-fourth *pangu* to Ramaswami Ayyar by Exhibit VI and the other one-fourth *pangu* to Rama Ayyar (the eldest son of the second daughter) by Exhibit IV. The defendants contend that these documents amount to a surrender by Thayammal accelerating the reversion: that they also amount to a *bona fide* family settlement and that no reversion devolved on the plaintiffs in 1918.

By two deeds of sale, dated the 19th July 1884, Ramaswami Ayyar and his brother Vaidyanatha sold the house and lands in Anaithandavapuram to one Muthu Ayyar, the father of the defendants 1 and 2, and the lands in Radhanallur were sold to Ramaswami Ayyar, the father of the seventh defendant.

From that time, the vendees and their representatives were in peaceful possession and enjoyment of the house and the land in Anaithandavapuram village, while the plaintiffs-respondents were in possession and enjoyment of their share of the lands in accordance with the documents of 1867. The vendees demolished the old dilapidated house and erected a new and substantial building on its site.

On the 22nd December 1901, Thailammal died. Lakshmiammal then instituted Original Suit No. 12 of 1902 on the file of the Kumbakonam Subordinate Judge's Court for the recovery of the house and the land from the vendees of Ramaswami (her sister's son). Lakshmiammal's sons (except Rama Ayyar, the eldest son) also brought an action for a declaration that the alienation in favour of the appellants was not binding on them after the death of their mother, Lakshmiammal. The said two suits were tried together and the evidence for both suits was by consent recorded in the first suit.

On the 9th December 1903, the mother's suit was withdrawn unconditionally. The sons' suit was eventually dismissed on the ground of limitation, and the dismissal was affirmed by the High Court on appeal.

Lakshmiammal died on the 14th January 1918, and on the 27th July the plaintiffs-respondents and their deceased brother brought the present suit to recover possession of the lands mentioned in the plaint, of which the defendants were in possession, with other incidental reliefs. The learned Subordinate Judge dismissed the suit. The plaintiffs appealed to the High Court, which allowed the appeal and directed the learned Subordinate Judge to submit findings on certain issues which had not theretofore been decided.

*On the further hearing of the appeal, and on consi*deration of the findings as to the said issues, the High Court decided that the vendee under the deed executed by Ramaswami Ayyar and Vaidyanatha, and dated the 19th July 1884, who was the father of the first defendant, *bona fide* believed that he was the owner of the property in 1898 when he executed an improvement in the building of the value of Rs. 4,000: that an improvement made in 1903 was on a different footing, inasmuch as the suits for the recovery of the property by Thayammal's daughter and grandsons had been filed and were then pending, and that the further expenditure of Rs. 1,500 was made before the suits were disposed of. The learned Judges held that it had not been shown that at that time the vendee *bona fide* believed that he was the owner of the property: they therefore decided that as regards the last-mentioned sum, the defendants were not entitled to compensation.

After estimating the increase in value since the improvements were made, the High Court fixed the compensation payable by the plaintiffs 1, 3, 4 and 5 to the defendants 1, 3 and 4 at the sum of Rs. 5,800.

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The High Court accordingly made a decree directing that the plaintiffs should be put in possession of the properties mentioned in the plaint, and declaring that the defendants 1, 3 and 4 were entitled to compensation in the sum of Rs. 5,800 for the value of improvements effected in 1898, and that the plaintiffs 1, 3, 4 and 5 should either pay the said sum within the time to be fixed by the lower Court and take the land and building, or sell the land to the defendants 1, 3 and 4 for the sum of Rs. 1,500, which was the agreed value of the land. A further order was made as to the removal of materials used in the improvement made in 1903 upon the terms and conditions therein contained.

The learned Judges of the High Court decided that there was no valid surrender by Thayammal, the widow of Ananthakrishna, on several grounds. They regarded it as an insuperable objection that the alleged renunciation in 1867 by the widow was not in favour of all the then reversioners: that there was a transfer of one set of properties to one group of reversioners (at the best), and of another set to another group, and that it was necessary to introduce a fictitious partition to read the transactions as a surrender: that there could not be a surrender in shares of three-fifths and two-fifths, and that apparently certain minors were unrepresented. Their Lordships do not think it necessary to express any opinion on any of the above-mentioned points, inasmuch as, in their opinion, the appeal should be disposed of upon another ground mentioned by the learned Judges.

The learned Judges of the High Court decided that there was not sufficient evidence to justify them in holding that the daughters Thailammal and Lakshmiammal surrendered their interests. Their Lordships are in agreement with the High Court's decision in respect of this matter.

It was argued, however, that the learned Judges had not considered the proper question, viz., whether the above-mentioned daughters had in fact consented to and acquiesced in the execution of the four deeds by their mother Thayammal in July 1867.

Their Lordships have examined the evidence relating to this question, and they are satisfied that it falls far short of proving the alleged consent and acquiescence on the part of the two daughters.

There is not sufficient evidence to show that they or either of them knew the contents or appreciated the effect of the provisions of the deeds of the 22nd July 1867.

This appeal, therefore, must be decided on the assumption that the above-mentioned daughters of Ananthakrishna did not agree to surrender their interests in the properties of their father, and that they did not consent to and acquiesce in the deeds of the 22nd July 1867.

The principle applicable to the power of surrender by a Hindu widow is well settled and may be stated as follows :—

"A Hindu widow can renounce in favour of the nearest reversioner if there be only one, or of all the reversioners nearest in degree if more than one at the moment. That is to say, she can, so to speak, by voluntary act operate her own death. The landmark of decision as to this may be taken as the case of *Behari Lal* v. *Madho Lal Ahir Gayawal*(1), where, in delivering the judgment of the Board, Lord MORRIS said: 'It may be accepted that according to Hindu Law, the widow can accelerate the estate of the heir by conveying absolutely and destroying her life estate. It was essentially necessary to withdraw her own life estate so that the whole estate should get vested at once in the grantee.'"

(1) (1891) I.L.R., 19 Calc., 236; L.R., 19 I.A., 30.

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See the judgment of the Board delivered by Lord DUNEDIN in *Rangasami Gounden* v. *Nachiappa Gounden*(1).

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It is clear that the widow, Thayammal, by executing the deeds in July 1867, and disposing of her property thereby, did not renounce her interest in favour of the nearest reversioners. Her two daughters, Thailammal and Lakshmiammal, were the nearest reversioners, and they took no interest in the properties under the said deeds.

The conditions, therefore, necessary to create a valid surrender by the widow, Thayammal, were not present.

It was, however, argued on behalf of the appellants that the surrender by the widow was valid, because the daughters, Thailammal and Lakshmiammal, consented to the transactions carried out by the deeds of July, 1867, so as to efface their own interests, and that consequently not only the interests of the widow, but also the interests of her daughters in the property, were effaced.

Their Lordships are relieved from the necessity of expressing any opinion on the important question of law involved in this contention, in view of their above-mentioned conclusion that it was not proved that the daughters, Thailammal and Lakshmiammal, did in fact consent or acquiesce in the said transactions.

That conclusion is sufficient to dispose of the first part of the appeal, and for that reason, and without expressing any opinion on the other points hereinbefore referred to, their Lordships agree with the High Court that there was no valid surrender by the widow Thayammal of her interest in the properties of her deceased husband.

(1) (1918) I.L.R., 42 Mad., 523, 532 ; L.R., 46 I.A., 72, 79.

The only other question relates to the amount of compensation fixed by the High Court in respect of the improvements, viz., Rs. 5,800.

The appellants contended that the compensation for the house should have been at least on the basis of the Commissioners' valuation, viz., Rs. 10,000.

The High Court took Rs. 8,000 as the value of the whole structure; they held that the defendants, who were entitled to compensation in respect of the Rs. 4,000 out of Rs. 5,500 spent by their father, are entitled to eight-elevenths of Rs. 8,000—or roughly, Rs. 5,800.

Their Lordships are of opinion that the said sum of Rs. 5,800 is sufficient compensation. Indeed, they are not sure that the said sum is not too much, for the Rs. 8,000 was arrived at by the High Court by allowing an increase in value to the extent of about 50 per cent upon the total expenditure of Rs. 5,500, whereas the High Court had decided—and their Lordships agree with the decision—that it was not shown that the father of the first defendant *bona fide* believed he was the owner of the property when he expended the sum of Rs. 1,500 (part of the total of Rs. 5,500) in 1903.

There is, however, no cross appeal in respect of this matter, and the sum awarded by the High Court must stand.

For these reasons their Lordships are of opinion that the appeal must be dismissed with costs, and they will humbly advise His Majesty accordingly.

Solicitors for appellant: *Chapman-Walker and Shephard.*

Solicitor for respondents: *H. S. L. Polak.*

A.M.T.