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settlement, i.e., about May or June 1803, and the inam is pre-settlement. The inam is resumable by Government.

* * * * * *

MADHAVAN NAIR J.

MADHAVAN NAIR J.—On the general question of "burden of proof" and "limitation" arising in cases of this description, I have already expressed my opinion in detail in the separate but concurring judgment which I delivered in Second Appeals Nos. 648 to 832 and the connected second appeals. The arguments now addressed to us have not persuaded me in altering the views therein expressed.

In the appeals before us, I agree with my learned brother on the question of limitation regarding the applicability of article 120 of the Limitation Act to the facts of the case and also on the merits, and have nothing to add.

G.R.

APPELLATE CIVIL.

Before Mr. Justice Venkatasubba Rao.

1934, March 29.

SUBBALAKSHMI AMMAL AND ANOTHER (DEFENDANTS), APPELLANTS,

v.

A. NARAYANA AYYAR (PLAINTIFF), RESPONDENT.*

Hindu Law—Widow—Surrender by—Validity of—Motive of widow if relevant on question of.

The validity of a surrender by a Hindu widow does not depend upon her motive.

A surrender by a Hindu widow must be *bona fide* in the sense that there must be a complete relinquishment and that,

* Second Appeal No. 661 of 1930.

in the guise of a surrender, the widow ought not to enlarge her own estate in regard to a part. There is no warrant for importing the further condition that the motives operating on her mind must be of a religious or spiritual character.

Dictum of SANKARAN NAIR J. in *Challa Subbiah Sastri* v. *Palury Pattabhiramayya*, (1908) I.L.R. 31 Mad. 446, relied upon.

APPEAL against the decree of the Court of the Subordinate Judge of Trichinopoly in Appeal Suit No. 66 of 1929 (Appeal Suit No. 5 of 1929, District Court, Trichinopoly) preferred against the decree of the Court of the District Munsif of Karur in Original Suit No. 205 of 1927.

T. M. Krishnaswami Ayyar and *V. K. Mahadeva Sastri* for appellants.

N. Swaminatha Ayyar for respondent.

JUDGMENT.

This appeal raises the question of the validity of a surrender made by a Hindu female with a limited estate. The last male holder was one Sellamier, and the plaintiff, who as the reversioner to his estate impeaches the transaction, is his half-brother's son. After Sellamier's death, the property was taken by his widow, who in turn was succeeded by his daughters, Subbalakshmi and Alamelu, of whom the latter died in 1925, leaving a son Vaideeswara. Subbalakshmi, the surviving daughter, executed the settlement deed in question on the 28th October 1926 in favour of Vaideeswara's son Subbaratnam. On the following day, i.e., on the 29th October, Vaideeswara died. The lower Courts have found that the object of the surrender was to benefit Subbaratnam, to whom Subbalakshmi was attached and in whom she was interested, and to divert the

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succession from the plaintiff, who in the ordinary course would, as the nearest reversioner, have succeeded, Vaideeswara being then seriously ill and his death being imminent. The learned District Munsif has held that the motive that prompted the surrender does not affect its validity, but the lower appellate Court, taking a different view, has granted the plaintiff's prayer.

The point therefore to decide is whether, in regard to a surrender, the law makes the motive with which it is effected relevant. The question must, in any opinion, be answered in the negative. What the requisites of a valid surrender are, has been considered by the Judicial Committee. According to the Hindu Law, the widow can accelerate the estate of the nearest heir by conveying it to him absolutely and destroying her life estate. First, a surrender, to be valid, must be of the surrenderer's whole interest in the whole estate in favour of the nearest reversioner or reversioners at the time of the alienation; a surrender being an effacement of the widow and, it being impossible to conceive of a widow who is partly effaced and partly not so, a partial surrender, although absolute as to the part conveyed, cannot under the Hindu law be effectual. Secondly, a surrender must be *bona fide*, i.e., there must be no device to divide the property between the lady and the reversioner, it being equally fatal to the transaction whether the benefit is directly taken by the lady or by her nominees subject, however, to the proviso, that the giving of a small portion to the surrendering widow for her maintenance is unobjectionable; *Rangasami Gounden* v. *Nachiappa Gounden*(1), *Bhagwat Koer* v.

(1) (1918) L.R. 46 I.A. 72; I.L.R. 42 Mad. 523 (P.C.).

Dhanukhdhari Prashad Singh(1) and *Sureshwar Misser* v. *Mussammat Maheshrani Misrain*(2). Their Lordships of the Judicial Committee in the first and the third of the cases mentioned above explain clearly what is meant by the expression "*bona fide*" used in this connection. The transaction must be *bona fide* in the sense that the widow retains no benefit either directly or indirectly, i.e., there must be a complete relinquishment; if, in the guise of a surrender, the widow enlarges her own estate in regard to a part, the so-called surrender will not be upheld. I do not think there is any warrant for importing a third and further condition, namely, that the motives operating on the mind of the widow must be of a religious or spiritual character. In regard to adoptions by widows, according to the Bombay Courts, the motive is irrelevant, but the law, as administered in this presidency, makes the motive material. There being no authority declaring that the motive of the surrendering widow has any bearing, I should, for my part, be disinclined to introduce an uncertain and puzzling element, making it incumbent upon the Courts to embark upon an enquiry, often difficult and fruitless, as regards the motive for the transaction. The lower appellate Court, in holding that the motive was material, has mainly relied upon *Siva Subramania Pillai* v. *Piramu Ammal*(3), to which decision I was a party. There, while delivering judgment, I observed:

"If the transaction is a device to divide the estate, the surrender is clearly not *bona fide*; but the converse is not

(1) (1919) L.R. 46 I.A. 259; I.L.R. 47 Calc. 466 (P.C.).
(2) (1920) L.R. 47 I.A. 233; I.L.R. 48 Calc. 100 (P.C.).
(3) (1925) 49 M.L.J. 128.

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necessarily true, for want of good faith may be evidenced by other circumstances."

This passage, which has been chiefly relied on, must not be taken from its context. The argument put forward was that, there being no device to share the estate with the reversioner, the transaction should, on the authority of the Privy Council decisions, be upheld. We repelled that contention and tried to show that there was an objection equally fatal, if not more, namely, that the surrender was colourable and not intended to be operative at all. We observed accordingly :

"Subsequent to the surrender, it does not appear that the appellant exercised any act of exclusive ownership from which unequivocal enjoyment or possession can be inferred."

Then we go on to state :

"Subbammal was more anxious that her daughter should be provided for than that her son should take immediate possession of the estate . . . It was not her intention that she should forthwith divest herself of the estate or that the surrenderee should enter into possession."

We also refer to a further fact, namely, that the widow's object in making the surrender was to get immediate possession of a certain sum of compensation money that had been paid by the Government into Court. Reading the judgment as a whole, I am not prepared to regard it as laying down that the motive of the surrenderer is a material or even a relevant factor. I agree with the dictum of SANKARAN NAIR J. in *Challa Subbiah Sastri* v. *Palury Pattabhiramayya*(1) to the effect that the validity of a surrender does not depend upon the motive of the widow, although, in regard to the actual point that case decided, following the judgment in *Rangappa Naik* v. *Kamti Naik*(2), it must now be treated as over-

(1) (1908) I.L.R. 31 Mad. 446. (2) (1908) I.L.R. 31 Mad. 366 (F.B.).

ruled; see *Rangasami Gounden* v. *Nachiappa Gounden*(1), where the Judicial Committee observes:

"It follows that their Lordships cannot agree with a good deal of what was said in *Rangappa Naik* v. *Kamti Naik*"(2).

So far as the text books go, it remains to observe that both Mulla and Sarkar Sastri cite *Challa Subbiah Sastri* v. *Palury Pattabhiramayya*(3), although without discussion, as authority for the position that the motive is immaterial; *see* Mulla's Hindu Law, sixth edition, page 204, and Sarkar Sastri's Hindu Law, sixth edition, page 702. In the result, the second appeal is allowed and the plaintiff's suit is dismissed with costs throughout.

A.S.V.

APPELLATE CIVIL.

Before Mr. Justice Jackson and Mr. Justice Butler.

JADDU PADHI (FIRST DEFENDANT), APPELLANT,

1934, March 22.

v.

CHOKKAPU BODDU *alias* JAGANNADHAM AND ANOTHER (PLAINTIFFS), RESPONDENTS.*

Indian Limitation Act (IX of 1908), sec. 7—Hindu joint family—Brothers—Mother of—Alienation by—Suit to set aside—Limitation—Elder brother barred—Younger if also barred.

Two brothers sued for a declaration that a sale executed by their mother, the second defendant, to the first defendant was not valid. It was found that the first plaintiff, the elder

(1) (1918) L.R. 46 I.A. 72, 84; I.L.R. 42 Mad. 523 (P.C.).
(2) (1908) I.L.R. 31 Mad. 366 (F.B.). (3) (1908) I.L.R. 31 Mad. 446.
* Appeal against Order No. 128 of 1929.