THE

INDIAN LAW REPORTS

BOMBAY SERIES

PRIVY COUNCIL

RAMGOWDA ANNAGOWDA AND OTHERS (PLAINTIFFS) *v.* BHAUSAHEB AND OTHERS (DEFENDANTS)

* J. C. 1927 *July* 11

[On Appeal from the High Court of Judicature at Bombay]

Hindu law—Alienation by widow—Family arrangement—Reversioner party to arrangement—Reversioner and his descendants bound.

A Hindu died in 1846, leaving a widow who survived until 1912, and a daughter. On the death of the widow A was heir to her husband's estate. In 1868 the widow had alienated nearly the whole property by three deeds executed and registered on the same day. By the first deed she gave a property to her brother, by the second she sold half of another property to A, and by the third she sold the other half of that property to her son-in-law. The signature of each of the deeds was attested by the two other alienees. A who survived the widow for six years did not seek to set aside any of the alienations. After his death his son and grandsons brought a suit to recover the whole property.

Held, that, the three deeds were to be regarded as forming one transaction entered into by all the persons interested in the properties, and that A, and consequently the plaintiffs, were precluded from disputing the alienations; the alienations being by the widow were voidable, not void, and, A being precluded from questioning them, it was not necessary to consider whether he could validly have agreed to sell his reversionary interest.

Decree of the High Court affirmed.

APPEAL (No. 42 of 1925) from a decree of the High Court (March 19, 1923) which modified a decree of the Subordinate Judge of Belgaum.

The appellants, as plaintiffs, sued in 1918 for the property of a Hindu who died in 1846 and whose widow had survived until 1912, on the ground that the father of one and the grandfather of the other plaintiffs was his nearest reversioner on the widow's death. The question in the appeal was whether the plaintiffs were precluded from recovering property alienated in 1868 by the widow in circumstances which appear from the judgment of the Judicial Committee.

The trial Judge set aside the alienations and gave the plaintiffs a decree for the whole estate. On appeal the High

**Present:* Lord Sinha, Lord Blanesburgh, Lord Salvesen, Sir John Wallis and Sir Lancelot Sanderson.

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Court set aside the decree, holding that the plaintiffs, being in no better position than Annagouda, were bound by the alienations of 1868 and were entitled to recover only the property not then dealt with.

E. B. Raikes and *Nilkant Atmaram*, for the appellants: The attestation of Annagouda to the two deeds was no evidence of his consent to the transactions: *Hari Kishen Bhagat* v. *Kashi Pershad Singh*,(1) *Banga Chandra Dhur Biswas* v. *Jagat Kishore Acharjya Chowdhuri*,(2) *Pandurang Krishanaji* v. *Markandeya Tukaram*.(3) If there was consent it was not by the then next reversioner. The consent of the reversioners generally is only evidence that the alienation was for necessity; it is not binding upon the reversioners where it is shown that there was no necessity: *Bijoy Gopal Mukerji* v. *Krishna Mahishi Debi*,(4) *Rangasami Gounden* v. *Nachiappa Gounden*,(5) *Kondama Naicker* v. *Kandasami Goundar*.(6) The sale to Annagouda himself did not estop him from disputing the other alienations which were separate transactions. The decision in *Basappa* v. *Fakirappa*(7) is not consistent with the judgment of the Privy Council in *Rangasami Gounden's case*.(5) The plaintiffs as reversioners were not bound by the acts of Annagouda through whom they traced their descent: *Bahadur Singh* v. *Mohar Singh*.(8) Further, Annagouda had in 1868 merely a *spes successionis* and could enter into no valid transaction as to it: *Annada Mohan Roy* v. *Gour Mohan Mullick*.(9)

Sir George Lowndes, *K. C.* and *Wallach* for the respondents: The three deeds constituted a family arrangement made by all the interested parties. The plaintiffs can be in no better position than Annagouda and he having taken advantage of the transaction was precluded from challenging any part of it. *Bajranji Singh* v. *Manokarnika Bakhsh*

(1) (1914) 42 Cal. 876; L. R. 42 I. A. 64.
(2) (1916) 44 Cal. 186; L. R. 43 I. A. 249.
(3) (1921) 49 Cal. 334; L. R. 49 I. A. 16.
(4) (1907) 34 Cal. 329; L. R. 34 I. A. 87.
(5) (1918) 42 Mad. 523; L. R. 46 I. A. 72.
(6) (1923) 47 Mad. 181; L. R. 51 I. A. 145.
(7) (1921) 46 Bom. 292.
(8) (1901) 24 All. 94; L. R. 29 I. A. 1.
(9) (1923) 50 Cal. 929; L. R. 50 I. A. 239.

Singh[1] is conclusive in the respondents' favour and is not adversely affected by *Rangasami Gounden's case*[2]; see also *Vinayak* v. *Govind*,[3] *Fateh Singh* v. *Thakur Rukmini Ramanji Maharaj*,[4] *Basappa* v. *Fakirappa*[5] and *Akkawa* v. *Sayadkhan Mithekhan*.[6] The fact that in 1868 Annagouda had only a *spes successionis* presents no difficulty. First, because the conveyance was not by him but by the widow. Secondly, because section 6 of the Transfer of Property Act, 1882, did not apply in the Bombay Presidency until 1893, and apart from that section a reversioner could deal with his reversionary rights: *Sri Jagannada Raju* v. *Sri Rajah Prasada Rao*[7]; *Gitabai* v. *Balaji Keshav*.[8]

E. B. Raikes replied.

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The judgment of their Lordships was delivered by LORD SINHA:—This is an appeal by the plaintiffs from a decree of the High Court of Bombay which modified a decree of the Subordinate Judge of Belgaum made in Suit No. 203 of 1919.

That suit was instituted to recover possession of certain houses and lands from the defendants.

The properties in suit originally belonged to one Akkagouda who died in 1846, leaving two widows, Lingava and Tayava, and a daughter Kashibai, who was married to one Shivgouda and had a son Shidgouda.

Lingava died before 1868, but her co-widow lived till 1912, thus surviving her husband for sixty-six years.

Kashibai, the daughter, died in 1907, a few days after the death of her husband Shivgouda. Shidgouda, her eldest son, died in 1907, leaving an adopted son named Bhau (defendant No. 1).

Kashibai had a second son, Pirgouda (defendant No. 2), who, however, had been given in adoption to another family some years before Kashibai's death.

(1) (1907) 30 All. 1; L. R. 35 I. A. 1.
(2) (1918) 42 Mad. 523; L. R. 46 I. A. 72.
(3) (1900) 25 Bom. 129.
(4) (1923) 45 All. 339 (P. B.).
(5) (1921) 46 Bom. 292.
(6) (1927) 51 Bom. 475.
(7) (1915) 39 Mad. 554 at p. 557.
(8) (1892) 17 Bom. 232.

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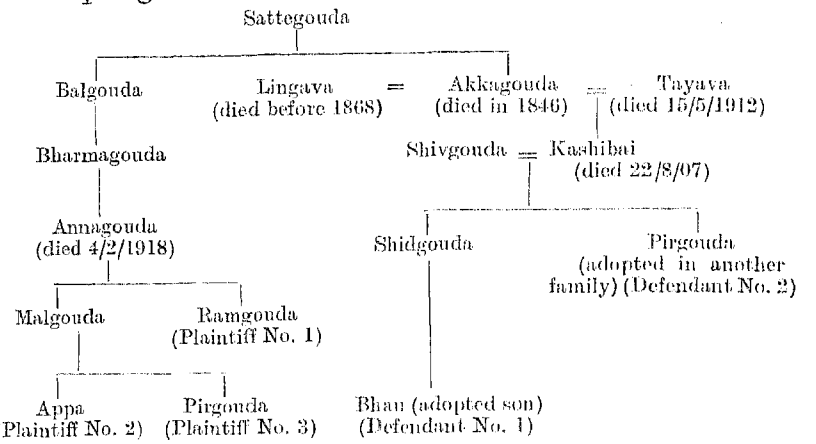
The pedigree of the family is as follows :—



It is no longer in dispute that when the succession opened out on the death of Tayava in 1912, Annagouda was under the Hindu law the nearest heir of Akkagouda, in preference to Bhau (defendant No. 1) and Pirgouda (defendant No. 2).

Tayava had alienated most of her husband's properties in 1868 by and under three deeds. By one of these she made a gift of certain of those properties to her brother Basappa ; by another she purported to sell half of certain other lands to Annagouda himself for Rs. 2,000, and by the third she sold the other half of those properties to her son-in-law Shivgouda. There was only one small property left unalienated.

These three deeds were all executed and registered on the same day. The deed of gift in favour of Basappa was attested by Annagouda and Shivgouda ; the deed of sale in favour of Shivgouda was attested by Annagouda and Basappa ; and the sale-deed in favour of Annagouda was attested by Basappa and Shivgouda. And the widow as executant was identified before the Registrar in respect of all three deeds by Annagouda.

The latter subsequently in 1882 sold the properties purchased by him as aforesaid for Rs. 3,000. The properties purchased by Shivgouda remained in his possession till his

death and afterwards of his grandson and son (defendants Nos. 1 and 2) and their tenant, defendant No. 3. Basappa's share passed by purchase to defendants Nos. 4 to 7.

Annagouda, who survived the widow by nearly six years, did not in his lifetime seek to set aside the alienations in favour of Shivgouda and Basappa ; but after his death in 1918, his son and grandsons instituted the present suit, against all the defendants above-named to recover those properties on the ground that the alienations thereof by the widow were not valid.

It is admitted that Annagouda became entitled to the succession in 1912 and that the plaintiffs claim under or through him and therefore have no better title to succeed in this suit than Annagouda had.

On the written statements filed by the defendants, issues were raised, of which the two material ones are :—

1. Are the plaintiffs estopped from bringing this suit ? and

2. Do the defendants prove that the transactions of gift (to Basappa) and sale (to Shivgouda) are legal and valid and binding on the plaintiffs ?

The trial Court found in favour of the plaintiffs on both issues and gave them a decree.

The High Court held that no question of estoppel arose in the case ; but on the second issue, held that both the gift to Basappa and the sale to Shivgouda by Tayava were binding on the plaintiffs, who therefore were entitled to recover in the suit only the small property which was not included in any of the three documents by her in 1868.

The grounds of their judgment may best be stated in their own words :—

"The transactions which were effected by Tayava with the consent of Annagouda and Shivgouda were evidently pre-arranged as a proper disposition of Akkagouda's property between these parties, and those transactions must be considered as a whole, and since Annagouda received considerable advantage from giving his consent to Tayava's alienations, it would be most inequitable if his descendants, while retaining that advantage, should be allowed to set aside the other alienations."

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It was contended before their Lordships on behalf of the appellants that the decision of the High Court was erroneous because :—

1. The attestation by Annagouda of (1) the deed of gift to Basappa and (2) the deed of sale to Shivgouda was no evidence of his consent to either of those transactions.

2. The deed of gift in favour of Basappa was admittedly not supported by legal necessity and no consent of reversioners, near or remote, could give it validity.

3. That even if Annagouda consented, such consent would not give validity to the sale to Shivgouda, as Annagouda was not the nearest reversioner at the time, inasmuch as the daughter Kashibai and her son Pirgouda were then alive and were nearer in succession.

4. That the sale to Annagouda himself did not estop him from questioning either the gift to Basappa or the sale to Shivgouda, as the transactions were separate and in no way interdependent, and that there was no such equity in favour of the defendants as the High Court assumed.

Their Lordships consider that the decision of this case depends upon how far the three documents can be taken as separate and independent, or so connected as to form one transaction.

The long lapse of time between the execution of the deeds and the institution of the suit has rendered it impossible to prove what actually occurred between the parties on that occasion. There is not sufficiently definite evidence to come to a conclusion as to how far any of those properties were validly encumbered or what was done with the purchase money alleged to have passed on the two deeds of sale.

But the parties to the documents included, or after so great a lapse of time may be presumed in a very real sense to have included, all persons who had any actual or possible interest in the properties, viz., the widow herself, her brother, who was a natural object of her affection and bounty, her

son-in-law, who was the natural protector of the interests of her daughter and grandson, and the nearest kinsman on the husband's side and the only person from whom any opposition might be apprehended with regard to dealings by the widow concerning her husband's estate.

Their Lordships conclude that all the circumstances strongly point to the three documents being part and parcel of one transaction by which a disposition was made of Akkagouda's estate, such as was likely to prevent disputes in the future and therefore in the best interests of all the parties.

The three deeds appear thus to be inseparably connected together and in that view Annagouda not only consented to the sale to Shivgouda and the gift to Basappa but these dispositions formed parts of the same transaction by which he himself acquired a part of the estate.

It was argued that Annagouda's contingent interest as a remote reversioner could not be validly sold by him, as it was a mere *spes successionis*, and an agreement to sell such interest would also be void in law. It is not necessary to consider that question, because he did not in fact either sell or agree to sell his reversionary interest. It is settled law that an alienation by a widow in excess of her powers is not altogether void but only voidable by the reversioners, who may either singly or as a body be precluded from exercising their right to avoid it either by express ratification or by acts which treat it as valid or binding.

If some person other than Annagouda had been at the death of Tayava the nearest heir of her husband, it might have been open to him to question all or any of the three deeds, but Annagouda himself being a party to and benefiting by the transaction evidenced thereby was precluded from questioning any part of it. Nor is it other than a most notable circumstance that he did not, after Tayava's death, essay to do so.

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For these reasons their Lordships agree with the conclusion arrived at by the High Court and would humbly advise His Majesty that this appeal should be dismissed with costs.

Solicitors for appellants : Messrs. *T. L. Wilson & Co.*

Solicitors for respondents : Messrs. *Ranken Ford & Chester.*

A. M. T.

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MUKUND DHARMAN BHOIR AND OTHERS (DEFENDANTS) *v.* BALKRISHNA PADMANJI AND OTHERS (PLAINTIFFS)

[On Appeal from the High Court of Judicature at Bombay]

Hindu law—Partition—Renunciation by plaintiff's father—Effect of renunciation—Absence of severance of joint status.

A father and his two sons formed a joint Hindu family. The younger son, P, was idle and of weak intellect; he lived separately, the father having allotted to him certain property for his maintenance. In 1907, after the father's death, the elder brother, M, took possession of the rest of the property under a will made by his father, and P executed a document by which he acknowledged that the property (which really was ancestral), was self-acquired, that P and his heir had no interest in it, and that M was full owner of the whole except portions given to P by his father and by M. In 1917 a son of P sued for partition. P was a defendant but died before the trial.

Held, that the document of 1907 did not operate as a severance of the joint status, nor as a division of the joint property; it was not binding upon P's sons, and even if it was binding upon P himself, his renunciation enured not to the benefit of M's branch but to that of all the surviving coparceners.

Decree of the High Court affirmed.

APPEAL (No. 117 of 1925) from a decree of the High Court (October 4, 1922) varying a decree of the Subordinate Judge of Thana (December 21, 1920).

The suit was instituted by the first respondent for partition of the property of a joint Hindu family of which he claimed to be a member.

The facts appear from the judgment of the Judicial Committee.

Upon the issues framed both Courts in India found concurrently that the property, with the exception of a certain part with regard to which there was no further dispute, was

**Present:* Viscount Dunedin, Lord Shaw, Lord Sinha, Sir John Wallis and Sir Lancelot Sanderson.