Killi Latchamma and anr. Vs. Killi Appanna and ors.

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Court : Chennai

Decided On : Apr-20-1921

Reported in : AIR1921Mad710; (1921)41MLJ386

Appellant : Killi Latchamma and anr.

Respondent : Killi Appanna and ors.

Judgement :

Phillips, J.

1. The plaintiffs in this suit are the sons of two brothers and the defendants 1 and 2 are widow and daughter respectively of another brother named Musalayya. These brothers were divided and Musalayya after adopting one Poluvadu died. Poluvadu also died and his widow remarried. The 1st defendant his adoptive mother obtained possession of the estate of her son. The plaintiffs sue as the reversioners of the deceased Poluvadu and ask for a declaration that Poluvadu's adoption was valid, that they are the reversionary heirs and that an alienation made by the 1st defendant is not binding upon them. The lower courts have found that the alienation was valid because it was an alienation of property forming the 1st defendant's stridhanam but they have granted the declarations as prayed for.

2. It is now contended for the defendants (appellants) that, inasmuch as the substantial relief asked for, namely, the declaration that the alienation is invalid, cannot be granted, the plaintiffs are not entitled to the other declarations. It may

here be stated that the plaintiffs really base their suit on an alleged denial by the 1st defendant in collusion with the 2nd defendant that Poluvadu had been adopted and the declaration as to the validity of the adoption is the main prayer in their pLalnt. It is however argued in appeal that this question of adoption is merely subsidiary to the question of plaintiffs' right to be considered reversionary heirs and that their'right as reversioners has to be proved through the adoption. No doubt if this were so and the chief relief asked for were the declaration as to the reversionary right the decree could not be upheld. The question has been considered recently by the Judicial Committee in Venkatanarayana Pillai v. Subbammal , Janaki Ammal v. Narayanaswamy Iyer I.L.R. (1915) Mad. 406 I.L.R. (1916) Mad. 634 and Sandagar Singh v. Pardip Narayan Singh I.L.R.(1917) Cal. 510 . The effect of these decisions appears to me to be that when reversioners sue for a declaration of their reversionary right such a suit will not lie except when such declaration is incidental to some other relief which they can claim 'and this is the view of those decisions which has been taken by another Bench of this Court in Navaneetha Krishna Thevan v. Ramasami Pandia Thalavar (1916) I.L.R. 40 Mad. 871.

3. We have, therefore, in this case to see whether the declaration as to the reversionary right is the main praye r in the plaintiffs' suit or whether it is merely incidental to the declaration as to adoption. Under Section 42 of the Specific Relief Act the Court is empowered in its discretion to make a declaration in favour of any person entitled toany legal character, or to any right as to any property. It is I think clearly established now that reversioners can bring a suit for a declaration in certain circumstances and for that purpose they must be deemed to be persons having a right to property within the meaning of Section 42 viz,, to the estate to which they are the reversioners and in Venkatanarayana Pillai v. Subbammal I.L.R. (1915) 38 Mad. 406 two kinds of suits which can be brought by them are specified, namely, suits to set aside an adoption by a widow and suits to set aside an improper alienation of the estate, and the Judicial Committee remarked that in both these cases the right to sue is based on a danger to the inheritance common to all the reversioners. Under illustration (f) to Section 42 a suit can be brought by a reversioner to declare an adoption by a widow invalid. The present suit is 'merely the converse of that but it is contended for the appellants that the converse suit is

not of the same nature as a suit to set aside an adoption the argument being that an adoption, by a widow devolves the property immediately on the adopted son and that gives a right to the reversioners to sue; but it may be pointed out that when there-has been an adoption as has been found to be t'he case heie, a denial by the widow of the truth and validity of such adoption is a danger to the inheritance. If that denial is persisted in possibly for a long series of years until the widow finally dies, it may then be impossible for the reversioners to prove that an adoption actually took place and the effect of the adoption being declared invalid would be to alter the succession to the estate, for the last male holder would then be the father instead of the adopted son and if the father is the last male holder his daughter would be in the line of inheritance and if she had a son the estate would devolve on him to the exclusion of the father's own brothers or nephews--in this case, the plaintiffs. The result, therefore, of the denial by the 1st defendant of the validity of the adoption might be that the estate would on her death devolve on her daughter and daughter's son thus excluding the plaintiffs who would be entitled to come in after the first defendant if Poluvadu had really been adopted. To allow this denial of the 1st defendant to pass unnoticed would undoubtedly be a danger to the estate, for in cases like adoption and so on it is advisable that the factum should be determined as near the date of the adoption possible and therefore, the plaintiffs are justified in i bringing the suit now to declare the adoption valid one of the reasons being that the suit is valuable as prepetua-tion of evidence as otherwise it might not be available when the reversion falls in. This suit isnot really a conflict as suggested by the appellants between two sets of reversioners as in Rama Rao v. The Rajah of Pittapur, I.L.R. 42 Mad. 219 but it is really a suit to establish finally the identity of the last male holder and thereby to ascertain in which family are to be found the general body of reversioners. It is of course possible that the 2nd defendant might die without a son in which case the plaintiffs would be the reversioners after her death but in view of the possibility of her having a son there is undoubtedly a danger of the estate being diverted from its proper course. By establishing the validity of adoption the estate devolves in one way, whereas if there had not been an adoption the estate might devolve in another and might be diverted from the proper heirs. The Subordinate fudge has actually found that this suit was brought by the plaintiffs in consequence of the

denial of the adoption by the 1st defendant and a perusal of the pLalnt shows that this is so. The alienation compLalned of Was of property the value of which bears a very small proportion to the whole estate and the alienation took place many years before the suit was brought. I think here the plaintiffs have brought this suit primarily to establish the factum of adoption and secondarily to set aside the alienation. I therefore can see no reason why this suit to establish the adoption should not lie under Section 42 of the Specific Relief Act, and if it does lie, the declaration that the plaintiffs are the presumptive reversioners is merely an incidental declaration following on the factum of adoption.

4. For these reasons I think that the lower courts are right and dismiss the second appeal with costs.

Odgers J

5. The suit was for two declarations (1) that Poluvadu was the adopted son of Musalayya and the plaintiffs are the reversionary heirs of the former, (2) that the alienation by the first defendant (adoptive mother of Poluvadu) is invalid and does not bind the plaintiffs as reversioners. The plaintiffs are the sons of brothers of Musalayya. The latter having no son adopted his brothers son Poluvadu. Poluvadu died 20 years before the suit and his widow having remarried, first defendant succeeded as his adoptive mother and the second defendant is her daughter. It is not disputed that the plaintiffs are reversionary heirs if the adoption is valid. It is also not disputed that they would be more distant reversionary heirs if the adoption weie in fact invalid, provided second defendant had no son. The adoption was declared to be valid by both the lower courts who also found in favour of-the alienation by the first defendant and granted the first declaration above set out. On these facts it is contended first for the appellants that as the reversionary right can only be proved by proving the adoption and as the reversionary right cannot be decreed, therefore the adoption cannot be decreed. This proposition was based on Janaki Animal v. Narayanaswami Aiyar I.L.R (1916). Mad. 634 which Laid down that as waste, misappropriation etc., by the limited owner had not been proved, the plaintiff was not entitled to a declaration as to his reversionary right, even though it had been disputed, under cover of ' further relief ' in the pLalnt when the

substantial heads of his claim had failed.

6. It was also held that in that case that heirs with rights differing little irom spes successionis, had a right to demand that the estate be kept intact for the class of reversioners whoever they might ultimately turn out to be. cf also Balbhaddar Prasad v. Prag Datt I.L.R. (1919) All. 492,.

7. This case is essentially different from the one before us. The substantial heads of claim here are declarations both as to adoption and as to the alienation; the latter was comparatively unimportant. What was important for the plaintiffs was to have the adoption established while evidence was available which had been denied by the first defendant.

8. As pointed out by Mr. Collett in his notes to Section 42 Specific Relief Act in order to found a suit for a declaratory decree relating either to some legal character or some right in property the essentials are that there should be some present existing interest, however-distant the possibility of its coming into actual possession and enjoyment may be, and secondly there must be some present danger or detriment to such interest.

9. It seems to me both these essentials exist here and this is supported by illustration (f) to the section. Such a suit may or may not involve a declaration that the plaintiffs are the reversionary heirs.

10. As pointed out by the Privy Council in Saudagar Singh v. Pardip Narayan Singh I.L.R(1917). Cal. 510 a suit following illustration (e) must always involve such a declaration.

11. In Katama Nachiar v. Dora Singa Tevar (1875) 2 I.A. 169 it was Laid down by the Privy Council 'there can be no declaratory decree unless there is a right to consequential relief' and Navaneetha Krishna Thevar v. Ramaswami Pandiya Thalavar I.L.R(1916) . Mad. 871 held that reversioners are not entitled to a decree that they are the next reversioners unless the question is incidental to the grant of some other relief to which they may be entitled. Here the plaintiffs are unquestionably entitled to bring a suit for a declaration as being next reversioners

provided the adoption was also declared to be valid.

12. It is really incidental to the other relief claimed in Venkatanarayana Pillai v. Subbammal I.L.R. (1915) Mad. 406 the P.C. The Privy Council says ' it is the common injury to the reversionary rights which entitles the reversioners to sue. Apart, therefore from the question whether 'the next presumptive heir' is 'the Jegal representative' of the deceased presumptive reversioner there remains the outstanding fact of identity of interest on the part of the general body of reversioners near and remote to get rid of the transaction which they regard as destructive of their rights.'

13. Here the words apply the transaction being the denial by the first defendant of the adoption. The second objection by the appellants is that the adoption does not affect all the reversioners. It certainly affects all the reversioners who would be displaced or postponed if the adoption were invalid. In cases under illustration (f) to Section 42 (Specific Relief Act) there will obviously be two sets of reversioners, those entitled if the adoption is upheld and those entitled if the adoption is declared invalid. Moreover as' in this case the plaintiffs might be entitled to succeed'the more remotely, even if the adoption were declared invalid it appears t'o me that there is no force in the contention. The declaration sought is in reality as to the identity of the last male holder.

14. For these oeasons I would dismiss this second appeal with costs.