

Seshappa Heggade Vs. Chandayya Heggade

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Court : Chennai

Decided On : Mar-13-1919

Reported in : (1919)37MLJ402

Appellant : Seshappa Heggade

Respondent : Chandayya Heggade

Judgement :

Oldfield, J.

1. I do not propose to express any opinion on the question, with which my learned brother has dealt--whether the plaintiff's claim is sustainable. My reason is that there is no decree before us, which we are entitled to test with reference to the considerations arising in connection with that question. The decree was passed by a Small Cause Court without jurisdiction, inasmuch as the claim is a claim for maintenance: See *Saminatha Aiyar v. Mangalathammal* I.L.R. (1896) M. 29. The only order we can pass in my opinion is that the decree be set aside and that the lower court do return the plaint for presentation to the proper Court. Each party will bear his own costs throughout up to date.

Seshagiri Aiyar, J.

2. This is a suit for arrears of maintenance by an assignee. The assignor is a member of an aliyasanthana family. The suit was brought in the Small Cause

Court for arrears which had already fallen due. The Lower Court dismissed the suit on the ground that the assignment is opposed to the Transfer of Property Act. In my opinion this conclusion is wrong. I do not think that Section 6 of the Transfer of Property Act is opposed to the assignability of the right which the plaintiff seeks to enforce. It is undoubtedly property because it is now well settled that the right of a member of a Malabar tarwad or of an aliyasanthana family to maintenance is based on ownership of property and not because he is entitled to be paid a fixed allowance by the karnavan who must be regarded as the true owner of the property. In *Maradevi v. Pammakka* I.L.R. (1912) M. 203 : 22 M.LJ 309 this principle was laid down and this is followed in a case to which I was a party, viz., *Ammani Ammal v. Padhmanabha Menon* I.L.R. (1918) Mad. 1075 : 35 M.L.J. 509. In an earlier case *Chandu v. Raman* I.L.R. (1888) Mad. 378 this court held that the right to maintenance by a junior member of a tarwad can be made a charge upon a specific portion of the tarwad property. Therefore it seems to me to be clear that the right to maintenance which a member of an aliyasanthana family or a junior member of a tarwad possesses is property, and therefore the first portion of Section 6 of the Transfer of Property Act is complied with. Mr. Adiga for the respondent contended that the assignability is opposed to Clauses (d) and (h) of the same section. Some support is given to this argument by the observations of Sadasiva Aiyar, J. in *Pallikandy Mammad v. Krishnan Nair* I.L.R. (1916) Mad. 302 : 30 M.L.J. 361. The question before Sadasiva Aiyar and Moore, JJ. in that case related to the attachability of the right to maintenance under a money decree obtained against a widow. Therefore the present question did not arise for decision directly in that case but Sadasiva Aiyar, J. in coming to the conclusion that the right to maintenance was not attachable refers to (d) and (h) of Section 6 of the Transfer of Property Act. I will take Clause (d) to which the learned Judge refers. That refers to an interest in property restricted in its enjoyment to the owner personally. I do not think it can be said that the right to maintenance is a right of that kind. That clause contemplates cases like service tenures or the office of an archaka in a temple which is restricted in its enjoyment and cannot be transferred by the office holder. Then as regards Clause (h) the transfer must not be opposed to the nature of the interest affected thereby. This again relates to cases of property which are known as extra commercium for example, transfer to a non-

Hindu of a right in a religious office : that would be opposed to the nature of the interest affected thereby. I do not think that a right to maintenance is covered by either Clause (d) or Clause (h) of Section 6. I am supported to some extent by the observations of the learned Judges who decided *Rani Annapurni Nachiar v. Swaminatha Chettiar* I.L.R. (1910) Mad. 7 : 20 M.L.J. 785 wherein they say that at any rate where, as here, the amount payable is subsequently fixed by agreement or by decree a transfer of a widow's right to maintenance from her late husband's estate would be good. I understand the distinction to be this, that you cannot attach maintenance which is to fall due at some future time but where the maintenance has become payable, it is attachable. That is well settled. Therefore so long as a decree-holder does not attempt to anticipate an income which is to fall due, there can be no objection to his obtaining decree and subsequently attaching the allowance when it becomes payable. Subject to this limitation I fail to see why a right to maintenance should not be assigned. I am therefore of opinion that the Transfer of Property Act is not opposed to the assignability of the maintenance of a member of a Malabar tarwad or of a member of an Aliyasanthana family.

3. Mr. Adiga next attempted to argue that under the general law a right to maintenance should not be assigned and he quoted two cases, one in *Bhyrub Chunder Ghose v. Nubo Chunder Gooha* (1866) 5 W.R. 111 and another in *Narbada Bat v. Mahadeo Narayan Kazinathnarayan and Shama Bai* I.L.R. (1880) Bom. 99 in support of this proposition. So far as my experience goes in Madras it has always been regarded that a right to maintenance which has already fallen due can be assigned and can be attached and as I said before, there is nothing either in the Transfer of Property Act or in the Civil Procedure Code which prohibits such a transfer or such an attachment. I am therefore not prepared to hold that under the general law a right to maintenance is not assignable.

4. This conclusion lands Mr. Sitarama Rao's client in another difficulty. If it is in the nature of a right in property and a right to maintenance that he has purchased, then the suit will not lie in a Small Cause Court. The decision in *Saminatha Ayyan v. Mangalathammal* I.L.R. (1896) Mad. 29 is in point. Even the decision quoted by the learned vakil *Achutan Nair v. Kunjunni Nair* : (1903)13MLJ499 shows that such

a suit is taken away from the cognizance of a Small Cause Court. I would therefore direct that the decree be set aside and that the lower Court do return the plaint for presentation to the proper Court. I agree with my learned brother as to the order as to costs which he proposes to make.

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