

**Muthuveeru Mudaliar Vs. Vythilinga Mudaliar and anr.**

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**Court :** Chennai

**Decided On :** Dec-18-1908

**Reported in :** 3Ind.Cas.476

**Judge :** Arnold White, C.J. and ;Miller, J.

**Appellant :** Muthuveeru Mudaliar

**Respondent :** Vythilinga Mudaliar and anr.

**Judgement :**

Arnold White, C.J.

1. Assuming Exhibit I to be a genuine document and the recitals in the instrument to be true, I do not think that the effect of the transaction first recited, namely, an agreement between the brothers of the deceased and his widow that the former should take the whole of his share of the property,' operated as an effective conveyance to the brothers of the widow's limited estate by inheritance. The recital itself .states that the agreement was conditional on the debts of the deceased being paid by the brothers, and the second recital (the conveyance by one ! brother ' to the other of the whole of the deceased's share of the property, on condition! that the brother to whom the Conveyance is a recited to have been made should pay the debts of the deceased) states that the debts had not been paid by the two brothers. There is no statement in the deed that the debts have been paid by the brother to whom the last mentioned conveyance is recited to

have been made. The third recital, namely, a recital of a sale by the widow of a portion of the property is quite inconsistent with the view that she had under the transactions mentioned in the first two recitals surrendered the whole of her limited estate to the brothers, or one of them. The deed purports to convey the reversionary right of the two brothers few Chokka Mudaliar, but, in the view that at the time they purported to do this the widow had not been divested of her limited estate] and the brothers had nothing more than a reversionary right, this conveyance would be ineffective. See *Manickam Pillai v. Ravialinga Pillai* 29 M. 120 and my judgment in *Rangappa Naik v. Karnti Naik* 81 M. 366 : 18 M.L.J. 309 : 3 M.L.T. 355; in which the point in question was considered by a Full Bench.

2. In the view I take as to the construction of Exhibit I. I think this case, apart from any question of estoppel, is governed by the decision of the Full Bench in *Munidamuthttt Nadan v. Srinivasa Pillai* 21 M. 128. This decision was recently considered by the Privy Council in *Bajrongi Singh v. Manokarnika Baksh Singh* 30 A. 1 : 12 C.W.N. 74 : 3 M.L.T. 1 : 9 Bom.L.R. 1348 : 6 C.L.J. 766 : 5 A.L.J. 1 and was cited with approval; and as pointed out in the judgment in the Full Bench case to which I have referred, although the question before their Lordships was the general question of the right of a Hindu widow, in the absence of legal necessity to alienate property with the consent of the nearest reversioners, there is nothing as it seems to me to indicate that their Lordships were of opinion that the right was free from the qualification or restriction that the whole limited estate must be withdrawn.

3. Apart, therefore, from any question of estoppel, it seems to me that the decisions of the Courts below were right. As regards this question of estoppel, in the recent Full Bench case to which I have referred, the Judges were all of opinion that in the facts of that case the plaintiffs were estopped from setting up the invalidity of the alienation by the widow. The Judges were of opinion that they were precluded from holding otherwise having regard to the final sentence in the judgment of the Privy Council in *Bairangi Singh v. Manokarnika Baksh Singh* 30 A. 1 : 12 C.W.N. 74 : 3 M.L.T. 1 : 9 Bom.L.R. 1348 : 6 C.L.J. 766 : 5 A.L.J. 1.

4. There may be difficulties, as I observed in my judgment, in reconciling the view of the law in which the statement contained in this sentence was based, with the law as laid down in earlier cases; but as I am of opinion that, as regards the question of estoppel, the facts in the present case cannot be distinguished from those in the case referred to the Full Bench, I hold following the decision of the Full Bench that, if the alienation was in fact made and the then reversioners in fact consented to it and received consideration therefor, the plaintiffs are estopped from denying its validity.

5. I think, therefore, this case must go back to the lower appellate Court for a finding as to whether Exhibit I is genuine, and if the finding is in the affirmative, for findings as to whether Soundrathanni in fact alienated the properties in favour of Chokka Mudaliar and Subbaraya Mudaliar, and, if so, whether Ponnu Mudali and Vythilinga Mudali consented thereto and received consideration for their consent.

6. Fresh evidence may be taken.

7. Findings should be submitted after the re-opening of the Court after the recess  
Seven days will be allowed for filing objections'

**Miller, J.**

8. The case presented to us on behalf of this appellant is that the widow Soundrathanni Animal surrendered or relinquished her estate to the reversionary heirs of her husband, recovered it from them and then effected this alienation now question-' ed. There is no evidence of this suggested recovery from the heirs after relinquishment but the relinquishment itself we are asked to find established by Exhibit I. Exhibit I however, presuming it to be a genuine document containing true recitals does not establish the relinquishment. It recites that the brothers, Vythilinga and Poimambala Mudabar, having undertaken but failed to discharged debts of their deceased brother' Theygaraja Mudaliar, according to a deed of agreement executed by them in favour of his widow Soundrathanni, conditioned that they should take the whole of his property and pay all his debt, and Vythilinga Mudali having undertaken but failed to discharge the debt in pursuance of an agreement between himself and his brother, a part of the property had been sold

by the widow; and the brothers' apparently, by way of confirming the sale convey to the vendee for the sum of Rs. 100 in cash their reversionary interest in the property sold. There being no mention of any recovery of the property by the widow the sale by her is inconsistent with a prior relinquishment by her, and property construed, the document appears to recite that there was an agreement to relinquish if the brothers would pay the debts, but that, as they did not do so there was no conveyance, and consequently the widow effected an alienation-for the purpose of paying off the same debts This seems to be the case presented in the evidence at the trial, and the relinquishment alleged in paragraph 5 of the first defendant's written statement does not appear to have been urged before the Courts below; there is no issue dealing with the question, nor do the grounds of appeal to the lower appellate Court suggest that that question ought to have been tried.

9. In these circumstances it is unnecessary to send back the case for a finding on the question of relinquishment by the widow and the question for decision is whether assuming Exhibit I to represent the truth, the confirmation by the brothers Vythilinga and Ponnambala Mudaliar of the widow's sale is sufficient to give validity to the transfer as against the plaintiffs. It is found that there was no existing necessity sufficient to justify the sale and for the purpose of my decision. I assume that the two brothers were at the time of the confirmation the only living reversionary heirs of Thyagaraja Mudaliar.

10. The only difference between the present case and the case of Marudamuthu Nadan v. Srinivasa Pillai 21 M. 128 decided by a Full Bench of this Court is that in that case the alienation was assented to by one out of several reversionary heirs living at its date, while here all the living reversionary heirs confirmed the sale.

11. The law does not favour alienation by widow and the ground upon which the learned Judges put the restriction imposed by them on such alienations in Marudamuthu Nadan v. Srinivasa Pillai 21 M. 128 is that it will afford a safeguard against improper alienation. It may be argued with some force that the necessity of obtaining the assent of the whole body of reversionary heirs will afford as effective a check on alienation as the rule adopted by the Full Bench. The latter rule will

however, operate in every case where a widow proposes to alienate for purposes other than those recognized by the law as justificatory, while the former may operate only where the body of reversioners is numerous, and is on that account not a check which can be admitted as generally sufficient. The learned Judges do not suggest in their decision that an alienation of a part only of the inheritance will be good if made to the nearest reversionary heir provided that he is at the time of the alienation the only reversionary heir. So to hold would, in not unfrequent cases, remove the check which it is their object to preserve.

12. Nor can the consent of the whole body of reversionary heirs to a partial alienation be held to supplement the powers of the widow to deal with estate. No estate being vested in any reversionary heir the aggregate of the assents of all is for this purpose no better than the assent of the nearest reversioner among them.

13. I do not, of course, suggest that the assent of the whole body of living kindred is not more valuable than the assent of one member of that body. It is obviously more valuable as evidence in favour of an alienee when, it may be evidence of the actual purpose of the transfer has ceased to be available and it may be more valuable as furnishing estoppels against subsequent attempts to upset the alienation made on the strength of it. But these considerations do not apply to the point which I am considering, the question whether, if a partial alienation to the nearest reversioner is bad, similar alienation to all the reversioners is good.

14. I think, therefore, that the present case is not taken out of the rule laid down in *Marudamuthu Nadan v. Srinivasa Pillai* 21 M. 128 and if that decision binds us the decision of the lower appellate Court is right on this point. It is suggested that the decision of the Privy Council in *Bajrangi Singh v. Mandkarnika Baksh Singh* 30 A. 1 : 12 C.W.N. 74 : 3 M.L.T. 1 : 9 Bom.L.R. 1348 : 6 C.L.J. 766 : 5 A.L.J. 1 virtually overrules the case in this Court; but I do not think that is so. It is true that in that case, if the facts are correctly reported, the alienation of the whole estate was effected piecemeal by the widow, but the alienations received the assent of the reversionary heirs as a whole, after all were completed, and the decision is, therefore, not a direct authority in favour of partial alienations.

15. Moreover, their Lordships though they quote from the decision in *Marudamuthu Nadan v. Srinivasa Pillai* 21 M. 128 do not suggest that they disapprove of the restriction there laid down. I think that we are still bound by that decision and must hold that the consent of Ponnu Mudaliar and Vythilinga Mudaliar is not of itself sufficient to give validity to the alienation by the widow.

16. Since this case was argued a Full Bench of this Court has decided that a consent given bona fide and for good consideration will bind persons claiming through the giver of the consent and if Exhibit I is a genuine document and represents truly the transaction set forth in it, Ponnu Mudaliar's grandsons would be bound by his consent. It is necessary, therefore, to call for findings on this question, and I concur in the order made by the learned Chief Justice.

17. In compliance with the order of the High Court, the District Judge submitted findings that Exhibit 1 was not genuine, that the alienations by S were not proved and that Ponnu and Vythilinga did not give any consent or receive valuable consideration. These findings were accepted and the second appeal was dismissed with costs.