

Palikandy Mammad Vs. Chingoron Keloth Valia Appa Alias Krishnan Nair

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Court : Chennai

Decided On : Feb-09-1916

Reported in : (1917)ILR40Mad302

Judge : Sadasiva Ayyar and ;Moore, JJ.

Appellant : Palikandy Mammad

Respondent : Chingoron Keloth Valia Appa Alias Krishnan Nair

Judgement :

Moore, J.

1. Under a family karar (Exhibit A) the respondent, the deposed karnavan of the tarwad, was allotted properties yielding an annual income of 1,120 1/2 edangalis of paddy and Rs. 92-4-0. The karar farther provided that the respondent should be paid Rs. 276 every year in monthly instalments of Rs. 23 before the 5th of each month for the purpose of meeting extra expenses such as entertaining guests. The appellant who holds a money-decree against the respondent applied for the appointment of a receiver to realize the monthly allowances, as they fell due in satisfaction of his decree-debt. Both the lower Courts held that the right to receive future maintenance could not be attached, and that a receiver could not be appointed to collect the allowance due to the respondent. Mr. Subrahmanya Sastri for the appellant contends that the lower Courts have misconstrued the karar and erred in holding that the allowance in question is maintenance, that the monthly

allowance is property which can be attached, and that the proper and convenient course would be to appoint a receiver to collect the monthly allowance.

2. I think that it is clear upon the construction of the document that the sum of Rs. 276 which is payable in monthly instalments forms part of the respondent's maintenance allowance, and that it represents an extra allowance granted to the respondent to enable him to maintain the dignity of his position as a retired karnavan of the tarwad. It is not however made payable out of any definite fund or estate, nor is any charge created. The allowance in question is clearly not a debt--a debt must be specific, existing and definite--*Syed Tuffuzool Hossein Khan v. Rughoonath Pershad* (1871) 14 M.I.A. 40 and not merely a sum of money which may or may not become payable at some future time, and the payment of which depends upon contingencies which may or may not happen; *Haridas Acharjia Chowdhury v. Baroda Kishore Acharjia Chowdhury* I.L.R. (1899) Calc. 38. Section 60(n). Civil Procedure Code, provides that 'a right to future maintenance' shall not be liable to attachment or sale, the prohibition being presumably based on grounds of public policy. The learned vakil for the respondent argues that the right of the judgment-debtor to receive a monthly allowance is a right to future maintenance within the meaning of Section 60(n), Civil Procedure Code, that such right is not assignable, and that it cannot be attached prospectively before it becomes due.

3. The question whether a right to future maintenance can be attached and sold has been exhaustively considered by Mr. Justice Mookerjee in *Asad Ali Molla v. Haidar Ali* (1910) 12 C.L.J. 130 and *Tara Sundari Debi v. Saroda Charan Banerjee* (1910) 12 C.L.J. 146 in which the various decisions on the point are reviewed. The learned Judge observes at page 151 of the report, that 'while the cases in the books are by no means easy to reconcile on any intelligible principle, there is a well marked distinction between two classes of cases, namely, the one in which the right is merely to receive an allowance by way of maintenance periodically, and the one in which the right relates to immoveable property granted and accepted in lien of a periodical allowance for maintenance,' and at page 156, 'that the true test to be applied, when a question arises as to whether a right to maintenance is assignable or not, is whether the intention of the grantor was to

create a purely personal right to receive certain sum of money in the grantee, and consequently inalienable, or whether his intention was to create an interest in property, either a fund or an estate which should be treated as alienable property.' A similar test has been applied in England. It has been held that alimony payable to a wife is not assignable because it is not in the nature of property but only money paid by the order of the Court from time to time to provide for the maintenance of the wife; *In re Robinson* (1884) 27 Ch.D., 150 See also *Paquie v. Suary* (1909) 1 K.B. 688 On the other hand, a life annuity is assignable. In *Holmes v. Millage* (1893) 1 Q.B. 551 the Court of Appeal held that the Court has no jurisdiction to enforce satisfaction of a judgment-debt by appointing a receiver of the future earnings of a judgment-debtor, and that unless a man has assigned or charged his future earnings or has made a sum payable out of them, they cannot be prospectively impounded by any of his creditors by any ordinary process of execution, whether legal or equitable.' Coming now to the Madras decisions cited by the appellant's vakil, in *Vaidyanatha v. Eggia* I.L.R. (1907) Mad. 279 which followed *Muthukumara Chettiar v. Sundara Kumara Ettappasami* (1899) 9 M.L.J. 113 it was ruled that a hereditary right to an allowance out of the melvaram of certain lands was attachable but that case is, we think, distinguishable on the ground that a heritable right is not a mere personal right and consequently ought to be treated as assignable.

4. In *Muthukumara Chettiar v. Sundara Kumara Ettappasami* (1899) 9 M.L.J. 113 Mr. Justice Subrahmanya Ayyar observes that the word 'maintenance' in Section 266 of the Code of 1882 means nothing more than personal sustenance the right to which must under any circumstances cease with the life of the party entitled thereto, while a right of annuity payable to a man and his heirs is not a personal and limited right of that character. The decision in *Nanammal v. The Collector of Trichinopoly* : (1910)20MLJ97 , where it was held that a decree for maintenance is a right to future maintenance and under Section 266 of Act XIV of 1882 cannot be attached nor can it be treated as a money-decree, is against the appellant *Govinda Pillai v. Meenatchi Achi* : (1912)22MLJ204 does not also help the appellant. What was held in that case was that the crops standing on land allotted to a widow for maintenance were her property and as such available for her debts and could be attached and consequently did not fall within the interdiction in

Clause (n) of Section 60, Civil Procedure Code.

5. The learned vakil for the appellant has referred us to *Ranee Annapurni Nachiar v. Swaminatha Chettiar* I.L.R. (1911) Mad. 7. In that case a widow had hypothecated her claim to past and future maintenance and the plaintiffs asked for the appointment of a receiver to collect the amounts hypothecated and for a decree ordering the sale of the hypotheca. The observations of the learned Judges at page 9 of the report lend some support to the appellants' contention that a right to future maintenance is transferable but the actual point decided was that, where the amount payable for maintenance is subsequently fixed by agreement or decree a transfer of such an interest may be valid. The learned Judges did not express any opinion on the question whether a right to future maintenance is liable to attachment.

6. Following the rulings in *Nanammal v. The Collector of Trichinopoly* : (1910)20MLJ97 and *Tara Sundari Debi v. Saroda Charan Banerjee* (1910) 12 C.L.J. 146 I am inclined to hold that a mere right to future maintenance is not liable to attachment and sale and that the appellant was not entitled to attach the monthly allowance payable to the respondent for maintenance. I am also of opinion that the Lower Courts were right in holding that they had no power to appoint a receiver to collect the future maintenance due to the respondent. The learned vakil for the appellant relies on Section 51(d), Civil Procedure Code, but that section merely declares in general terms the powers of a Court to enforce execution, one of which is by the appointment of a receiver. Rule 1 of Order XI, Civil Procedure Code, gives power only to that Court in which the suit is brought or by which the property has been attached to appoint a receiver. The said right to receive future maintenance is not property and cannot be attached. 'A Court cannot appoint a receiver except it has seisin of the property either by a suit being pending or by proceedings in execution of a decree made in a suit being pending and attachment having been made.' See *Amir Ali and Woodroffe's Civil Procedure Code*, page 1186.

7. The learned vakil for the appellant relies on *Monessur Doss v. Beer Protap Sahes* (1871) 15 W.R. 188 In that case maintenance payable in instalments had

been awarded by a decree, and it was held that the Court might at the instance of a person who held a decree against the maintenance decree-holder make an order for the non-payment of an instalment by the party chargeable and for its non-receipt by the decree-holder (judgment-debtor in the second suit), i.e., by the issue of a prohibitory order. In *Amir Ali and Woodroffe's Commentaries on the Civil Procedure Code*, the learned authors say at page 293 that this has not been the practice since. See *Haridas Acharjia Chowdhury v. Baroda Kishore Acharjia Chowdhury* I.L.R. (1809) Calc. 38. In *Udoy Kumari Chatwalin v. Hari Ram Shaha* I.L.R. (1901) Calc. 483 the learned Judges, while holding that future rents and profits due to a ghatwal cannot as such be attached in execution of a decree against him, sent the case back to the Lower Court with directions to consider the propriety of appointing a receiver to collect the rents and profits as they fell due. The facts of that case are, however, plainly distinguishable from the present one.

8. In the result the appeal fails and is dismissed with costs.

Sadasiva Ayyar, J.

9. I entirely agree. As regards the case in *Ranee Annapurni Nachiar v. Swaminatha Chettiar* I.L.R. (1911) Mad. 7 I am inclined with the greatest respect to hold that a right to receive future maintenance cannot be validly alienated. Shephard and Brown in their commentaries hold that it is not alienable as it is not property within the enabling words of Section 6 of the Transfer of Property Act. The learned Judges following the observations in *Palaniappa v. Lakshmanan* I.L.R. (1893) Mad. 429 hold that a right to future maintenance, though not 'property' under the Transfer of Property Act and though not attachable under the Civil Procedure Code might be alienable under the principles followed by Courts of Equity in England. We know that Courts of Equity have held that even the contingent right of an heir presumptive can be validly charged. I think that Courts in India are bound by the Transfer of Property Act, the clear implication of Section 6, Clauses (d) and (h) of that Act being that a right to receive future maintenance cannot be validly alienated. I think that 'a transfer not recognized by the Transfer of Property Act' as legally effective cannot create any right in the alleged transferee.

10. Mr. Subrahmanya Sastriyar contended that if a decree awarding future maintenance can be attached the rights granted by a private deed to receive future maintenance of definite rates can also be attached, but I think we are bound by the decision in *Nanammal v. The Collector of Trichinopoly* : (1910)20MLJ97 , to hold the contrary. Whatever may be the law in England, it has been held that the law applicable in this country is that 'a right to recover damages for assault is not assignable': see *Seethamma v. Venkataramanayya* I.L.R. (1913) Mad. 308. While the prohibitions against attachment found in the provisos to Section 60 of the Civil Procedure Code and the prohibitions against transfer found in the clauses of Section 6 of the Transfer of Property Act have been both enacted on grounds of public policy, the prohibition against attachment, so far as it relates to some of the properties mentioned in Section 60, Civil Procedure Code (such as tools of artisans, necessary cooking vessels, etc.), is not intended to interfere with the right of the owner to effect private alienations of those properties. The prohibition of private alienation itself found in the Transfer of Property Act rests therefore on rules of public policy of at least equal stringency with the prohibition against attachment found in the Civil Procedure Code and instead of being sought to be evaded by the Courts should in my opinion be liberally given effect to.