

K.A. Ramier Vs. Minor Indiran Ramaswami Pandia Thalavanar Through His Mother and Guardian Gomathi Nachiar

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Court : Chennai

Decided On : Oct-28-1941

Reported in : AIR1942Mad315; (1942)1MLJ41

Appellant : K.A. Ramier

Respondent : Minor Indiran Ramaswami Pandia Thalavanar Through His Mother and Guardian Gomathi Nachiar

Judgement :

King, J.

1. The question at issue in these appeal's is whether two items of property belonging admittedly to the Zamindar; of Talaivankottai can be proceeded against in execution of personal decrees obtained against the Zamindar's late father. These items of property are:

1. a bungalow at Courtallam acquired by the then Zamindar in 1905,
2. the villages of Dharukapuram and Pattakurichi granted in inam to a remote ancestor of the Zamindar in 1207.

The second appeal is concerned with the former item only. There the District Judge has held that this property is liable to attachment. In the first appeal the Subordinate Judge of Tinnevely has held that both items are not so liable.

2. The estate of Talaivankottai is one of those mentioned in the schedule to the Madras Impartible Estates Act (II of 1904). If therefore these items of property are part of that estate, it would seem to follow that they cannot be taken in execution of a personal decree--such alienation being prohibited by Section 4 of the Act. The learned advocate for the appellant in C.M.A. No. 439 has, however propounded the novel theory that the Act' can apply only to the estates mentioned in the schedule as they existed at the time of the Permanent Settlement in 1802 and in so far as they are recognised in the sanads then granted. There being no proof that the second item with which we are concerned is included in the sanad he contends that the Act cannot apply to it--and a fortiori the Act cannot apply to property acquired after 1802.

3. We are totally unable to accept this argument in the absence of any support for it in the definitions contained in the Act itself. It is, we think, sufficiently obvious that the Act must apply to an estate as it was constituted at any time in or after 1904 which is material in any litigation. If, therefore, at the time when proceedings were sought to be taken in execution against these two items of property they formed portions of the Talaivankottai estate such proceedings must fail.

4. The law is clear that an impartible estate is not something which is permanently fixed and incapable of either diminution or, augmentation, and in regard to the latter kind of change it is now well settled that the holder of an impartible estate can, if he wishes, incorporate into it any other immovable property which he owns. The question whether such, incorporation has or has not taken place is one of intention, and such intention can be proved either directly or as a presumption from other facts. These appeals must therefore be decided on this issue of fact whether the two items of property have been incorporated or not in the Talaivankottai estate.

5. In regard to the Courtallam bungalow the evidence of incorporation is very meagre. The learned Subordinate Judge relies only upon Ex. IX which is a report

from the Collector of Tinnevely sent in 1922 to the Court of Wards in which it is stated that as the Estate Manager says that the bungalow was purchased with the estate funds the bungalow may be treated as part of the impartible estate, and upon the fact that there is nothing in the accounts of the Zamindari to show that the income from the bungalow has been kept separately from the Zamindari's general income. In regard to Ex. IX there is no specific proof that the recommendation of the Collector was acted upon by the Court of Wards. Even if it were it is insufficient to effect incorporation as *Kamaya Nayakkar V. Viralakshmi* : AIR1940 Mad814 lays it down that the act of incorporation must be the act of the owner himself and not of anyone who is managing his estate for him. So far as the accounts are concerned the evidence that there is no specific differentiation between two heads of income is, in our opinion, far from being sufficient to prove incorporation. This part of the Zamindar's case, it may be mentioned, was not seriously pressed by the learned advocate who appeared for the Zamindar. It must therefore be held that- the Courtallam bungalow has not been shown to be part of the impartible estate, and may therefore be proceeded against in execution,

6. The principal evidence with respect to the inam villages is furnished by the records of two suits one in 1817 and the other in 1859, which show conclusively that at those periods the Courts held that the right of succession to these villages must be governed by the rules of succession relating to impartible estates. This evidence seems to us, though it is, of course not available in support of any strict plea of *res judicata*, to prove conclusively that at some period long before 1817 the villages must have been incorporated with the Zamindari proper.

7. The learned advocate for the appellant in C.M.A. No. 439, while accepting the fact that the succession to the villages have proceeded for generations on the understanding that the villages were impartible? argues that they have never lost their identity as a separate item of property, and never became completely merged in the Zamindari. In support of this argument he relies upon the facts that the villages were not included in the sanad at the Permanent Settlement, and were enfranchised in 1865 by the Inam Commissioner. We do not think that these facts are sufficient to show that the villages had not been incorporated in the Zamindari. In 1802, of course, the main question in which Government and the Zamindar

were alike interested was the determination of the amount of peishkush to be paid. This was long before the legal doctrine of incorporation had been thought of, and any omission on the part of the then Zamindar to claim that these villages on; which revenue was already being paid in the form of quit rent, should be included in his sanad as property upon which peishkush was payable cannot in our opinion, outweigh the significance of the fact that the villages had been treated by that Zamindar and many of his predecessors as impartible estate and not private property. It is such treatment which constitutes the act of incorporation. It is not necessary that the property incorporated shall cease to possess any separate identity for any purpose whatever. Here though the separate identity remained in regard to the relationship between the Zamindar and the Government it had disappeared entirely in regard to the all-important questions of succession and alienability and the other incidents of property held as impartible estate.

8. We are therefore of opinion that in regard to these villages the order of the learned Subordinate Judge is right, and must be confirmed. In regard to the bungalow, as we have already said, his order must be set aside. To that extent the appellant's execution petition will be restored to file and the Subordinate Judge directed to dispose of it according to law. The parties in this C.M.A. will give and take proportionate costs throughout.

9. C.M.S.A. No. 20 of 1940 requires no separate discussion. It is dismissed with costs.