

i.M. Ratna Mudaliar and anr. Vs. Krishna Mudaliar and anr.

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Court : Chennai

Decided On : Nov-24-1936

Reported in : AIR1937Mad353; 171Ind.Cas.760

Judge : Varadachariar, J.

Appellant : i.M. Ratna Mudaliar and anr.

Respondent : Krishna Mudaliar and anr.

Judgement :

Varadachariar, J.

1. This second appeal raises an important question of Hindu Law. The plaintiff claiming to be the reversioner to the estate of one Shanmuga, filed a suit for a declaration that an alienation made by the 1st defendant, the mother of Shanmuga, in favour of the 2nd defendant, was not binding on the reversion. The first issue in the case raises the question whether the plaintiff is the nearest reversioner entitled to succeed after the death of the 1st defendant. The decision of this question turns upon the following facts.

2. Shanmuga, the last male owner, was the son of Palaniyandi whose father Kunjan was in turn the son of another Palaniyandi, who may be referred to as Palaniyandi the senior. Palaniyandi, the senior had a brother Muthan who was the plaintiff's father. The case has proceeded on the footing that the plaintiff is a

legitimate son of Muthu and that the descendants of Palaniyandi the senior were also his legitimate descendants. But, as between Muthu and Palaniyandi the senior, the finding is that they were the sons of the same mother Valliammal but that their paternity is not known, as Valliammal was not a married woman nor the permanent concubine of any known person. It was alleged by the defendants and not disputed that Kunjan had two daughters one of whom has left one or more sons who are alive. On these facts two questions are comprised in the first issue, namely (1) whether the plaintiff can at all claim to be an heir to Shanmuga and (2) whether he is the nearest, presumptive heir, i.e., one entitled to succeed in preference to the son or sons of Kunjan's daughter.

3. The District Munsif in para. 7 of his judgment expressed himself in a way which does not make it quite clear whether he thought that the plaintiff was not an heir at all or he thought that the plaintiff must, in any event, be postponed to Kunjan's daughters sons. On appeal the learned District Judge has held that the decision in *Viswanatha Mudali v. Doraisami Mudali* 48 M. 944 : 91 Ind. Cas. 193 : (1925) M.W.N. 612 : 49 M.L.J. 684 : A.I.R. 1926 Mad. 1 also (1926) M.W.N. 182 has decided that the plaintiff is an heir and also in effect that he is a preferable heir to any one who can only claim to be only a bandhu. He understood that decision to lay down that the legitimate descendants of the two brothers can claim all the adjuncts of heritability which in the Hindu Law applied to persons who are the legitimate descendants of the legitimate brothers, that is brothers born of a lawful marriage. In second appeal the question for determination is whether the decision in *Viswanatha Mudali v. Doraisami Mudali* 48 M. 944 : 91 Ind. Cas. 193 : (1925) M.W.N. 612 : 49 M.L.J. 684 : A.I.R. 1926 Mad. 1 also (1926) M.W.N. 182 lays down both the above propositions.

4. I confine myself for the moment to the second of the above questions, namely whether assuming that Muthusami and Palaniyandi the senior could claim to be heirs to each other and assuming further that the plaintiff could claim to be an heir to the legitimate male descendants of Palaniyandi the senior, the plaintiff can also claim to succeed in preference to Kunjan's daughter's sons. The language employed by the learned Judges in *Viswanatha Mudali v. Doraisami Mudali* 48 M. 944 : 91 Ind. Cas. 193 : (1925) M.W.N. 612 : 49 M.L.J. 684 : A.I.R. 1926 Mad. 1

also (1926) M.W.N. 182 is no doubt very general and I have, therefore, examined the papers in that case to see whether any question of preference was raised and argued in that case. The parties in that case were not agreed as to the genealogy. The defendants no doubt pleaded that Murugesu who was the last male-holder had a grandaunt by name Sivabagiam and that Sivabagiam had a son who was alive who, according to them, would be a reversioner. But neither in the judgments of the Courts below nor in the judgment of this Court am I able to find any reference to this aspect of the case and all that I can infer is that the alleged existence of a reversioner more, than the plaintiff in that case was not established by proving the relationship alleged in the written statement and that, therefore, no further notice was taken of that point. The judgment of the trial Court merely discussed the question whether the plaintiff was an heir at all and the Appellate Court took the question of the plaintiff's right to maintain the suit to have been finally decided, and it determined that the plaintiff could claim to be an heir. It was the order of remand based on this view that was confirmed by the learned Judges in this Court.

5. The existence of Kunjan's daughter's son or sons not being disputed in this case, the position here is different. I quite agree that in deference to the decision in *Viswanatha Mudali v. Doraisami Mydali* 48 M. 944 : 91 Ind. Cas. 193 : (1925) M.W.N. 612 : 49 M.L.J. 684 : A.I.R. 1926 Mad. 1 also (1926) M.W.N. 182 I must hold that the plaintiff can claim to be an heir to the deceased Shanmuga. If I were free to deal with that question, I should have something to say in respect of certain parts of the reasoning of that judgment) as for instance, the extension of the principle of 'representation' to obstructed heritage; but as it is not necessary for the purpose of this case to deal with that question, I am content to assume that that decision is correct and confine myself to the question whether the plaintiff can claim to be a preferential heir even as against Kunjan's daughter's son.

6. It will be noticed that Kunjan's daughter's son will be in the position of a paternal aunt's son to Shanmuga the propositus. That means he is an *atmabandhu* about whose heirship in general there can be no question. It is no doubt the law that *bandhus* can succeed only after *sagotra sapindas*. The point for determination, therefore, is whether the plaintiff can claim to be not merely a *sapinda* of

Shanmuga but also a gotraja or sagotra sapinda. Here again I shall assume for the purpose of the argument that even sagotra relationship is capable of being postulated outside the marriage relationship. But the least that is required to constitute sagotra sapinda ship is descent in an unbroken male line from a common male ancestor. In this respect the conception corresponds to the notion of agnatic relationship. I am unable to see how such a connection can be postulated as between two persons of whom we cannot predicate whether they were born of the same father or different fathers. As shown by the enumeration in placitum 5 of Section 5 of Chap. II of the Mitakshara, one has to start with the great great-grandfather and then bring in his descendants in the male line. It being impossible in the present case to say that the plaintiff and Shanmuga were descendants of common male ancestor, I must hold that the only possible ground on which the plaintiff can succeed in preference to Shanmuga's paternal aunt's sons has not been made out.

7. The decision in *Narayan Pundalik Valanju v. Lakshman Daji Sirsekar* : AIR1927 Bom456 cannot help the respondent. The learned Judges had not to consider any question of preference in the case. They only hold that a sister of a prostitute has sufficient sapinda relationship or blood relationship to the prostitute to be able to defeat an escheat of the prostitute's property to the Crown. I must add that no analogy can be drawn in the present case for decisions relating to the succession of property as between daughter's grandsons. The rules of Customary Law applied in that connection came to operation only when the Court has to deal with the succession to property belonging to dancing women. It is not the law that male members of that community, who have entered into marriage relationship and lived like ordinary householders, are governed by the rules of the Customary Law. I must accordingly hold that the plaintiff is not the nearest presumptive reversionary heir.

8. It was next argued on behalf of the plaintiff that even if he is not the nearest, reversionary heir, the declaratory decree granted by the lower Appellate Court must be maintained for the benefit of the reversion generally, and reliance was placed in this connection on the decision in *Govinda Pillai v. Thayammal* 28 M. 57 : 14 M.L.J. 209. It is not disputed that the general principle is that laid down by the

Judicial Committee in *Rani Ahmad Kunwar v. Court of Wards* 6 C. 764. If allegations had been made in the plaint as to the circumstances under which the nearer reversioners had precluded themselves from maintaining the suit, it might have been possible to consider these allegations on their merits. In *Govinda Pillai v. Thayammal* 28 M. 57 : 14 M.L.J. 209 it happened that the nearer reversioners had in fact been made party defendants and proper allegations made against them. Without going so far as to say that the nearer reversioners should be impleaded in a suit brought by the distant reversioner for the benefit of the reversion, I may say, it is at least clear that materials must be placed before the Court that can reasonably lead to the inference that the nearer reversioners, are colluding or have precluded themselves from suing. The mere fact that the lower Appellate Court had granted declaratory decree is not by itself a ground for maintaining it when this aspect of the matter was not present to its mind at all. Further in view of the decisions of the Judicial Committee dealing with the effect of the consent of the nearer reversioner to a widow's transactions, the mere fact that the nearest reversioner had consented to the alienation or was supporting the alienation cannot by itself prove that his conduct was improper. This is an additional reason for insisting upon allegations in the plaint against the presumptive reversioner, The Court will then have an opportunity to consider the effect of the reversioner's consent upon the validity of the alienation itself. The learned Counsel for the respondent drew my attention to the fact that a note had been by the trial Court that one of the paternal aunt's sons was present in Court helping the 2nd defendant and his Counsel. For reasons above stated, I am not prepared to draw an inference therefrom that his conduct was improper in the sense contemplated by Privy Council in *Rani Ahmad Kunwar v. Court of Wards* 6 C. 764.

9. The result is that the decree of the lower Appellate Court must be set aside and that of the trial Court restored with costs here and in the lower Appellate Court payable by the plaintiff to the 2nd defendant.