1. R. Muthammal (Died)2. Parameswari ... vs Sri Subramaniaswami ... on 14 January, 1960

Equivalent citations: 1960 AIR 601, 1960 SCR (2) 729, AIR 1960 SUPREME COURT 601, 1960 2 SCR 721 1960 SCJ 963, 1960 SCJ 963

Author: M. Hidayatullah

Bench: M. Hidayatullah, S.K. Das, A.K. Sarkar

PETITIONER:
1. R. MUTHAMMAL (Died)2. PARAMESWARI THAYAMMAL

Vs.

RESPONDENT:
SRI SUBRAMANIASWAMI DEVASTHANAM,TIRUCHENDUR

DATE OF JUDGMENT:
14/01/1960

BENCH:
HIDAYATULLAH, M.
BENCH:
HIDAYATULLAH, M.
DAS, S.K.
SARKAR, A.K.

CITATION:
1960 AIR 601 1960 SCR (2) 729

ACT:
Hindu Law-Exclusion from inheritance-Lunacy, if must be congenital.

HEADNOTE:
A Hindu was found to be a lunatic when succession opened. It was claimed that under the texts lunacy must be congenital to exclude from inheritance.
Held, under the Hindu law lunacy as distinct from idiocy need not be congenital to exclude from inheritance, if it existed when succession opened.
Muthusami v. Meenammal. (1920) I.L.R. Mad. 464, Wooma Parshad Roy v. Grish Chunker Prochundo, (1884) I.L.R. 10 Cal. 639 and Deo Kishen v. Budh Prakash, (1883) I.L.R. 5 All. 509 (F.B.)approved.

Murarji Gokuldas v. Parvatibai, (1876) I.L.R. 1 Bom. 177 and
Sanku v. Puttamma, (1891) I.L.R. 14 Mad. 289, disapproved.

JUDGMENT:

CIVIL APPELATE JURISDICTION: Civil Appeal No.200 of 1955. Appeal from the judgment and decree dated January 20, 1943, of the Madras High Court in A. S. No. 392 of 1943, arising out of the judgment and decree dated March 30, 1943, of the Sub Judge, Tuticorin in O. S. No. 34 of 1939.

S. V. Venugopalachariar and S. K. Aiyangar, for the appellant No. 2.

A. V. Viswanatha Sastri, R. Ganaapathy Iyer and G. Gopalakrishna, for respondent No. 1.

1960. January 14. The judgment of the Court was delivered by HIDAYATULLAH J.-This appeal has been filed on leave granted by the High Court of Madras against its judgment and decree dated January 20, 1947, by which the decree of the Subordinate Judge, Tuticorin, dated March 30, 1943, was substantially modified.

Before the application for leave to appeal to the Judicial Committee could be filed, the first defendant (Ramasami Pillai) died, and the application for leave was filed by his widow, R. Muthammal, who was the fourth defendant in the suit. R. Muthammal also died soon afterwards and her place was taken by Parameswari Thayammal (her daughter born of Ramasami Pillai), who was the fifth defendant in this case. Along with these three defendants, the other members of Ramasami Pillai's family were also joined as defendants. The suit was filed by Sri Subramaniaswami Devasthanam, Tiruchendur (hereinafter called for brevity, the Devasthanam), and the Devasthanam is the only contesting respondent in this Court.

One Poosa Pichai Pillai had five sons and three daughters, of whom Meenakshisundaram Pillai died on May 21, 1919. Before his death Meenakshisundaram Pillai executed a registered will on May 20, 1919, and a registered codicil on May 21, 1919. By these documents, he left his entire property to his only son, M. Picha Pillai, with the condition that should he die without issue, the property was to go to the Devasthanam.

M. Picha Pillai died a bachelor on December 10, 1927. Three claimants claimed the property after his death. The first naturally was the Devasthanam claiming under the gift over to it. The other two were the heirs of M. Picha Pillai, who asserted that the gift over was void, and Meenakshisundaram's wife's brother and sister, Arunachala Irungol Pillai and N.S. Muthammal (third defendant), respectively who claimed under an alleged will of M. Picha Pillai. The heirs of M. Picha Pillai were defendants 7, 8, 10, 13 and 14, the father of defendants 9, and the first defendant. These claimants denied the claim of the Devasthanam, contended that the will and the codicil above mentioned gave an absolute estate to M. Picha Pillai, and that the gift over to the Devasthanam was, therefore, void. The Devasthanam filed O.S.No. 57 of 1932 for declaration and possession of the properties covered by the will, together with other reliefs. During the pendency of the suit, the heirs of M. Picha Pillai

and the present defendants 15 and 16 (two of the three sons of Arunachala Irungol Pillai) assigned their interest in favour of the Devasthanam. The result of the suit, therefore, was that a decree in favour of the Devasthanam was passed in regard to the interest of the assignors, but it was dismissed as regards the interest of N.S. Muthammal (third defendant) and Pothiadia Irungol Pillai (second defendant) who had not entered into the compromise. It May be mentioned here that by Ex. D-22, a registered agreement dated May 20, 1928, the heirs had already agreed to give to Arunachala Irungol Pillai and N.S. Muthammal one-eighth share each respectively in the properties of M. Picha Pillai. Thus, by this compromise the Devasthanam received 5/6th share of the properties of M. Picha Pillai, the remaining 1/6th, going to Pothiadia Irungol Pillai (1/24th) and N.S. Muthammal (1/8th). The Devasthanam filed an appeal in the High Court against the dismissal of the suit in respect of this 1/6th share and failed. An appeal was then taken to the Judicial Committee, which also failed. The judgment of the Privy Council is reported in Sri Subramaniaswami Temple v. Rama- samia Pillai (1).

Without waiting, however, for the result of the appeal in so far as the 1/6th share was concerned, the Devasthanam filed the present suit joining the two sets of claimants for declaration, ejectment and possession by partition of the properties to which it claimed title and for mesne profits. The properties were shown in various schedules annexed to the plaint; but it is unnecessary to refer to those schedule except were the needs of the judgment so require. One of the contentions raised by the plaintiff- Devasthanam in this suit was that the first defendant,Ramasami Pillai, was not entitled to a share in the properties as an heir of M. Picha Pillai, being a lunatic when succession to these properties opened. Onbehalf of the first defendant, Ramasami Pillai, who contested the suit through his wife and guardian, R.Muthammal, it was contended that he was not a (1) (1950) 1 M.L.J. 300.

lunatic (buddhi swadeenam illadavar) but only a person of weak intellect (buddhi deechanya matra), and thus,he was not excluded from inheritance. This point was the main argument in this appeal, because the two Courts below reached opposite conclusions. According to the Subordinate Judge of Tuticorin, Ramasam Pillai's plea was correct and proved. The High Court, on the other hand, held that the mental defect in Ramasami Pillai amounted to lunacy, and that it disentitled him to a share. Connected with this above matter is the second contention raised by Ramasami Pillai that he was entitled to a 1/9th share by virtue of an alleged agreement stated on affidavit in Ex. D-7 by Doraiappa Pillai on April 1, 1931. We shall give the details of this contention hereafter. The third contention raised in this appeal and also before the High Court was that the properties described in plaint sch. 4-A were the subject-matter of a decree dated September 19, 1927, in favour of M. Picha Pillai in O.S.No. 35 of 1924 filed by him against his cousins. According to Ramasami Pillai (first defendant), the decree was not executed for a period of 12 years and the claim thereto was, therefore, barred under s. 48 of the Code of Civil Procedure, and thus the Devasthanam was not entitled in this suit to claim possession of those properties.

We shall begin with the question whether Ramasami Pillai was excluded from inheritance by reason of his mental condition on December 10, 1927. The argument of the appellant is two- fold. The first is on the fact whether Ramasami Pillai was a lunatic within the Hindu law texts. The second is a question of law whether this lunacy was not required to be proved to have been congenital to disentitle Ramasami Pillai to succeed to his father. We shall deal with these two questions

separately.

In view of the fact that the two Courts below had reached opposite conclusions on the fact of lunacy, we have looked into the evidence in the case, and have heared arguments for the appellant. We are satisfied that the opinion of the High Court is correct in all the circumstances of this case. The argument on behalf of the appellant was that in judging this issue we should see the evidence regarding the mental condition of Ramasami Pillai antecedent and subsequent to December 10, 1927, the conduct of his father, relatives and the other claimants of the property. It was contended that Ramasami Pillai was attending school. though nothing was shown to us from which we infer that he had profited by the attempts to educate him. The appellant, however, set great store by two documents, Exs. D-1 and D-2, executed by his father, Perumal Pillai, in January and April 1924. By the first, Perumal Pillai released his claim to certain properties in favour of his four sons, mentioning therein Ramasami Pillai without adverting to the fact that he was a lunatic and without mentioning a guardian. By the second, which was a will, Perumal Pillai gave equal shares in his properties to his sons including Ramasami Pillai, and once again without a mention of his mental condition. It was contended that Perumal Pillai was a Sub-Registrar who would know the importance of such a fact and also the law that a lunatic was not entitled to succeed. The fact that the father in these two documents made no mention of the mental condition of his son does not bear upon the present case for two reasons. The first is that the case of Ramasami Pillai in this suit was that he was quite sane till 1924, and that his mental condition deteriorated only after that year. The second is that the omission by the father to mention this fact might be grounded on love and affection in which the claim of a mentally defective child might not have been viewed by him in the same manner as the law does. It was next contended that the other heirs recognised the right of Ramasami Pillai in April 1928 and agreed to give him a 1/9th share, as has been already stated above. That too would not prove that Ramaswami Pillai was entitled, in law, to a share. The compromise (which is also contested) might have been out of motives of charity but might not have been due to the fact that Ramasami Pillai's right to a share was legally entertainable.

The evidence, however, of Ramasami Pillai's mental incapacity is really voluminous. Between June 1924 and till his death, numerous suits were filed by different members of the family, including his wife, his cousins, uncle and aunt, in which Ramasami Pillai was always shown as a lunatic requiring the appointment of a next friend or a guardian-ad-litem. In one case only where Ramasami Pillai was the second defendant, an appearance was entered on his behalf by a vakil, who contended that Ramasami Pillai was sane and ought to be represented in person. The Court on that occasion appointed the Head Clerk of the Court as his guardian, and asked him to report about the condition of Ramasami Pillai. Ramasami Pillai was also asked to appear in Court in person, so that the Court might form its own opinion by questioning him. The Head Clerk visited Ramasami Pillai and submitted his report, Ex. P-8, in which lie described his observations. It appears that Ramasami Pillai did not even give his name when questioned, and appeared to be woody and silent. The relatives felt that he was hungry and fed him; but even after this, Ramasami Pillai did not give any answers to the questions put to him in the presence of his wife and others. The Head Clerk therefore reported that the appearance of Ramasami Pillai as a gloomy and sickly person with a vacant look and that his inability to answer even the simple question about his name, clearly showed that he was insane, This report was presented to the Court in the presence of the vakil, who had filed the

vakalatnama, and on September 20,1924, an order (G. S. No. 35 of 1924) was recorded by the Subordinate Judge (Ex. P-9). It was mentioned therein that the report was not objected to by the vakil for Ramasami Pillai, and that Ramasami Pillai was treated as a lunatic. Ramasami Pillai himself did not appear.

It was contended that this enquiry as well as the fact that in numerous litigations Ramasami Pillai had a guardian or next friend to look after his interests did not prove that he was insane within the meaning of the Hindu law texts; it only proved that he was a person incapable of looking after his interests and for the purposes of the conduct of the suits a guardian or next friend, as the case might be, was necessary. In our opinion, the long and continued course of conduct on the part of the various relatives clearly shows that Ramasami Pillai was, in fact, a lunatic, and the report of the Head Clerk given in a case long before the present one was ever contemplated, shows only too clearly that he was, for all intents and purposes, not only a person who was slightly mentally deranged but one who was regarded and found to be a lunatic. There being this evidence, the distinction now sought to bemade and which appealed to the Subordinate Judge of Tuticorin, is not borne out by the evidence in the case.Such a long and continuous course of conduct clearlyproves the contention that Ramasami Pillai was, infact, mad. Further, in Ex. D-22 dated May 20, 1928, Ramaswami Pillai was not considered as a claimant,and his claims could not have been overlooked by all his relatives simply because they were to get an additional share each in the property by reasonof his exclusion. Some one of his relatives would havefelt the need for asserting the claim on his behalf, ifhe himself did not do so. In view of the fact that thepreponderance of probabilities is in favour of thedecision of the High Court, we do not think that theappellant has succeeded in establishing the distinction,which was made in the case, between a lunatic and aperson of weak intellect on the evidence, such as it is.This brings us to the next contention which is oneof law. It may be pointed out here that before theSubordinate Judge, Ramasami Pillai did not raise thecontention that as a matter of law insanity must becongenital before a person would be excluded from inheritance. Learned counsel for the appellant explained that it was futile to raise this contention in view of the decision of the Madras High Court in Muthusami v. Meenammal (1), in which it was ruled that insanity need not be congenital to create the disability, and that insanity at the time succession opened was enough. The point, however, appears to have been raised in the High Court, but it was decided against Ramasami Pillai. The soundness of this view is questioned in this appeal.

The argument shortly is this: The text of Manu (ix, 201) mentions many causes of exclusion from (1) (1920) I.L.R. Mad. 464.

inheritance, some of which like blindness, muteness,idiocy and lameness, it is settled, must be congenital to exclude a person from inheritance. It is argued that the collection of the words in the text suggests that insanity like these other disabilities must also be congenital. No doubt, the word " Unmatha " comes between the words "Jatyandhabadhirau" and " Jadamukascha "; but the rulings have uniformly held that for the madness, the test, that it should be congenital, does not apply. The argument now raised has the support of the opinion expressed by Dr. Sarvadhikari in his Principles of Hindu Law Inheritance-(2nd Edn.) p. 846,where the author expounded the text according to rules of grammar, though he was doubtful if according to medical science, madness as opposed to idiocy

is ever congenital. The translations of the same text by Setlur, Gharpure and Dr. Ghose do not admit this interpretation. In Muthusami v. Meenammal (1), it was pointed out also that "

> Unmatha " was not qualified by the word " Jati ". Seshagiri Ayyar, J. observed that it according to Mimamsa rules of interpretation, an adjective qualifying one clause should not by implication qualify a different clause ". The counsel on that occasion agreed that this was the correct approach, but relied upon the opinion of Dr. Sarvadhikari which was not accepted.
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> Learned counsel for the appellant also referred to the opinion of Colebrooke in his Digest, Vol. 11, p. 432. Colebrooke's translation is based upon the commentary of Jagannatha Tarkapanchanana, and it is Jagannatha who made no difference between the various disabilities, and opined that madness like blindness or muteness must be also congenital. No doubt, much weight must be attached to the opinion of Jagannatha who was " one of the most learned pandits that Bengal had ever produced ". But this translation of Colebrooke has not been universally accepted, and is not borne out by the original texts and commentaries on the Mitakshara. Dr. Ghose in his Hindu Law, Vol. 1, p. 224 has expressed his doubts. The texts of Narada XIII, 21, 22, Yajnavalkya 11, 140-141 and others do not show that the defect of madness must also be (1) (1920) I.L R. 43 Mad. 464.

congenital. In Saraswati Vilasa 148, the emphasis of congenital disability is placed on blindness and deafness. Similarly, in Smriti Chandrika, Chap. V , 4, persons born blind and deaf are mentioned apart from madmen and idiots. That idiots must be congenitally so, is ruled by the Courts. The cases that have come before the Courts have Devasthanam all been uniform, except Murarji Gokuldas v. Parvatibai (1), where the observation is obiter and Sanku v. Puttamma (2), which was dissented from in later cases. On the other hand, Wooma Pershad Roy v. Grish Chunder Prochundo (3), Deo Kishen v. Budh Prakash (4) and other decisions have clearly held the contrary. In two cases before the Privy Council it was assumed that madness need not be congenital. It may also be noted that when the Legislature passed the Hindu Inheritance (Removal of Disabilities) Act XII of 1928 making the change to madness from birth as a ground of exclusion the law was not made retrospective, thus recognising the correctness of the judicial exposition of the original texts. In this view of the matter, we do not think that we should unsettle the law on the subject; nor has it been made to appear to us that any different view is open. We accordingly do not accept the contention.

The result -is that Ramasami Pillai was not entitled to succeed to M. Picha Pillai. We now come to the next contention. It is that even if this be the position, Ramasami Pillai was entitled to 1/9th share on the basis of an alleged arrangement evidenced by Ex. D-7 dated April 1, 1931. This document is an affidavit which was filed by Doriappa Pillai (Defendant 8) in a suit (O. S. No. 25 of 1930) filed by him for possession after partition of his 1/8th share on the basis of Ex. D-22. In that suit, Ramasami Pillai was the second defendant. Ex. P-5 is the written statement filed on his behalf in which he repudiated that he was excluded from inheritance by reason of his insanity. This suit was withdrawn on April 2, 1931, with the leave of the Court, with liberty to bring a fresh suit (Ex. D-6). In the affidavit which was filed, it was stated as follows :

(1) (1876) I.L.R. 1 Bom. 177. (2) (1801) I.L.R. 14 Mad.

289.

(3) (1884) I.L.R. 10 Cal. 639. (4) (1883) I.L.R. 5 All. 509 (F.B.).

5. Excepting Defendant 9, myself and almost all the Defendants agree to give. to Defendant 2 an equal share with others and thus come to some amicable arrangement between us.

6. In view of the ninth Defendant's contentions in the suit and in view of the fact that I have not prayed in this suit for a declaration of my title to the suit properties as against him, I am advised that I should withdraw the present suit for partition with liberty to institute a fresh suit as I may be advised.

7. It is therefore just and necessary that I may be permitted to withdraw this suit with liberty to bring a fresh suit properly framed."

The Subordinate Judge held on this and the evidence of D.W. 2 that this family arrangement was duly proved, and that Defendant 10 who was present in Court when the above statement was made, did not choose to deny it. The High Court rightly pointed out that the affidavit did not show the compromise as a completed fact, and also did not accept the word of D.W. 2. The claimants, who are stated to have given a share to Ramasami Pillai, have not been examined. The High Court also noticed that no application for transfer of the pattas was made. In view of these circumstances which are all correct, the appellant cannot be said to have successfully established the family arrangement, and we do not consider it necessary to examine the oral evidence in the case.

This brings us to the last point that Ramasami Pillai was entitled to a share in the properties comprised in Sch. 4-A. M. Picha Pillai had filed O.S. No. 35 of 1924 against his cousins for possession of these properties. The suit was decreed on September 19, 1927. On October 30, 1927, P. Picha Pillai (Defendant 7) and Serindia Pillai sent a notice, Ex. P-3, informing M. Picha Pillai that he could take possession of the properties covered by, the decree. This notice was refused and returned to the senders. M. Picha Pillai died soon afterwards on December 10, 1927. It is contended that the properties thus remained in possession of the judgment-debtors, and the decree not having been executed, the present suit filed on October 18, 1939, is barred in so far as those properties are concerned, and the Devasthanam cannot get possession of them. Both the Courts below have concurred in holding that M. Picha Pillai must have got possession otherwise than by execution of the decree, because even D.W. 2 not very friendly to the Devasthanam admitted that M. Picha Pillai was at the time of his death in possession of all the suit properties. The two Courts below also adverted to the fact that for the years, Faslis 1338 and 1339 the 10th defendant paid the taxes, and this would not happen if the heirs of M. Picha, Pillai were not in enjoyment. The fact that the patta stood in the names of the original judgment-debtors would not indicate anything, because mutations some. times lag behind change of possession. In view of the fact that the two Courts below have agreed on the finding and there is evidence to support it, we see no reason to interfere. The question of mesne profits was not pressed,and no other point having been argued, we hold that the

appeal has no merits. It will, accordingly, be dismissed with costs. Appeal dismissed.