Madras High Court
Makineni Virayya And Ors. vs Madamanchi Bapayya on 27 April, 1945
Equivalent citations: (1945) 2 MLJ 208
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JUDGMENT Patanjali Sastri, J.

1. The only question raised in this second appeal is whether the plaintiff-respondent is precluded by his individual conduct from claiming the properties in suit as the nearest reversionary heir of his maternal grandfather, one Makineni Buchayya, who was the last full owner. Both the Courts below have held that he is not and passed a decree for delivery of possession. The defendants 1 to 3, 5 and 6 have preferred this appeal challenging the correctness of that decision.

2. The following table will show the relationship of the parties one to another :

Buchayya : Lakshmi Devi (d. 1900) (d. 21-5-1930) | _____ | | Mangamma (predeceased Buchayya) Subbamma (d. 1906) | | Venkatasubbamma (d. 1906) Bapayya (Plaintiff) | Veerayya (first defendant)

3. On the 4th January, 1904, Lakshmi Devi executed a dakhal deed (Ex. D-1) whereby she transferred the properties inherited by her from her husband Buchayya. The deed recites that her husband, while in a sound state, made arrangements to the effect that she should enjoy during her lifetime the entire moveable and immoveable property belonging to him, and that after her lifetime one half of the property should pass to his daughter Subbamma and the other half to his granddaughter Venkatasubbamma with right of absolute disposal, and proceeds as follows:

According to the arrangement effected by him, the entire property is being enjoyed by me ever since. Hence as I have now become old and as I have no ability to get the lands cultivated, I have relinquished the right possessed by me during my lifetime in respect of the moveable and immoveable property worth Rs. 1,000 which has been in my possession and enjoyment and is described in the schedule hereunder, and I have on this date delivered possession of the same to you. . You shall both enjoy the said property in equal halves with rights of gift, exchange and sale from son to grandson and so on in succession . You shall maintain me during my lifetime and you shall cause the obsequies which have to be performed to me after my death to be performed by Krishnayya the husband of Makineni Venkatasubbamma of you.

4. This was followed by the execution, on the 8th January, 1904, of a maintenance deed (Ex. D-2) in favour of Lakshmi Devi by her daughter and grand-daughter, the donees under Ex. D-1. This deed also recited the arrangement said to have been made by the husband of Lakshmi Devi and the dhakal deed executed by the latter, and provided that Rs. 50 per annum should be paid by the donees in equal halves to Lakshmi Devi during her lifetime and that her obsequies should be duly performed after her death. The donees died in 1906 and, in 1907, the father of the plaintiff and the father of the first defendant acting as their respective guardians sold one of the items of immoveable property comprised in the dhakal deed. The rest of the properties appear to have been partitioned in

equal shares and enjoyed separately by the plaintiff and first defendant. The plaintiff, who was a minor when all these transactions took place, attained majority in or about 1913. Thereafter by four sale deeds (Exs. D-6 to D-9) ranging from 1919 to 1928 the plaintiff sold all the immoveable properties allotted to his share at the partition aforesaid, and these deeds recited that the properties passed to his mother Subbamma under the dhakal deed executed by Lakshmi Devi and subsequently to him on his mother's death, and they purported to convey absolute title to the respective vendees in the properties sold. Lakshmi Devi died on the 21st May, 1930, and the plaintiff claiming to be the nearest reversionary heir of his maternal grandfather Buchayya brought the suit out of which this second appeal arises for recovery of the properties in the hands of the first defendant and his alienees who were impleaded as defendants 2 to 5. The fourth defendant died pending suit and is now represented by the sixth defendant.

5. The plaintiff alleged that Buchayya died intestate leaving him surviving his widow Lakshmi Devi and his only surviving daughter Subbamma, that all his properties were inherited by his widow who had only a limited estate and passed to him on her death as the nearest reversioner of Buchayya entitled to succeed to his estate. He charged that Lakshmi Devi, with the intention of benefitting her daughter's daughter Venkatasubbamma who would, in no event, be entitled to any share in Buchayya's properties, falsely set up an oral arrangement by her husband as recited in the dhakal deed of 1904 and released all the properties to her and to her daughter Subbamma who, in consideration of her getting immediate possession of some of the properties, waived her objections to the transactions. He averred that Buchayya gave no directions regarding his property before he died, as falsely recited in the dhakal deed, and, Lakshmi Devi having only a widow's limited interest in the property had no right to relinquish her interest in equal shares to her daughter and grand-daughter so as to bind him as the ultimate male reversioner to the estate of Buchayya. The defence, in the main, was that before his death Buchayya gave " oral testamentary directions " giving a life estate in his properties to his wife and vested remainders to Subbamma and Venkatasubbamma and that the gift under the dhakal deed was expressly based upon the said testamentary directions. It was also pleaded that by reason of the plaintiff having " recognised and elected to take the full benefit of the title conferred by the deed of the 4th January, 1904" he was estopped from disputing its validity and could not seek " to approbate and reprobate the same " and that, in any event, the transaction operated as a family arrangement binding upon the plaintiff. The District Munsiff of Guntur who tried the suit found that no oral testamentary disposition by Buchayya was made out and that there was no true basis for a family arrangement as there were no disputed claims to settle. He also overruled the other pleas raised by the defendants and decreed the suit, and that decree was affirmed on appeal by the Additional Subordinate Judge of Guntur. Hence this second appeal.

6. On behalf of the defendants, appellants, Mr. Govindarajachari did not challenge the finding as to Buchayya's oral will, as indeed he could not, it being a pure question of fact. Nor did he attempt to support the dhakal deed of 1904 as a family arrangement binding on the plaintiff. His contention was that the plaintiff was precluded by reason of his conduct in dealing with the properties which his mother got under the dhakal deed and which subsequently passed to him, from claiming any part of the properties covered by the deed on a title different from and inconsistent with the title on which the dispositions in the deed were based. He put the matter from different points of view; estoppel,

election and affirmation or ratification, citing numerous Indian and English decisions to support his argument. We find ourselves, however, unable to accept the contention. Whichever way the plaintiff's conduct may be viewed, we are of opinion that there is nothing in it to preclude him from enforcing the legal rights which on the finding that Buchayya died intestate, undoubt-edly accrued to him when Lakshmi Devi died in 1930.

7. In considering this question, it is necessary to bear in mind these important facts : (1) under the dhakal deed Lakshmi Devi did not purport to convey anything more than a life interest in the properties. She no doubt recited the oral arrangement by her husband already referred to as being the source of her title, but if, as has been found, the said arrangement was not true, her interest in the properties was the limited interest of a Hindu widow which undoubtedly would pass to her donees under the dhakal deed. The point to note is that she did not purport to convey to her donees any interest in the properties which would enure beyond her lifetime, but only asserted that they had a vested remainder in the properties under her husband's oral will, an assertion which has been held to be unfounded. (2) The plaintiff did not directly take any benefit under the dhakal deed. He merely succeeded to the properties given to his mother under the deed. (3) He is not attacking the dhakal deed as void and inoperative to convey any title to his mother, but seeks only to impugn its recitals in so far as they are inconsistent with his claim to succeed to Buchayya as his reversioner on Lakshmi Devi's death. And (4) the plaintiff is not suing to recover the properties from his own alienees to whom he had sold them absolutely before Lakshmi Devi's death, but seeks to recover the other properties which were given to Venkatasubbamma under the dhakal deed and which are now in the hands of her son the first defendant and his alienees, as being part of Buchayya's estate of which Lakshmi Devi's disposition would not enure beyond her lifetime.

8. On these facts it is manifest that there can be no estoppel by representation affecting the plaintiff's claim. To his own vendees he may no doubt be considered to have represented that he had an absolute interest in the properties conveyed on the basis of the recitals in the dhakal deed of 1904, but he cannot be taken to have represented to the first defendant or his alienees expressly or by his conduct that those recitals were true or to have caused them to believe and act on such recitals. Indeed Mr. Govindarajachari did not seriously argue that there was any estoppel by representation in the circumstances of this case, and it is unnecessary to pursue it further. He argued, however, that the present case fell within the principle laid down in Rangaswami Goundan v. Nachiappa Goundan (1918) 36 M.L.J. 493 : L.R. 461.A. 72 : I.L.R. 42 Mad. 523 (P.C.) and further expounded and applied in Ramakotayya v. Veeraraghavayya (1928) 56 M.L.J. 755 : I.L.R. 52 Mad, 556 (F.B.) Subbaraghava Rao v. Adinarayana Rao (1932) M.W.N. 491 Fateh Singh v. Thakur Rukmini Ramnaji Maharaj (1923) I.L.R. 45 All. 339 (F.B.), Akkava v. Sayad Khan Mitekhan (1927) I.L.R. 51 Bom. 475 (F.B.) and Ramgowda Annagowda v. Bhau Sahib (1927) 53 M.L.J. 350 : I.L.R. 52 Bom. 1 (P.C.). These decisions will be found on examination to proceed on the principle that an alienation by a Hindu widow without justifying necessity is not void but only voidable at the instance of the reversionary heir who may either affirm or avoid it, but will be precluded from questioning it if he does something which amounts to an affirmation of the transaction. Such election to hold the sale good, as it has sometimes been expressed, may, it has been held, take place even before the death of the widow while the reversionary heir was only a presumptive reversioner. Can it be said that this principle has any application here? As we have already observed, the widow

conveyed only her life interest, though she purported to derive it under her husband's alleged oral will. The dhakal deed did not purport, proprio vigore, to transfer any absolute interest in the properties to the donees. It postulated an arrangement by the husband under which they already had an absolute interest in remainder to take effect after the widow's death. The deed was therefore neither void nor voidable at the instance of the actual reversioner, but was valid and operative to vest in the donee the widow's right to possession and enjoyment during her lifetime and it ceased by its own terms to have any operation after her death. It was an alienation which, so far as the interest it purported to convey was concerned, was within her competence to make. In such circumstances, we are of opinion that there is no room for the application of the principle referred to above.

9. It was said that the plaint proceeded on the footing that the dhakal deed was an alienation by the widow in excess of her powers which the plaintiff was entitled to avoid as the reversionary heir, and in this view the principle would apply. There is no force in this suggestion. The plaintiff no doubt attacked the dhakal deed, as representing a collusive scheme devised by the widow and the donees in order to give some of the properties to Venkatasubbamma and on that account not binding on him as the reversioner of Buchayya who, he alleged, died intestate. The attack; as we read the plaint, was against the recitals in the deed and the collusive character of the transaction rather than against the actual disposition made thereunder which could not prejudicially affect the plaintiff's title as reversionary heir.

10. Mr. Govindarajachari next called in aid the principle of the well known case of Dalton v. Fitzgerald (1897) 2 Ch. 86, and argued that the plaintiff having taken and dealt with the properties given to her mother under the dhakal deed was estopped from disputing the validity of any of its dispositions. The argument derives no support from the decision cited and is, in our opinion, unsound. In that case, the trustees under the will of a testator who had no title to certain lands, settled them on A for life with remainders over to B and others. A entered into possession of the lands as tenant for life and, after continuing in possession long enough to acquire title by adverse possession, died making a will devising the lands to C. B then brought the suit claiming as remainderman to recover possession from C, and the Court upheld the claim. Lindley, L.J., rested the decision mainly on the true effect of adverse possession for the statutory period, pointing out that it perfected the title not of the person who happened to be in possession at the time when the period of limitation expired, but of the one whose possession started time running against the true owner, with the result that the will in that case became operative as if the testator had title at the time when it was made, and B's title as remainderman prevailed against C claiming under the tenant for life. Lopes, L.J., put it on the ground of estoppel. The rule was stated thus:

A person having no title to land settles it on A for life with remainder to B. A enters and takes possession and deals with the property as tenant for life, that person is estopped from telling the truth--his mouth is shut; he has availed himself of the settlement for the purpose of obtaining possession of the land, and he cannot afterwards seek to invalidate that which enabled him to obtain possession, and this though subsequently he may have acquired a good title. If a man obtains possession of land claiming under a deed or will, he cannot afterwards set up another title to the land against the will or deed though it did not operate to pass the land in question and if he remains in possession till twelve years have elapsed and the title of the testator's heir is extinguished, he

cannot claim by possession an interest in the property different from that which he would have taken if the property had passed by the will or deed.

11. Rigby, L.J., expressed the same view. It will be seen that the estoppel was there applied against A's privy C with reference to the property obtained by A under the settlement. C's " mouth was shut" so as to prevent him from "telling the truth " viz., that the will and the settlement did not operate to pass " the land in question." But could it be held that A in that case, if he was the testator's heir-at-law, would be estopped from denying the trustee's title to other properties not conveyed to him but settled under the same deed on other persons, on the ground, say, that the will was not genuine? We think not. And that is the position here, for, as already stated, the plaintiff does not seek to set up a different title to the lands which were given to his mother under the dhakal deed and which on her death passed to him, but impugns the title of the first defendant to the lands given to Venkatasubbamma under the same deed, on the ground that the " arrangement " by Buchayya recited in the deed is not true. As pointed out by Blackburn, J., in Board v. Board (1873) 9 Q.B. Cases 48 which was approved and followed in Dalton v. Fitzgerald (1897) 2 Ch. 86, the estoppel applicable in such cases is like that which precludes a tenant from denying his landlord's title and which in this country is embodied in Section 116 of the Evidence Act. No authority has been brought to our notice extending the tenant's estoppel to other properties of the landlord although the latter may hold them under the same title as the one demised. Furthermore, as we have already pointed out, the dhakal deed purports to convey only Lakshmi Devi's life interest which in any case she possessed as a Hindu widow in her husband's estate, and we fail to see how the title which the plaintiff now seeks to set up as the reversioner entitled to succeed on the widow's death is in any way inconsistent with or "against the deed." It is no doubt, inconsistent with the alleged disposition of the properties by Buchayya. But, to hold that the plaintiff, who was an infant at the time and could have known nothing personally about the truth or otherwise of such disposition, is estopped from setting up his undoubted legal rights to properties not taken by him under the deed, on the strength merely of his having dealt with certain other properties as properties got by his mother under the deed and inherited by him as her heir would, in our opinion, be an unwarranted extension of the doctrine of Dalton v. Fitzgerald (1897) 2 Oh. 86.

12. It was said that, inasmuch as the deed purported to convey Buchayya's properties on the footing that he had made an oral will, the donees and their privies must be deemed to have taken under such will. We see no reason to make Such supposition which ignores that the widow had, in any case, a life interest which passed under the deed. But supposing it were so, the defendants would be in no better position; for, as we have indicated already, if a person purports to enter into possession of certain properties under a will believing it to be true and thereafter discovers that it is not true, there is no apparent reason why he should be precluded from claiming other properties purported to be disposed of under the will as the heir-at-law of the alleged testator. It would seem that even if he took as a tenant for life in such circumstances he would not be estopped from setting up his title as heir-at-law as against the remainderman. Lindley, L.J., observed in Dalton v Fitzgerald (1897) 2 Oh. 86:

No doubt a person may by mistake treat himself as tenant for life of property of which he is himself the owner and such a mistake can be set right unless he has so acted as to render a rectification of

the mistake unjust to others,

13. A fortiori where the true claim is put forward against persons purporting to take other properties under the will Reference may also be made in this connection to Anderson, In re : Pegler v. Gillatt (1905) 2 Ch. 70, where Buckley, J, as he then was, held that a devisee of a life estate in two properties, one of which was validly disposed of under the will and the other not, can set up the invalidity of the will as to the latter so as to defeat the remainderman, distinguishing Dalton v. Fitzgerald (1897) 2 Oh. 86.

14. Mr. Satyanarayana Rao for the plaintiff referred to Alamelu Ammal v. Balu Ammal (1914) 28 M L.J. 685 : I.L.R. 43 Mad. 849, where on somewhat analogous facts Sadasiva Aiyar, J., refused to apply the principle of Dalton v. Fizgerald (1897) 2 Oh. 86. A Hindu widow made a will bequeathing the properties inherited from her husband to her three daughters absolutely, and the daughters entered into possession under the will and divided the properties into three equal shares, each taking one share as her absolute property. On the death of one of them, thowever, the survivors sued as heirs of their father for recovery of the third share from the daughter of the deceased daughter and the learned Judge was of opinion that they were not estopped. The other learned Judge, Napier, J., however expressed no opinion on the point, concurring merely in dismissing the suit on the ground that the partition made between the daughters extinguished the right of survivorship as between them.

15. Lastly it was urged for the defendants that here was a case of election, for, the plaintiff, having taken the benefits given under the dhakal deed could not claim, adversely to the deed, other properties disposed of under it. It was said that a man shall not take bofh by the deed and against the deed or approbate and reprobate. On the facts of this case, there can be no question of election In the strict sense of the doctrine, for at the time when the plaintiff is supposed to have made his election he could not have given up the property which he now claims as he became entitled to it only long after. And, moreover, for the purpose of this doctrine the person sought to be precluded from setting up his right must have taken some benefit directly under the instrument. Lord Romilly, M.R., observed in Brown v. Brown (1866) 2 Eq. Cases 481 This is according to the ordinary rule in cases of election, as, for instance, if a person disposes of the property of A, by his will, A cannot take the benefits given to him under the will without giving up the property which the testator has disposed of; but if it happens that the legatee or devisee of other property disposed of by the will, leaves that property to A, or dies intestate,and A, as his heir-at-law or next of kin, acquires some of the property disposed of by the will of the testator, then no case of election arises at all, because A takes it independently and by a separate and distinct course. That is a principle well recognised in all cases of election, and would, if the plaintiff were in a similar position, apply here.

16. Here the plaintiff did not take any benefit directly under the dhakal deed but only as the heir of his mother after she died in 1906, while he now claims directly through the last full owner Buchayya.

17. We consider, therefore, that plaintiff is not precluded either by estoppel or by election from claiming the properties in suit as Buchayya's reversionary heir, and we accordingly dismiss the second appeal with costs.