Supreme Court of India
Ponnammal vs R. Srinivasarangan And Ors. on 21 October, 1955
Equivalent citations: AIR 1955 SC 162
Author: Sinha
Bench: Bhagwati, V Ayyar, Sinha
JUDGMENT Sinha, J.

1. The only question for determination in this appeal, by leave of the High Court of Judicature at Madras, is whether the transaction dated the 18th July 1934 is binding on the plaintiffs, respondents in this Court. It is not disputed that if that transaction characterised as a family arrangement and evidenced by Ex. D-1 is binding on the plaintiffs, the suit must fail, as held by the trial court in its judgment dated the 15th July 1943.

If, on the other hand, the transaction is not binding on the plaintiffs, the suit must stand decreed, as held by the High Court by its judgment dated the 19th December, 1946. The facts of this case may shortly be stated as follows :

2. Rangaswami Iyengar, who died in 1894, and Doraiswami Iyengar, who died in 1948 and who was the first defendant in the suit giving rise to this appeal, were divided brothers. Rangaswami died leaving him surviving his widow Ranganayaki Ammal and his infant son Krishnaswami, who died in 1895-96 unmarried. Ranganayaki thus succeeded to her son's property as a limited owner. She held the property until her death on the 29th October 1933.

She was survived by her daughter Padmasani, who was married to Rajagopala Iyengar (P. W. 1). Padmasani died in July 1939 and was survived by her husband Rajagopal and two sons, who are the plaintiffs in the present action (respondents in this Court). Padmasani had two daughters also.

3. In the meantime, the Hindu Law of Inheritance (Amendment) Act, II of 1929 (which will be referred to hereinafter as "the Act") was passed by the Indian Legislature. It came into force on the 21st February 1929. As a result of this legislation, a son's daughter, daughter's daughter, sister and sister's son became entitled to succeed to the property of a Hindu male governed by the Mitakshara school, not held in co-parcenary and not disposed of by will.

All those specified heirs ranked in order of succession next after the father's father. At the time of Ranganayaki's death in October 1933 there was a diversity of judicial opinion in the different High Courts in India on the question whether the Act would apply to the property of a propositus who had died before the Act came into force.

So far as the opinion of the Madras High Court which governed the case in hand was concerned, a Division Bench of that Court had held in the case of --'Krishna Chettiar v. Manikkammal, AIR 1934 Mad 138 (A) that the Act did not apply to cases of Hindu males who had died intestate before the Act came into force. This decision was given on the 19th October 1933, that is to say, just ten days before the death of Ranganayaki.

Taking advantage of this ruling of the Madras High Court, which differed from some other High Courts on the interpretation of the Act, Doraiswami, who was the uncle of the propositus Krishnaswami, took possession of his property soon after Ranganayaki's death. He appears to have taken legal advice on the question whether he or Padmasani, as the sister of the propositus, would have a preferential claim to the inheritance.

He was advised, on the strength of the decision aforesaid of the Division Bench of the Madras High Court, that he had a preferential claim. Naturally, Padmasani's husband Rajagopal was also moving in the matter and taking legal advice. He approached his brother's son Krishnaswami, an advocate practising at Kumbakonam, who was working as a junior to a well-known lawyer, Rao Bahadur N. Thiruvengadatha Iyengar, who appears to have been a very prominent citizen of the district, besides being a leading lawyer of the place.

The advocate Krishnaswami aforesaid, was related to his senior as the former had married the latter's brother's daughter. Rao Bahadur Thiruvengadatha Iyengar had an elder brother named N. Srinivasa Iyengar (D. W. 1), who appears to have been a prominent and influential inhabitant of the locality. Finding that Doraiswami aforesaid had taken possession of the property, Padmasani and her husband, who were rather in straitened circumstances, consulted the lawyers of Madras as to the legal position whether Padmasani, as the propositus' sister, could not claim the benefit of the Act in preference to the uncle Doraiswami.

They were advised that as a result of the decision of the Madras High Court supra, the uncle had a better right but that in any case the legal position was not free from doubt and difficulty and called for a settlement of the dispute out of court. On that advice Rajagopal on behalf of his wife Padmasani, with the help of advocate Krishnaswami aforesaid, approached N. Srinivasa Iyengar (D. W. 1) to intervene in the dispute between the relations and to bring about an amicable settlement; otherwise they would have to go to court if the negotiations for a compromise failed.

Doraiswami was sent for by D. W. 1 and was told that Padmasani would have to go to court if the parties to the dispute did not settle it out of court. Doraiswami claimed that he was in rightful possession of the property of the propositus on the basis of the High Court's judgment. After weighing the pros and cons Doraiswami agreed to the suggestion of N. Srinivasa Iyengar to share the property with Padmasani and her children.

Hence towards the end of November 1933 Doraiswami agreed to give up half of the property for the benefit of Padmasani and her children and left the drafting of the document to the advocate Thiruvengadatha Iyengar. In order to pin him down to his promise, the said lawyer made a draft (Ex. P-1) which was signed by Doraiswami and was left in the custody of N. Srinivasa Iyengar, who was also put in charge of the moiety of the property proposed to be given away to Padmasani and her children.

As Ranganayaki had made certain alienations which were said to be not binding on the reversioners, it was decided that the draft of the transaction between the parties, would be finalised after recovering by negotiations, if possible, those properties which, had been alienated by Ranganayaki.

One of those alienees was Natesa Iyer, an advocate, who realizing his position reconveyed a portion of the alienated property to Doraiswami.

These transactions also were entered into with the full cognizance and co-operation of Rajagopal, acting on behalf of his wife Padmasani, and their relation and lawyer Krishnaswami Iyengar. Those transactions were completed by January 1934.

4. Padmasani's husband Rajagopal was financially in embarrassed position and had incurred debts on the occasion of his daughter's marriage, as also for the maintenance and education of his children, with the result that some decrees had been obtained against him and his "own properties were in jeopardy. Hence when the settlement between the parties was finalised in the shape of Ex. D-1, dated the 18th July 1934, one portion of the inheritance was retained by Doraiswami for himself and the other portion was divided into two parts, one of , which was given to Padmasani in absolute right and the other to the infant sons, now the plaintiffs.

This was done with a view to facilitating the maintenance and education of the children and meeting the expenses of the daughter's nuptials. In the document as finally prepared the minor sons were represented by their mother as guardian in preference of their father Rajagopal, who should under the law have been the preferential guardian. This was done with a view to avoiding complications and in fear of the creditors of Rajagopal, though really it was the father who had carried on the negotiations and finalised the agreement.

By this arrangement Padmasani was allotted 10.16 acres of wet land and 5.75 acres of dry land and the sons were given 8.20 acres of wet land and 4.22 acres of dry land. The value of the properties retained by Doraiswami was said to be Rs. 5,000, equal to the value of the land allotted to Padmasani valued at Rs. 2,50,0 and to her sons valued likewise, though the area of the lands kept by Doraiswami was larger than that of the area gifted by him to Padmasani and her sons.

The document took the shape of "the deed of arrangement or the deed of indenture" executed between Doraiswami of the first part and Padmasani and her two minor sons, the present plaintiffs, under the guardianship of Padmasani of the second part. It proceeded on the basis that the entire properties mentioned in Schedules A, B and C td the deed were inherited by Doraiswami from the propositus and that the second party had no legal claim thereto but that out of love and affection for his deceased brother's daughter and daughter's sons he was making provision for their maintenance.

Thus, Schedule B properties were given to Padmasani with power of alienation and Schedule C properties in equal shares absolutely to the plaintiffs, Padmasani to remain in charge of the properties until the minors attained majority. Schedule A properties were to continue as before in the possession of Doraiswami as full owner.

5. Both parties came in possession of their respective allotments & Padmasani, with the concurrence of her husband Rajagopal, alienated some of the properties which had been given to her in absolute right, for the purpose of meeting the expenses of maintenance and education of the children and the nuptials of the daughter. If the ruling of the Madras High Court in 'AIR 1934 Mad 138 (A)' had

continued to be good law, perhaps no more would have been heard about the present dispute.

But on the 29th January 1937 'a Full Bench [Reported as, AIR 1937 Mad 699 (FB)] of the Madras High Court' overruled the earlier decision and on the 31st January 1937 a notice (Ex. D-2) was issued on behalf of the plaintiffs impugning the transaction evidenced by Ex. D-1 aforesaid.

6. The present suit was commenced on the 16th July 1942 after the death of Padmasani in July 1939. The plaintiffs laid their claim for possession and mesne profits in respect of the properties left by their mother's brother and in possession of the defendants on the basis that they were the next reversioners after their mother's death, that the transaction of the 18th July 1934 was not binding upon them inasmuch as their mother was not a free agent in giving her consent to the arrangement which was vitiated by undue influence, that there was really no dispute, much less any bona fide dispute, which could have been amicably settled, nor was there any genuine and bona fide mediation.

Padmasani's consent to the document was also assailed on the ground that she was not the legal guardian of the plaintiffs and had in interest adverse to theirs. Doraiswami was the 1st defendant in the suit. Defendants 2 to 27 were impleaded as alienees from the 1st defendant and defendants 28 to 39 and 41 as alienees from Ranganayaki and Padmasani.

7. The suit was contested by the 1st defendant, whose daughter after his death is now the appellant before us. The defence was rested mainly on the ground that as the law was understood at the date of Ranganayaki's death he was the most preferential heir to the propositus and that he took possession claiming as such; that there was a threat of litigation on behalf of Padmasani, whose husband had been reduced to narrow straits and that the parties were brought together by their well-wishers and relations, mostly lawyers, and a 'bona fide' family arrangement was arrived at settling the dispute between the parties.

That transaction was reduced to the form of a document (Ex. D-1). It was also averred that the plaintiffs' father's family was financially in difficult circumstances and that the arrangement was considered by all the parties concerned as highly beneficial to the plaintiffs themselves. The allegations of undue influence and exercise of pressure on Padmasani were denied.

8. The trial court dismissed the suit as between the plaintiffs and those defendants who had not compromised. It recorded certain compromises in respect of disputes between the plaintiffs & some of the alienees. The court found that the allegations of undue influence & coercion & that Padmasani and her husband Rajagopal were duped had been recklessly made and had no foundation even in the evidence adduced by the plaintiffs; that the family arrangement had been arrived at on a 'bona fide' settlement of a genuine dispute between the relations at the intervention of competent lawyers and good friends who were actuated solely by considerations of benefit to the family. Its conclusions can be summed up in its own words as follows:--

"So there were clearly rival claims, and a real family dispute, and a 'bona fide settlement thereof by respectable mediators, acting to the best of their lights and interested in both parties, and making a

'bona fide' settlement of the dispute with the consent of both sides, and their active participation in bringing about the result (by arranging the transaction with Mr. Natesa Ayyar), and both parties subsequently recognised, Ex. D-1 as such family settlement, and acted on such basis, Padmasani even reciting Ex. D-1 as a deed of family arrangement, till the date of the subsequent Full Bench decision, which gave a fresh idea to Mr. Jagannathachariar to advise a further claim".

On appeal by the unsuccessful plaintiffs, a Division Bench of the High Court consisting of Wads worth and Govindarajachari JJ., substantially set aside the decision of the trial court and allowed the appeal with costs against the 1st defendant making further directions in respect of other defendants which it is not necessary to set out here. The High Court based its decision mainly on two considerations, (1) that the first arrangement evidenced by Ex. P-1 would have been a good settlement which in its terms was "generous and equitable"; and (2) that the interest of the plaintiffs who were both minors at the date the arrangement was actually arrived at, as evidenced by Ex. D-1, was sacrificed, keeping in view the fact that the law as ultimately laid down by the Full Bench ruling was entirely in favour of the plaintiff's claim.

9. It has been argued on behalf of the appellant &, in our opinion, rightly, that the High Court has fallen into two fundamental errors, namely that it ignored the well settled legal position that the family arrangement had to be judged with reference to the events and the circumstances as they existed at the date of that transaction and not what actually emerged at a later date as a result of the judgment of the Full Bench of the High Court; and that secondly, it scrutinised the final arrangement as contained in Ex. D-1 with reference to the provisional arrangement as contained in Ex. P-1. The law was laid down by Romilly, M. R. in --'Lawton v. Campion', (1854) 18 Beav 87 (B) in these words :--

"The validity of a compromise or family arrangement of disputed rights depends on the facts existing at the time, and will not be affected by subsequent judicial determinations, showing the rights of parties to be different from what was supposed, or that one party had nothing to give up".

That is the law in India also as laid down in innumerable decisions. Applying the test laid down in the dictum quoted above to the facts of the present case, it is manifest, as held by the trial court, that on the date of Ex. D-1 the 1st defendant was considered by competent lawyers to have been lawfully in possession of the property left by the propositus. Padmasani and her people were naturally disappointed and sought avenues of obtaining even a portion of the properties, desperately situated as they were.

The financial condition of Padmasani's family can best be described in their own words contained in a sale deed (Ex. D-11) dated the 23rd January 1939, to which Padmasani and the two plaintiffs of whom the first one had attained majority by then, were parties. In that document they admit as follows:--

"Since the husband of Padmasani Ammal, the individual No. 1 and the father of individuals Nos. 2 and 3, viz., Thuvar Rajagopala Iyengar, had no property whatsoever, the aforesaid Padmasani Ammal, with a view to meet the charges for the education and maintenance of her sons and to meet

the family expenses of and the marriage, etc., expenses of Bhooma, her second daughter, the sister of the aforesaid Srinivasarangan and minor Narasimhan, and to redeem the jewels of Padmasani Ammal which were pledged with Sankara Ramanuja Nidhi, Big Street, Kumbakonam for meeting the expenses in respect of education and maintenance of the individuals Nos. 2 and 3 (plaintiffs) ....".

Thus there is clear and cogent evidence of the fact that Padmasani, her husband and his family were in dire need of funds for maintaining the family, for educating the children and for meeting the marriage expenses of the girl. The High Court has well summed up the position in these words:--

"Seeing that the minors had no funds apart from their expectations and their mother and father were in straitened circumstances unlikely to be able to finance the necessary litigation, an arrangement which gave to the minors an absolute estate in nearly half the property on the income of which the whole family could live in comfort, was, in our opinion, generous and equitable."

Then the learned Judges of the High Court compare and contrast the terms of Ex. P-1 with those of Ex. D-1 and lead themselves to the conclusion that in their anxiety to settle the dispute all the parties agreed to a modification of the original settlement, which modification amounted to sacrificing the interest of the minors in disregard of their rights in order to aggrandise Padmasani in so far as she was given an absolute interest in respect of a moiety of the moiety which had been conveyed by the 1st defendant to the plaintiffs and their mother.

10. As already indicated, the learned Judges of the High Court have judged of the situation as it was after the judgment of the Full Bench of 1937 and not as it was in October 1933 when the dispute first began. If one starts with the supposition that the plaintiffs were the next reversioners, it is manifest that the 1st defendant had nothing to give and that his so-called gift evidenced by Ex. D-1 was a mere pretence.

If, on the other hand, we start with the hard fact that the 1st defendant was in possession of the estate on an assertion of a title which, as the law then stood, was a good claim, then the gift made by the 1st defendant to Padmasani in respect of about one-fourth of the entire estate and to the plaintiffs themselves in respect of another one-fourth of the estate approximately was A bounty to them.

There was the possibility of Padmasani and ultimately her sons getting the entire estate left by her brother, but that possibility was hedged round by a number of adverse circumstances. The 1st defendant had already taken possession of the estate and a litigation would have to be launched by Padmasani. Neither she nor her husband was in a position to finance that litigation.

Furthermore, they would have to run the risk of litigation with all its uncertainties especially in view of the recent Bench decision of the High Court. Keeping in view the circumstances in which Padmasani and her family found themselves, they naturally appealed to the feelings of love and affection of the 1st defendant for his deceased brother's daughter and daughter's sons, through the unselfish efforts of the lawyers named above who were both competent and willing to render their

services to mediate between them and the 1st defendant.

There cannot, therefore, be the least doubt that there was a genuine dispute between the parties which was sought by disinterested friends and relations to be settled by making the parties agree to give and take. So far as the 1st defendant was concerned, both according to Ex. P-1 and Ex. D-1 he took what both the courts below have agreed in holding to be a fair proportion of the properties in dispute. The courts below have disagreed on the portion given to Padmasani and her two sons, the plaintiffs.

According to Ex. P-1, the entire property to be gifted by the 1st defendant was to come into the hands of Padmasani as a limited owner and ultimately to the plaintiffs as full owners. But by virtue of the arrangement actually arrived at between the parties (Ex. D-1), Padmasani got nearly half in absolute right and the other half was allotted to the plaintiffs.

It has been held by the High Court and it has been vehemently pressed before us by the learned counsel for the respondents that the arrangement thus arrived at was a device to vest Padmasani with absolute right in respect of about half the properties in which she could not have claimed anything more than the interest of a limited owner. That would be so, firstly, on the supposition that the 1st defendant was a trespasser and Secondly, on the supposition that Ex. P-1 represented a concluded bargain. That is not so.

11. It is noteworthy that there is not a whisper in the plaint about the terms of Ex. P-1. It was for the first time in the High Court that the contention was seriously raised that with reference to the terms of Ex. P-1 those in Ex. D-1 were far too onerous to the plaintiffs. As already indicated the plaint proceeded on the basis that Ex. D-1 represented the final bargain between the parties -- a bargain which was vitiated by undue influence, coercion and deception.

That case, though laid in the plaint, completely failed for want of evidence in support thereof. The High Court failed to realise that the true situation was that the astute lawyers advising Padmasani and her husband were in a hurry to bind the 1st defendant by making him subscribe to a document drawn up by them. Hence they got the 1st defendant to sign Ex. P-1 which on the face of it was of a tentative character.

The other party to the transaction had not subscribed to it and the deed had not been delivered to her. She was therefore-free to go back upon it any time she chose, But she was the weaker party. At that point of time the 1st defendant was in a position of advantage. As certain alienations made by the limited owner in possession had to be negotiated for and settled to the satisfaction of the 1st defendant and Padmasani and her children, there was a delay of a few months.

If the 1st defendant had not been pinned down to some document, there was the danger of his backing out of his promise to share the inheritance with Padmasani and her sons. The document certainly achieved that objective. But it could not be said to have been a final and concluded bargain.

During the Interval of about eight months that elapsed between the drawing up of Ex. P-1 and Ex. D-1 it appears that Padmasani's advisers realised that the terms of the original document, Ex. P-1, would be too onerous for Padmasani herself and not in the interest of the plaintiffs and other members of the family in view of the involved financial circumstances of the family.

It had been decided that the mother would figure as the guardian of her minor sons and not the father, who under the law would be the preferential guardian. The reason was that the legal advisers thought it advisable to keep the properties out of the hands of the plaintiffs' father who, as found by both the courts below, was fully cognisant of the entire negotiations and the terms which were ultimately given effect to.

But it was further realized that Padmasani would require funds for meeting the expenses of maintaining and educating her children and giving her daughter in marriage. If she was the mere guardian of her minor children, she would naturally face greater difficulties in raising funds for those purposes than if she were vested with the character of a full owner in respect of the moiety of the property agreed to be conveyed by the 1st defendant.

The High Court lost sight of the fact that by the revised terms the 1st defendant did not make any gain at all, the only modification being that the properties agreed to be conveyed by him to Padmasani and her sons were divided into two parts in one of which Padmasani was given an absolute right. It was not done to aggrandise her at the cost of her minor sons but in their own interest and in the interest of the rest of the family.

It was in those circumstances that the terms as originally proposed in Ex. P-1 were revised and took their final shape in Ex. D-1. It must therefore be held that Ex. P-1 was not, as the High Court erroneously assumed, a final agreement between the parties. The final agreement was as laid down in Ex. D-1. At the time the document was executed and registered, in view of the law as it then was understood as laid down by the Division Bench of the High Court, the 1st defendant was the true owner.

Hence there could be no question of sacrificing the interest of the minors for the benefit of their parents as distinct from that of the children themselves. The 1st defendant had agreed to part with a portion of the inheritance from the propositus not only to benefit the minors alone but also Padmasani. Padmasani apparently acting under the advice of her husband and of their friends and relations, particularly their lawyers aforesaid, agreed to the final terms as contained in Ex. D-1, not with any sordid motive of benefiting herself at the expense of her sons but in the interest of the family as a whole.

Neither was the 1st defendant interested in advancing the cause of Padmasani at the expense of her sons. It is not correct, therefore, to suggest that any one, far less the parents of the minors, were acting against the latter's interest. The minors parents were immediately faced with the difficult problem of finding ways and means of maintaining the family, educating the children and giving the daughter in marriage, Those were matters in which everyone of them singly and collectively was equally interested.

The High Court, therefore, in our opinion misled itself into thinking that the interest of the minor had been sacrificed for the sake of the parents or one of them. The arrangement as finally incorporated in Ex. D-1 was conceived in the interest of the entire family of Padmasani and her husband and carried out under the advice of competent legal advisers who were not particularly interested in any one of the family as against the others.

As already indicated, that was not the basis of the claim as laid in the plaint. The plaint read as a whole assailed the arrangement on grounds which have completely failed in both the courts below.

12. But it was argued by the learned counsel for the plaintiffs-respondents that in so far as Padmasani was vested with absolute powers in respect of the property given to her she was not acting in the interest of the estate of the minors and was, therefore, not representing them in that transaction, that she had no right to part with a portion of the properties for the payment of her husband's debts, that her powers were not coextensive with the powers of a daughter inheriting her father's property and that in law she had no right to alienate any portion of the properties.

These are arguments which are wholly irrelevant to the present controversy and proceed on the assumption that the compromise should have been made on the basis of the law as laid down by the Full Bench in January 1937. We have already held that the binding character of the transaction evidenced by Ex. D-1 has to be judged with reference to the state of affairs as it was at about the date of that transaction and not with reference to what the law was interpreted to be three years later.

13. For the reasons aforesaid we must hold that the judgment of the trial court was correct and that the decision of the High Court was erroneous. The appeal is accordingly allowed and the suit dismissed with costs throughout as between the parties to this appeal.