(1935) 10 MAD CK 0006

Madras High Court

Case No: None

Naina Pillai and Others		APPELLANT
	Vs	
Daivanai Ammal and Another		RESPONDENT

Date of Decision: Oct. 22, 1935

Citation: AIR 1936 Mad 177 : 162 Ind. Cas. 23 : (1936) 43 LW 302

Hon'ble Judges: Stone, J; Madhavan Nair, J

Bench: Division Bench

Judgement

Madhavan Nair, J.
Defendant Nos. 1 to 4 are the appellants. The 1st defendant is dead and his legal representatives have been brought on

record.

2. The dispute in this appeal relates only to properties in the C Schedule to the plaint. These are admittedly kurnam service inam lands and had

been enfranchised in favour of the plaintiffs husband. The question is whether they belong to the plaintiff as the self-acquired properties of her

husband, or whether they belong to the appellants as the joint family property of the family, the properties being accordingly to the appellants

treated as such by all the parties concerned. The plaintiff''s husband Ayya-perumal Pillai, and the father of the 1st defendant, Thambiran Pillai, were

two undivided brothers and were the sons of one Karuppan Pillai. Both of them are dead. The plaintiff''s husband died on April 7, 1922.

Defendants Nos. 2 to 4 are the undivided sons of the 1st defendant 5th defendant is a mortgagee from the 1st defendant.

3. The learned Subordinate Judge found in favour of the plaintiff. In this appeal the correctness and the validity of that finding are questioned by the

appellants.

4. As already stated, the properties are admittedly karnam service inam lands. These lands were enfranchised in plaintiff''s husband''s favour on

May 9, 1891 (see Ex. D). There is no doubt that when karnam service inam lands have been enfranchised the lands form the separate property of

the person in whose name they have been enfranchised and are not subject to any claim to partition by other members of the family: See Venkata

Jagannada v. Veerabadrayya 44 M 643 : 61 Ind. Cas. 667 : AIR 1922 P C 96 : 28 I A 244 : 41 M.L.J. 1 : 34 C L J 16 : 14 L W 59 : (1921) M

W N 401 : 30 M L T 14 : 26 C W N 302 . But previous to this decision there have been fluctuations in opinion as to whether such enfranchised

lands form the private property of the holder or the joint family property of the members of the family. In Venkata v. Kama 8 M 249 : 9 Ind. Jur.

186 , the earliest decision on the question, accepted as having laid down correct law by the Privy Council in Venkata Jagannada v. Veerabadrayya

44 M 643 : 61 Ind. Cas. 667 : A. I. R. 1922 P C 96 : 28 I A 244 : 41 M.L.J. 1 : 34 C L J 16 : 14 L W 59 : (1921) M W N 401 : 30 M L T 14 :

26 C W N 302 , it was held that the enfranchised lands form the private property of the holder of the office. But in two decisions Gunnaiyan v.

Kamakshi Ayyar 26 M 339, and Pingala-lakshmipethi v. BomireddipalliChalamayya 30 M 424 : 17 M.L.J. 101 : 2 M L T 101 ; this position was

not accepted and the enfrachised properties were held to be joint family properties. The Privy Council introduced a resolution in the familiar

conception in this Presidency as to the effect of an enfranchisement. The period of the above decisions covers the years October-November 1884

to April, 1921. It will be remembered that the enfranchisement in the present case took place in 1891. Evidence shows that there have been

alienations of various portions of these properties in which they had been treated as joint family properties. (Vide Exs. I to VIII, XV and XVIII).

They range from the year 1892 to 1922. Some of these are by the plaintiff''s husband alone (Exs. V, VI and VII), some are by the plaintiff''s

husband and his brother (Exs. II and III). Exhibit XIX is by the plaintiff''s husband and the first defendant, his nephew. Exhibit XV is executed by

the 1st defendant alone but it is attested by his uncle, the plaintiff''s husband. In all these the properties are treated as joint family properties. In

document after document they are described as ancestral joint family properties and dealt with as such. This position is not disputed. It is not

necessary to refer to these documents in detail, Ex. I, dated September 11, 1892, the earlier alienation, was executed by Karuppan Pillai the father

of the plaintiff''s husband, and attested by the plaintiff''s husband, and another brother of his, and there also, the property was treated as joint family

property. The question is whether in these circumstances properties which must be considered to be self-acquired properties have become joint

family properties. By merely being dealt with as joint family property the self-acquired property of the person who deals with it as such does not

necessarily lose its character of separate property. In his book on Hindu Law, para. 278, the law bearing on the subject is thus stated by Mr.

Mayne:

...property which was originally self-acquired, may become joint property, if it has been voluntarily thrown by the owner into the joint stock with

the intention of abandoning all separate claims upon it. This doctrine has been repeatedly recognised by the Privy Council. Perhaps the strongest

case was one, where the owner had actually obtained a statutory title to the property under the Oudh Talukdars Act I of 1868. He was held by his

conduct to have restored it to the condition of ancestral properiy. The question whether he has done so or not, is entirely one of fact, to be decided

in the light of all the circumstances of the case; but a clear intention to waive his separate rights must be established and will not be inferred from

acts which may have been done merely from kindnesss or affection.

5. And the learned author mentions in the foot-note all the relevant cases. This paragraph makes it clear that the person who alleges that the

property is joint family property must show that the owner has voluntarily thrown the property into the joint stock with the intention of abandoning

all separate claims on it. In Perikaruppan Chetty v. Arunachalam Chetty 50 M 582 : 102 Ind. Cas. 293 : AIR 1927 Mad. 676 : (1927) M W N

287 : 52 M.L.J. 571 : 25 L W 688. it was pointed out by Reilley, J. that:

the separate property of a Hindu ceases to be his separate property and acquires the characteristics of his joint family or ancestral property, not by

any physical mixing with his joint family or ancestral property but by his own volition and intention by his waiving or surrendering his special right in

it as separate property. It is unnecessary to labour that point, as it underlies all the authoritative decisions on the subject from 1876 onwards

Hurpurshad v. Sheo Dayal 3 I A 259 : 3 Sar 611 : 3 Suther 309 : 26 W R P C 55 , the case under the Oudh Talukdars'' Act referred to by Mr.

Mayne...

6. See also Hemchandra Ganguli Vs. Matilal Ganguli, . The passage quoted from Mr. Mayne, and these cases show that unless it is proved that

the plaintiff''s husband had at any time a consciousness that these properties were his self-acquired properties and a consequent intention to treat

them as joint family properties, the properties in question cannot be claimed as joint family properties, by the appellants. It must specially be so, in

a case like the present one where there have been fluctuations in legal opinion as to whether the enfranchised properties were in law to be treated

as separate properties or joint family properties. In Mayandi Servai Vs. Santhanam Servai and Others, a case very much like the present, where

the question arose with respect to Nattamai service inam lands (enfranchised in 1906) this Court, after referring to the passage in Mayne''s Hindu

Law, para. 278, in second appeal called for a finding as to whether the 3rd defendant in that case converted his separate property into joint family

property by throwing it into the common stock after enfranchisement. The question is clearly one of intention; did the plaintiff''s husband voluntarily

threw into the common stock the suit properties knowing them to be his self-acquired properties and intending to treat them as joint family

properties? There is no evidence of any such intention on the part of the plaintiff''s husband in this case. The evidence only shows that the father of

the plaintiff''s husband treated the properties as joint family properties (see Ex. I, dated September 11, 1892) and the sons thereafter continued to

treat the same in a similar manner, though by the process of enfranchisement on May 9, 1891, the properties had become the separate properties

of the plaintiffs husband. It does not show that at any time the plaintiffs husband abandoned his separate rights to the properties and surrendered

them in favour of the family. We accept the finding of the Subordinate Judge on this point.

7. No other question was argued before us. The appeal is dismissed with costs of the 1st respondent.