

Ramasami Vs. Ramasami

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Court : Chennai

Decided On : Jan-23-1882

Reported in : (1882)ILR5Mad115

Judge : Innes and ;Kindersley, JJ.

Appellant : Ramasami

Respondent : Ramasami

Judgement :

1. Plaintiff sued to recover from defendant certain specified land in the village of Kiluveli of Kiliyanur which is equal to one-sixth of the land defendant holds. He said that on 21st November 1861 he entered into a deed of exchange with defendant whereby he was to get one-fourth of the four karais defendant then held in the village of Kiluveli of Kiliyanur, and defendant some lands of plaintiff' in another village; that for convenience sake they had arranged that plaintiff and defendant should enjoy the land jointly, but share the produce in the proportions due to each; and that they had been acting on this arrangement till recently when defendant carried off the produce of the two years Dhatu and Iswara; and that hence an apportionment of the lands became necessary. He further said that since the exchange effected in 1861 defendant had acquired two more karais of land in the same village and that plaintiff's share was therefore one-sixth. Defendant in his written statement admitted the exchange in 1861, but said that plaintiff had since been enjoying the land which fell to him separately. He denied having

carried off' the produce as alleged, but admitted having taken possession of plaintiff's share. He said that in September 1877 plaintiff had entered into an agreement with him to convey his share for Rupees 4,500 within a certain time then specified; that defendant paid in advance Rupees 500 and plaintiff had relinquished the hind to him and he was not bound to surrender it.

2. Two letters, said to have been written by plaintiff to defendant, were filed containing what defendant put forward as evidencing the agreement to convey.

3. The Subordinate Judge considered that these letters, which were denied by plaintiff, were not proved, and was of opinion that they had been concocted for the purpose of defending the suit.

4. He also found that the two parties had been enjoying the plaint land jointly for convenience sake, sharing the produce, and that defendant had not taken possession of the land claimed by plaintiff in anticipation of the conveyance of it to him by a deed of sale as he had alleged. He considered the letter marked No. 1 was receivable in evidence, though not registered, under clause ' h,' of Section 171 of Act III of 1877 (Registration Act). He decreed for plaintiff, but not for the specific lands claimed. He directed an apportionment and delivery to him of one-sixth karai and awarded him also the produce of the year Dhatti.

5. In appeal, the District Judge was of opinion that Exhibit No. 1 was not admissible in evidence as it required to be registered, the case being on all fours with that reported in *Vilaji Isaji v. Thomas* I.L.R. 1 Bom. 190.

6. The District Judge, therefore, gave a decree for plaintiff for the apportionment to him of the share to which he was entitled, but he dismissed his claim to the profits of the year Dhatu as it was not proved that defendant had wrongfully possessed himself of them.

7. An appeal is made by defendant to the High Court on the ground that Exhibit 1 was admissible in evidence and that plaintiff, if he should be found entitled to recover, should have awarded to him the parcels of ground that he specifies in the schedule to his plaint and is not entitled to a redistribution in accordance with the

deed of exchange in 1861.

8. It seems impossible to say that the instrument, Exhibit 1, which is rightly translated in the Judge's Judgment,² is not an instrument acknowledging the payment of consideration on account of the creation of an interest in immoveable property of over 100 rupees value (Section 17, Act III of 1877). It does not appear to be within the exception of clause 'h,' for it does of itself declare a right, title, and interest in the defendant which has passed to him from the plaintiff.

9. No doubt the document also intimates that a sale-deed is to be executed, but it cannot be said that of itself it merely creates a right to obtain that conveyance.

10. The District Judge in this respect appears to have put a proper construction on the document.

11. Upon the other point, the Vakil for the plaintiff said he had no objection to a decree for the plots of land specially claimed by him in his plaint.

12. There should therefore, we think, be a decree in modification of those of the District Judge and District Munsif. The decree should award plaintiff the specific lands claimed by him with one-sixth of the appurtenances of the village and mesne profits for the year Iswara, and the claim for the profits of Dhatu should be dismissed, and defendant should be directed to pay plaintiff costs proportioned to what has been decreed, and plaintiff should pay defendant costs upon what has been disallowed.

1 Documents of which registration is compulsory.

[Section 17 : The documents next hereinafter mentioned shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which Act No. XVI of 1864, or Act No. XX of 1866, or Act No. VIII of 1871, or this Act came or comes into force (that is to say)

* * * *

Documents merely creating right to obtain other documents.

(h) any document not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest of the value of one hundred rupees and upwards to or in immoveable property, but merely creating a right to obtain another document which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest.]

2 We have settled between ourselves, in order to discharge the prior claims on the village of Pathirikudi purchased by me at the time of my coming here, that I should make an absolute sale to you for Rupees 4,500 of the whole of the nunja, punja, &c.;, lands enjoyed by me, patta being in my name, and which is common to you and me and lying in the village of Kiliyanur, together with seed and cultivation expenses and mahasul and all the nunja, punja, &c.;, in my enjoyment and in my patta, as also lands including Agraharam Brahmavasthu (place where Brahmans live) and Suthravasthu (place where Sudras live). Out of the said Rupees 4,500 I have received Rupees 500 in notes and money, which I requested you to advance and which was sent with letter through your agent Rama Ayyan. I have claim only to receive the remaining sum after duly executing, &c.;, the deed within the 15th Arpisi as arranged between us, but have no connection whatever with the abovementioned lands. In collecting the said remaining sum, you must do so soon without occasioning delay and without fail. You must write about all other particulars. Many asservadams (blessings.)

Pathirakudi, 14th Purattasi of Iswara.

(signed) RAMASAMI IYYAN

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