

Kumarasami Mudaliar Vs. Narayansami and ors.

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Court : Chennai

Decided On : Jan-29-1932

Reported in : AIR1932Mad762

Appellant : Kumarasami Mudaliar

Respondent : Narayansami and ors.

Judgement :

1. The plaintiff as the reversioner of one Anaiappa sues to recover certain lands in the possession of the various defendants. Anaiappa, the last male holder, died in 1867 and his widow. Alagathai, sold the lands in question' in 1873 to one Rangasami. Defendants 1 to 11 are his heirs, and the other defendants, about sixty in number, are in possession of various plots claiming under alienations made by some descendant or other of Rangasami. Alagathai died in 1922 and the present suit was instituted in 1924. The learned Subordinate Judge has dismissed the suit holding inter alia that the alienation was made by the widow under circumstances which render it lawful and valid.

2. Several questions have been argued but for the disposal of this appeal, it is sufficient to deal with two of the defences raised. The first point is whether the plaintiff has succeeded in showing that the property in questions was on the date of the alienation (Ex. 7) a part of Anaiappa's estate. Anaiappa inherited several properties from his father Kannappa, but the suit property was not a part of his paternal estate but originally belonged to one Suryamurthi, his mother's paternal

uncle. One Suppammal was the first wife of Anaiappa, and her mother belonged to the family of Suryamurthi. The suit lands are in the village of Kularnangalam. Besides these Suryamurthi's family owned about 26 acres of land in a village called Madakulam. After the death of Anaiappa, several persons put forward claims to the Madakulam lands. Anaiappa had a daughter by Suppammal by name Kahammal. She was one of the persons that claimed the lands. Suppammal's maternal uncle was one Meenakshisundaram and his son-in-law, Velappa was another claimant. These two persons asserted rival titles to the lands through Suryamurthi. Their claims were resisted by Alagathai, who stated, that on the contrary, her husband had before his death, become the owner. So much for Madakulam lands. But in regard to the suit lands, there was no such claim put forward by any person claiming through Suryamurthi. It may therefore be safely held that at the death of Anaiappa, they formed a part of his estate. This is the finding of the learned Subordinate Judge and with that we agree. But this finding does not conclude the question. The point yet remains: Did they continue to form a part of the deceased's estate on the date of Ex. 7, the sale in favour of Rangasami? The defendants allege, that Anaiappa made an oral will directing the suit lands to be dedicated to some deity and that his widow, Alagathai, immediately after his death, giving effect to his desire, dedicated the lands to god Subrahmanya. The question is, Has this plea been established? The learned Subordinate Judge records the following finding:

I have therefore to hold on issue 4 that Anaiappa Mudali bequeathed his properties in favour of his wife Alagathai by means of a nuncupative will for a charity as contended by some of the defendants,

3. The appellant's contention that the learned Judge has acted on some inadmissible evidence (a previous judgment) in coming to this conclusion is no doubt well founded. Rejecting that evidence, we find that there is sufficient material on the record which supports the learned Judge's conclusion. Soon after Anaiappa's death, the present plaintiff's grandfather one Kumarasami (the brother of Anaiappa), appears to have put forward some claim to Anaiappa's property. It is difficult to say at this distance of time what the nature of that claim was; but there can be no doubt of the fact that some claim was preferred. Ex. 22, dated 8th June

1868, shows that Kumarasami and Alagathai entered into a settlement. By that deed, the former takes threefourths of Anaiappa's prpperty, leaving the widow the remaining fourth. The point to note is, that this settlement comprises only Anaiappa's estate got by him from his ancestors on the paternal line. Not content with the property which he obtained under Ex. 22, Kumaraswami, three months later, put forward a claim to the Madakulam lands also: Ex. D. He asserted that his deceased brother Anaiappa was the owner of those lands, they having originally belonged to Suryamurthi's family and that, on his brother's death, he became entitled to them. Why then did Kumarasami who claimed every other property of Anaiappa, not claim the suit lands? This conduct is consistent with the defendant's version, that they had been dedicated to the deity. More than that we find that as early as in April 1869, a patta for these lands was actually issued to Alagathai on behalf of the deity: Ex. K.

4. The matter does not stop there. One Elayanatha, connected with this family, filed in 1873 a number of suits alleging that these lands had been dedicated to the deity and that he was himself the properly constituted trustee. His suits were dismissed on the ground that his right to manage the trust was not proved. Elayanatha made another unsuccessful attempt in 1889 to establish his right as the trustee of the endowment. Finding that his claim as trustee failed, he put forward in an action he brought in the same year a personal right to the property. There again he was defeated. It is significant that throughout this period, when such controversy prevailed as regards the title to these lands, no claim was put forward to them by the plaintiff's predecessors. Indeed, in the litigation of 1889, the plaintiff's uncle Somasundaram, wa3 cited as a witness by Elayanatha, and he disclaimed all interest in the property in the evidence that ho then gave. We are referring to his deposition as it has been read to us by the appellant's learned Counsel. That deposition may not be admissible; but from Somasundaram's conduct in not claiming the property, while others were actively (contesting) their right to it, an inference against his title can certainly be drawn. In the sale deed, Ex. 7, Alagathai ignores this dedication and Mr. S. Srinivasa Ayyangar, for the appellant, strongly relies upon this circumstance. When selling the property, it was not to Alagathai's interest to refer to this dedication, nor was it to be expected that Rangasami, the purchaser, would refer to it in the later proceedings, to which our

attention has been drawn. Ex. K, coupled with the conduct of the plaintiff's predecessors, furnishes strong proof, that the property had been dedicated to the deity prior to Ex. 7 by Alagathai in pursuance of the oral will of her deceased husband. This is, in effect, the finding of the learned Judge, with which we agree, although we are not prepared to accept his reasons.

5. On this finding, the appeal should be dismissed, but there is yet another ground on which we can rest our judgment. Granting, that on the date of the sale, Alagathai was possessed of a widow's interest in the lands, the question arises: Was the alienation made for a legitimate or proper purpose? The deed (Ex. 7) recites that the price of Rs. 1,000 was made up of two items:

Rs. 359, the amount due under four mortgages executed by Anaiappa, and Rs. 641, paid in cash.

6. As regards the former amount, there can be no serious contest; The four deeds of mortgage referred to were produced in the litigation of 1875 and it is idle to contend that the amounts were not really due. As regards Rs. 641, the case stands thus: That Anaiappa had several debts to pay at his death is abundantly clear. To the four mortgages subsisting over the suit properties, we have already referred. Besides, the properties divided between Kumaraswami and the widow were also encumbered. That appears from Ex. 22. By the date of the sale in question, she had practically divested herself of all her other properties by successive alienations. It is not suggested that they were made without legal necessity. On the contrary, it is very probable, that for the purpose of maintaining herself, she was driven to sell or mortgage those properties. It has not been shown that at the time of Ex. 7 she was possessed of any property besides the suit lands. The plaintiff has abstained from going into the witness-box. If she had any other property, that was a matter within his knowledge. D. W. 1 deposes that out of the suit items, those that there were under mortgage were alone valuable lands. The remaining lands according to him, were of inferior quality. He goes on to depose, that as they did not yield sufficient income, Alagathai was obliged to sell the property for meeting the expenses of her maintenance. We see no reason for not acting upon this evidence. The suit was brought more than fifty years after the

sale. Both the vendor and the vendee have died. All the attestors of Ex. 7 (about 13 in number) have also died. It is well-settled, that when a long period has elapsed between an alienation and the suit to set it aside, presumptions are permissible to fill in the details which have been obliterated by time. This rule which says, that detailed evidence may be dispensed with, applies not only where there are recitals in the deeds as in *Banga Chandra Dhur Biswas v. Jagat Kishore Acharjya* A.I.R. 1916 P.C. 110 and *Somayya v. Venkayya* A.I.R. 1925 Mad. 673 , but also in other cases. As an instance of the latter, may be mentioned *Venkata Reddi v. Rani Saheba of Wadhwan* A.I.R. 1920 P.C. 64. In that case, no deed was produced: see the argument of Mr. De Gruyther, but still the Judicial Committee held, agreeing with the High Court:

* * * * It will not be reasonable to expect such full and detailed evidence as to the state of things which gave rise to the sale in question, as in the case of alienations made at more or less recent dates. In such circumstances, presumptions are permissible to fill in the details which have been obliterated by time.

7. It may be mentioned that one of the circumstances that weighed with the High Court in upholding the alienation, was the inaction and silence of the presumptive heirs who could have brought, but did not bring a declaratory suit: see p. 543 (of 43 Mad.). We cannot therefore uphold the argument, that the rule that presumptions may be made to fill in gaps, is to be confined only to a case, where the alienee can point to recitals in the deed, under which he claims. We may also refer to *Magniram Sitaram v. Kasturbhai Munibhai* A.I.R. 1922 P.C. 163, another decision of the Judicial Committee. Where the validity of a permanent lease granted by shebait came in question a long time (nearly hundred years) after the grant, so that it was not possible to ascertain what were the circumstances in which it was made the Privy Council held that the Court should assume that the grant was made for necessity so as to be valid. The following observations of their Lordships may usefully be quoted:

In the case of *Chockalingam Pillai v. Magandi Chettiar* [1896] 19 Mad. 485. it was pointed out that although the manager for the time being had no power to make a, permanent alienation of temple property in the absence of proved necessity for the

alienation, yet the long lapse of time between the alienation and the challenge of its validity is a circumstance which enables the Court to assume that the original grant was made in exercise of that extended power. Their Lordships have no hesitation in applying that doctrine to the present case. If in fact the grant was made by a person who possessed the limited power of dealing under which a shebait holds lands devoted to the purposes of religious worship, yet nonetheless there is attached to the office, in special and unusual circumstances, the power of making a wider grant than one which enures only for his life. After the lapse of 100 years, when every party to the original transaction has passed away and it becomes completely impossible to ascertain what were the circumstances which caused the original grant to be made, it is only following the policy which the Courts always adopt, of securing as far as possible quiet possession to people who are in apparent lawful holding of an estate, to assume that the grant was lawfully and not unlawfully made: see also the judgment of Spencer, J., in *Natesa Aiyar v. Panchapagesa Aiyar* : AIR1926 Mad247 .

8. On the evidence and on the probabilities, we agree with the lower Court in holding that it has been shown that the sale was made for legal necessity. The appeal is dismissed with costs of the contesting respondents.