

Palanivelu and ors. Vs. Ouseph Mathai

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Court : Chennai

Decided On : Sep-20-1972

Reported in : AIR1973Mad309; (1973)1MLJ264

Judge : Ramamurti, J.

Acts : Transfer of Property Act - Sections 5 and 53; Madras Agriculturists' Relief Act, 1938 - Sections 9-A

Appeal No. : Second Appl. No. 1611 of 1970

Appellant : Palanivelu and ors.

Respondent : Ouseph Mathai

Judgement :

1. The plaintiffs who failed in the courts below are the appellants in the second appeal. One Thangavelu, maternal grandfather of the plaintiffs executed a settlement deed Ex. A-1 dated 27-10-1944 under which he gave a life estate in the suit property to his daughter Kanchanamala and the vested remainder to his grandsons. The mother executed a surrender deed Ex. A-2, dated 1-8-1956 in favor of her children with the result that the remaindermen became entitled to the present possession of the property from the date of Ex. A-2. They have become the absolute owners of the property. The defendant obtained a decree against Kanchanamala in O. S. 1701 of 1956 for a sum of Rs. 1300 and he sought to attach the property in the hands of the minors on the ground that the surrender

made by the mother judgment-debtor was not a bona fide transaction and that it was a fraudulent transfer intended to defeat and delay the claim of the creditor. The courts below upheld the claim of the decree-holder in the view that it was brought about with a view to defeat and delay the claim of the creditors. It is impossible to sustain the view taken by the courts below.

2. The matter has got to be decided under the provisions of Section 53. Transfer of Property Act. read with Section 5 of the same Act. Section 5 defines 'transfer of property' in these terms:--

'In the following sections 'transfer of property' means an act by which a living person conveys property in present or in future to one or more other living persons or to himself or to himself and one or more other living persons; and 'to transfer property' is to perform such act. In this section, 'living person' includes a company or association or body of individuals whether incorporated or not but nothing contained herein shall affect any law for the time being in force relating to transfer of property to or by companies association or bodies of individuals.'

In order to attack a transaction under Section 53, there must first be a transfer and that transfer must suffer under the infirmities mentioned in the said section. The question is: If a person who is a life-tenant under a settlement deed walks out of the picture and accelerates the rights of the remaindermen, whether that would amount to a 'transfer' within the meaning of the Transfer of Property Act. Sections 5 and 53?'

3. Cases have uniformly taken the view that a document of release a document of relinquishment and document of surrender would not amount to a 'transfer' within the meaning of Section 5. The important idea involved in a transfer is that under the transfer a person who got title or right conveys that right or title to the transferee which right the transferee acquires only in pursuance of the transfer. In the case of a surrender by life-tenant in favor of the remaindermen, there is no transfer of property from the life tenant and there is merely an effacement or extinguishment of the rights of the life-tenant with the result the rights of the remaindermen get accelerated. The rights of the remaindermen are derived only under the document executed by the full owner and when a surrender deed is

executed the full rights accrue to the remaindermen only in pursuance of the title derived under the settlement and the remaindermen do not derive any title from or through the life-tenant who makes the surrender. In other words, there is merely a self-effacement on the part of the surrender, life-tenant, who goes out of the picture.

4. Reference may be made to the Bench decision in *Makhanlal Laha v. Nagendranath Adhikari* : AIR1933 Cal467 in which the Bench has pointed out that the word 'transfer' has been used in a technical sense and under the Transfer of Property Act transfers are sale, mortgage, lease exchange and gift and that there is nothing in the Act to indicate that 'surrender' is a mode of transfer. It is observed-

'The term 'surrender' distinguished from transfer is very well known in law; a surrender is an yielding up an estate for life or years to him that hath an immediate estate in reversion or remainder wherein the estate for life or years may merge by mutual agreement; it is the falling of a lesser estate into a greater.'

It is unnecessary to labor this point in view of the decision of the Supreme Court in *Natvarlal v. Dadhubhai* : [1954]1SCR339 in which the Supreme Court held that when the widow makes a surrender in favor of the reversioner there is no transfer of any property from the widow to the reversioner and that there is only a self-effacement on the part of the widow and extinguishment of her rights in the property and the entire rights of the reversioners spring only from the last owner through whom they claim title and nothing passes or is claimed through the widow- vide observations at page 74.

5. In *Periakaruppa Chettiar v. Nataraja Chettiar* : (1957)2MLJ610 the question was about the scope of a surrender by a widow during the period 30th September, 1937 and 31st January, 1948, under Section 9-A of Madras Agriculturists' Relief Act (IV of 1938). The argument that surrender by the widow amounted to a 'transfer' within the meaning of Act IV of 1938 was rejected (vide observations at pages 615 and 616).

6. From the foregoing reasons it will be seen that the grandsons, surrenderees do not occupy the position of transferees in the sense that any title is transferred to the transferees i.e., grandsons. What happens is that there is a civil death so far as the life-tenant is concerned and the grandsons become absolute owners of the property. There is no 'transfer' within the meaning of Section 53.

7. The appeal is allowed and the plaintiff's suit decreed. No costs in second appeal. The plaintiffs will be entitled to their costs in the courts below. No leave. The defendant will pay the court-fee due to Government in the trial Court and the lower appellate Court.

8. Appeal allowed.

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