Chellam Chetti and ors. Vs. Seeni Chetti and ors.

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Court : Chennai

Decided On : Oct-23-1917

Reported in : AIR1918Mad74; 43Ind.Cas.801

Judge : Sadasiva Aiyar and ;Bakewell, JJ.

Appellant : Chellam Chetti and ors.

Respondent : Seeni Chetti and ors.

Judgement :

Sadasiva Aiyar, J.

1. The defendants Nos. 2 to 4 are the appellants before us. They were judgment-debtors under a decree passed in favour of Aiyyavu Chetty Aiyyavu Chetty transferred the decree to one Choka Pathan. Choka Pathan again in his turn assigned it to Seeni Chetty. Seeni Chetty applied for execution of the decree. The appellants judgment-debtors) contended that the second assignee, Seeni Chetty, trying to execute the decree, was only a benamidar of one Chidambaram Chetty and that, therefore, the Court ought not to allow a mere benamidar to execute the decree and that it was Chidambaram Chetty who was entitled to apply for execution. The appellants rely on the decision of Krishnaswami Aiyar, J., sitting as a single Judge, In re Muthukumara Asari 9 Ind. Cas 40. That learned Judge remarks: 'The law is now well-settled that a benamidar is not entitled to sue : and I think it is equally clear that he cannot apply to execute a decree on the basis of an

assignment in respect of which be is a benamidar for another person I dismiss the petition.' The authorities, however, are not quoted or discussed in the judgment. The appellants' learned Vakil, Mr. K.V. Krishnaswami Aiyar, also relied on the observations of Sundara Aiyar, J., in Lonnusawmi Nadar v. Letchmanan Chettiar 12 Ind. Cas. 657 as follows: 'I do not think that, in strictness, it is necessary for the appellant for rebutting the plaintiff's case to go further than to allege that the plaintiff is not the real transferee. If he goes further to say that he is himself the real transferee, it is only to induce the Court to believe his assertion that the transferee is not the applicant.' In that case, however, the direct question for decision was whether the judgment-debtor could prove that the person who obtained the transfer of the decree was really the judgment-debtor's own benamidar and hence whether he could not execute it. Sundara Aiyar, J., based his decision, therefore, on another ground also, namely, that an assignment to the judgment-debtor which operates by merger through his benamidar as a satisfaction of the decree may be relied on to prove that the assignee obtained no valid title to an existing decree under his assignment. Under the proviso to Order XXI, Rule 16, where a decree for the payment of money against two or more persons has been transferred to one of them, 'it shall not be executed against the others.' That is clearly because the Legislature decided that the transfer of a decree for the payment of money to even one of several joint judgment-debtors should operate as an extinguishment of the executable character of the decree, and any rights as between the joint judgment-debtors should be settled in a separate suit and not in execution proceedings in the same suit. In Bayyana Ramayya v. Nidamarthi Krishnamurthi 32 Ind. Cas. 952 while not agreeing with Sundara Aiyar, J., in all his observations in the decision above referred to, Moore, J., and myself held that where the alleged transferee of a decree is found to be a benamidar of the judgment-debtor, the Court was bound by the second proviso to Order XXI, Rule 16, to refuse to allow the decree to be executed, in favour of the alleged transferee. We did not decide the question in that case whether, where a transferee was the benamidar not of a judgment-debtor but of a third person, he was or was not entitled to execute the decree.

2. As regards the benamidar's right to bring suits in his own name, I do not think (with the greatest respect) that the observation of Krishnaswami Aiyar, J., in Inre

Muthukumara Asari 9 Ind. Cas 40 that a benamidar, could never bring a suit for any relief, can be supported on the authorities. That, if a benamidar did bring a suit even in ejectment and therein failed, the real owner would be bound by the adverse decision passed against his benamidar has been decided in Shangara v. Krishnan 2 M.L.J. 93 In Sethurayar v. Shanmugam Pillai 7 M.L.J. 279 decided by Subramania Aiyar and Davies, JJ., the provisions of Sections 91 and 95 of the Indian Trusts Act are referred to and it was laid down that a benamidar is in the position of a trustee for the real owner. In this case Sections 82 and 95 of the Indian Trusts Act would seem to apply. It goes without saying that a trustee is entitled to realise the moneys due to the beneficiary and as a decree is property which would become useless if the moneys due under the decree are not recovered within the prescribed statutory period, one who owns a decree as trustee is bound to take all necessary steps for the realization of the decree amount in the interest of the beneficiary. See Sections 12, 13 and 15 of the Indian Trusts Act. The Allahabad High Court has always held that even a suit based on title to immoveable property could be maintained by a benamidar and so far as title to execute a decree is concerned, the recent case of Kamta Prasad v. Indomati 29 Ind. Cas. 593 is direct authority for the proposition that a benamidar could so execute. See also Bachcha v. Gajadhar Lal (1905) A.W.N. 173 and Parmeshwar Dat v. Anardhan Dat 26 Ind. Cas. 507 I do not see why the real owner should not be allowed to sue in the name of the benamidar or to execute a decree in the name of the benamidar, at least in cases where no title to immoveable property is in question, the very object of many honest benami transactions being to save the real owner of rights from the trouble of dealing with the outside world directly in respect of the rights acquired in the name of the benamidar.

3. I am myself of opinion, with the greatest respect to the decisions to the contrary, that the observations of their Lordships of the Privy Council in some cases that the benamidar has no title, must be confined to oases where the benamidar sets up a title as against the real owner and not so as to allow a third person to delay or evade performing his own undoubted obligations to the real owner of a right or to the benamidar who is suing to enforce the right. This principle, in my opinion, applies even to oases where the suit is in ejectment by the benamidar for possession of immoveable property. However, as I said, it is not necessary to go

so far for the purpose of deciding the case before us. In Atrabannessa Bibi v. Safatullah 3 Ind. Cas. 189 Mookerjee, J., after quoting most of the important cases, says 'these cases indicate that a distinction has been recognised in this Court,' that is, the Calcutta High Court, 'between suits for land and suits for money claim, in the determination of the question of the eompetence,of a benamidar to maintain a suit; in the former class of cases, the right has been denied, in the latter class of cases, the right has been sustained.' In Kuthaperumal Rajali v. Secretery of State for India 17 M.L.J. 174 decided by Subramania Aiyar and Wallis, JJ., it was held that all benamidars are not trustees entitled to sue and that it depends upon the facts in each case whether the benamidar was intended to be trustee clothed with the legal ownership or merely intended to be an alias for the real owner. The learned Judges say: 'The case of Bojjamma v. Venkataramayya 7 Ind. Dec. 378 was a suit on a negotiable instrument and the grounds on which the decision allowing the benamidar to sue should be supported have recently been considered in this Court. The decision in Second Appeal No. 186 of 1903, in which a benamidar mortgagee was allowed to sue for the recovery of the mortgage money and sals in default may, in our opinion, be supported on the ground that he was entitled to sue on the contract as agent of an undisclosed principal, even if the facts were not such as to entitle him to sue as trustee.' Then the learned Judges refer to Nandkishore Lal v. Ahmad Ata (1895) A.W.N. 160 : 8 Ind. Dec. 751, where a benamidar was held entitled to sue for land in his own name if the legal estate be vested in him and he is, therefore, a trustee for the real owner. Further on, the learned Judges say that, in cases where the land is purchased benami in the name of an infant son or in the name of a mere peon of the beneficiary, the be-namidar may not be considered a trustee. I think that in the present case, it is practically admitted that the real beneficiary owner of the decree purposely obtained the decree in the name of the appellant in order to enable the latter to execute the decree for the benefit of, and as trustee for, the former. The benamidar in this case is, therefore, clearly a trustee entitled to execute the decree according to the reasoning in the decision of Kuthaperumal Rajali v. Secretary of State for India 17 M.L.J. 174. In Venkatachala Asari v. Subramania Chetty 8 Ind. Cas. 264: (1910) M.W. N. 633 it was held that a benamidar against whom an order was passed under Section 335 of the Civil Procedure Code was entitled to bring a

suit in his own name to set aside that order.

4. In the result I would confirm the order of the lower Court and dismiss the appeal with costs.

Bakewell, J.

5. I agree with the order proposed by my learned brother and am of' pinion that the question raised by the respondent is concluded by the terms of Order XXI, Rule 16.

6. Under that rule where a decree is transferred by assignment in writing, it may be executed in the same manner and subject to the same conditions as if the application for execution were made by the decree-holder, and under the first proviso of the rule the only matter into which the Court can inquire is any objection by the transferor or the debtor to the execution of the assignment. The debtor can obtain his discharge by payment of the amount of the decree into Court and is not concerned with the relations between the transferor and transferee of the decree, and I think that the Legislature has advisedly limited the scope of the inquiry to formal proof of the right of the latter to apply in execution.

7. As my learned brother has pointed out, the Court is not precluded from inquiring whether the decree has in fact been satisfied and whether one of several debtors is attempting by means of a trick and under an alias to evade the second proviso to the rule.