

Vyasa Rayar Vs. Subbarayar and ors.

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SooperKanoon Citation : sooperkanoon.com/809408

Court : Chennai

Decided On : Oct-25-1926

Reported in : AIR1927Mad493

Appellant : Vyasa Rayar

Respondent : Subbarayar and ors.

Judgement :

Waller, J.

1. The question in this case is whether the property in suit belonged to the plaintiff, in whose name the saledeed stood, or whether it had been purchased by the defendant's father benami in the name of the plaintiff. The District Munsiff found against the theory of benami. The Subordinate Judge in a highly unsatisfactory judgment reversed this decision. I think that the appeal should be re-heard. The District Munsif in para. 14 of his judgment summed up all the salient features of the case. Hardly a single point that he made in favour of the plaintiff has been noticed or met by the Subordinate Judge. In a matter of this kind the question of motive is important. Two motives were set up on behalf of the defendants. The District Munsif has pointed out quite correctly that they were absurd. The Subordinate Judge has not touched on the question of motive at all. The District Munsif pointed out that it had not been proved that defendants's father provided the money. That was correct, and it was for the defendants to show that it was so

paid. As I understand the Subordinate Judge, he thought that it was for the plaintiff to show that he had funds in the hands of the defendant's father. The evidence was that he had vide Ex. 4 a and it was clearly for the defendants to show that the money referred to in Ex. 4 a belonged to their father and to explain why, if it did not belong to the plaintiff, a misleading entry was made in the accounts. The Subordinate Judge has omitted to notice material circumstances and the evidence in the case and has misdirected himself on the last point above referred to. I set aside his judgment and remand the appeal for disposal according to law. Costs to be costs in the rehearing.

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