

A. Venkatarama Aiyar Vs. E. Venkatarama Aiyar (Dead) and ors.

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Court : Chennai

Decided On : Mar-21-1918

Reported in : 50Ind.Cas.969

Judge : William Ayling and ;Coutts Trotter, JJ.

Appellant : A. Venkatarama Aiyar

Respondent : E. Venkatarama Aiyar (Dead) and ors.

Judgement :

1. This case raises a question as to the ownership of certain lands in a village in the Tanjore District. The 1st plaintiff was the Village Munsif of the Tillage, the 2nd plaintiff is his son, and the 1st defendant is his son-in-law. Some years ago, the 1st plaintiff who apparently was an old man--he has died since the institution of the suit--wished, to relinquish his position as Village Munsif. His son was in the Revenue Department and did not wish to succeed him. So he desired the appointment for his son in law, the 1st defendant, and he applied to the Deputy Collector to appoint his son-in-law in his place. Apparently the Deputy Collector raised the point that the son in-law must, be a Pattadar in the village in order to have the office of Village Munsif. The 1st plaintiff thereupon said that the 1st defendant had not any lands standing in his name but that he, the 1st plaintiff, would transfer his Patta to the 1st defendant and requested the Deputy Collector to carry out the transaction; and it appears from the documents in this case that what was done was that the Patta of the suit lands was transferred from the name

of the father-in-law to the name of the son-in-law, the 1st defendant. At a subsequent period the 1st defendant filed his petition in insolvency in the Tanjore District Court and was adjudicated an insolvent. Thereupon his property vested in the Official Receiver; and finding, I suppose, that the Patta of these lands stood in his name, the Official Receiver proceeded to deal with them as part of the estate available to the creditors. He put these lands up for Sale and they were kept in suspense as soon as it was found that the title of the 2nd defendant would be questioned and it awaits the determination of this appeal.

2. The 2nd defendant puts the case in three ways. In the first place, he says he is entitled to succeed under Section 41 of the Transfer of Property Act. That section provides: 'Where, with the consent, express or implied, of the persons interested in immoveable property, a person is the ostensible owner of such property and transfers the same for consideration, the transfer shall not be voidable, on the ground that the transferor was not authorised to make it; provided that the transferee, after taking reasonable care to ascertain that the transferor had power to make the transfer, has acted in good faith.' Now, it is unnecessary to discuss whether the fact of the transfer of Patta would create the transferee an ostensible owner within the meaning of this section for the simple reason that, however that may be, on the finding of the learned Judge, the transferee in this case has obviously failed to satisfy the requirements of the proviso that he should take reasonable care to ascertain that the transferor had power to make the transfer; because the learned Judge in terms says that 'the slightest enquiry would have shown the 2nd defendant that the title-deeds were not with the 1st defendant, and that the 1st defendant had no claim whatever to the land.' We cannot go behind that finding and that appears to dispose entirely of any case that the appellant might be supposed to have on the section of the Transfer of Property Act. But he puts his case wider than that, and he says: 'Apart altogether from the special remedy provided by Section 41 of the Transfer of Property Act I am entitled to rely upon the general law of estoppel, which for this country is embodied in Section 115 of the Evidence Act.' And he says, 'unfettered by the proviso and unencumbered with any duty of making particular enquiries, the general law of estoppel simply provides me with this remedy, that as a representation has been made to me in common with all the world by the 1st plaintiff by putting the name of

the 1st defendant as the Pattadar of his property, I am entitled to say that he shall not in future be allowed to maintain that the 1st defendant was not the transferee of that property, and, that being so, I can preclude him in this suit without any reference to the section of the Transfer of Property Act from alleging that he is in fact and in truth the owner of the property.' Now with regard to that, the contention for the 2nd respondent in the first place is this he says, you must take the very general provisions of the section of the Evidence Act as controlled and curtailed by Section 41 of the Transfer of Property, Act, and there is in fact a decision--a single Judge's decision no doubt--in *Hoorbai v. Aishabai* 6 Ind. Cas. 898 : 12 Bom. L.R. 457 where Mr. Justice Beaman carefully considered the relations between the two sections and came to the conclusion that Section 41 must be regarded as restricting the more general principles of the section of the Evidence Act. He says: 'A very superficial analysis would reveal obvious distinctions between the ordinary principles of estoppel on the one hand and the application of the principles to which effect has been given under Section 41 of the Transfer of Property Act,' and the effect of holding that will be to hold that the section of the Evidence Act is curtailed in this sense that the Transfer of Property Act forbids any person to avail himself of the estoppel created by the Evidence Act in the case of transfers of immovable property, unless the transferee satisfies the further condition of having made reasonable enquiries as to the security of his title. It is really not necessary for us in this case to say whether that be so or not, for this reason that in the year 1872, in *Ramcoomao Koondoo v. John and Maria McQueen* 11 B.L.R. 46 : 18 W.R. 166 I.A. 40 : 3 Sar. P.C.J. 160 the Privy Council, at a time when the section of the Evidence Act was in force and the Transfer of Property, Act had not yet been enacted, laid down that an estoppel of this kind in cases of transfer of real property could only be availed of by those who used the care and enquiry required by the provision of English Equity. This is what their Lordships say: 'It is not necessary to say whether this case is to be decided upon the principles on which the English' Court of Chancery acts in cases of resulting trusts, when questions arise between the equitable owner and the purchaser for value without notice; or whether it is to be decided upon the general rules of equity and good conscience which bind the Courts in India, because the principle of decision must in either case be the same. It is a principle of natural equity, which must be universally

applicable, that, where one man allows another to bold himself out as the owner of an estate, and a third person purchases it, for value, from the apparent owner in the belief that he is the real owner, the man whoso allows the other to hold himself out shall not be permitted to recover upon his secret title, unless he can overthrow that of the purchaser by showing, either that he had direct...notice of the real title; or that there existed circumstances which ought to have put him upon an enquiry that, if prosecuted, would have led to a discovery of it.' It, therefore, appears that the Privy Council were prepared to hold, at a time when the section of the Transfer of Property Act was not in existence, that a person who sought to create a title to real property by estoppel must satisfy the Court that he had neither actual nor constructive notice and had not before him any circumstances which would have put him on reasonable enquiry to find out the truth. Here the learned Judge has found that this purchaser did not make the enquiries which were staring him in the face. He never enquired as to whom the lands belonged to, he never asked for the title deeds, and we think one might gather from the fact that the Official Receiver held the purchase money in suspense all this time, he must have been told by the Official Receiver that he had no title-deeds and the question of title was one of great trouble and difficulty. However, we need not go into the evidence of that, because it is a matter definitely found by the Judge. We, therefore, hold following the decision of the Privy Council, that apart altogether from the section of the Transfer of property Act, the Evidence Act affords no definition of estoppel to dispense with the necessity of the purchaser making a reasonable enquiry.

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3. The result is that this second appeal must be dismissed with costs.

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