

Ramayya Chetti Vs. Mannaru Chetti and ors.

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Court : Chennai

Decided On : Dec-18-1929

Reported in : 126Ind.Cas.492

Judge : Curgenvén, J.

Appellant : Ramayya Chetti

Respondent : Mannaru Chetti and ors.

Judgement :

Curgenvén, J.

1. By a so-called deed of release (Ex. No. 2) executed by the reversioner in 1882, property, including the suit house, was conveyed to the 5th defendant Narasamma, sister of the last male holder, and to her son defendant No. 1, then a minor, for a consideration of Rs. 200. From time to time since then defendant No. 1 has alienated portions of the property. This property consisted of two houses, a piece of wet and a piece of dry land. While he was still a minor his mother acting as his guardian sold one of the houses under Ex. D in 1885. In 1895 he himself sold one half of the suit house under Ex. C, a sale-deed which his mother attested, The remaining half of the suit house was mortgaged in 1904 to the plaintiff's brother. To conclude with the alienations, he disposed of the nanja and punja lands under Exe. F, F(1) and G in 1908 and 1907.

2. The mortgaged portion of the house fell to the plaintiff in the family partition and he obtained a decree bringing the property to sale in 1921 and purchased it himself. When he attempted to obtain possession he was resisted by defendants Nos. 6 and 7, who are respectively the son-in-law and daughter's son of Narasamma, defendant No. 5. They set up an independent title as her vendee. The plaintiff applied as auction-purchaser for the removal of the obstruction but his application was dismissed BO that he brought the present suit. The question is whether the title of the plaintiff or of defendants Nos. 6 and 7 should prevail.

3. No attempt has been made before me to substantiate the pleas of estoppel and of adverse possession by defendant No. 1 against his mother which were successful in the Courts below. The question for decision accordingly is whether title to the suit property was in the son or the mother. There is a genealogical table affixed to the plaint as Schedule B. The property was originally held by Pedda Narasimhalu Chetti and passed from him to his son Chinna Narasimhalu Chetti and after his death to his mother Gururajamma. After the latter died it came into the hands of the 5th defendant Narasamma. The reversioner at that time was Pedda Narasimhalu Chetti's brother's son Gurunatham Chetti, and he executed the deed of release referred to above. It is in favour of Narasamma and her son Krishnama Chetti, described as a minor aged about nine years living under her protection and it conveys to them all the property which had been the ancestral and self-acquired property of Pedda Narasimhalu Chetti and his son Chinna Narasimhalu Chetti. There is a recital that it had devolved upon Narasamma as stridhanam but that is incompatible with the description given of it and as the learned District Judge surmises need not be taken seriously. And it goes on to say that mediators having settled the matter the executant agrees to receive a sum in cash of Rs. 200 and thereafter never to make any claim either upon Narasamma on her son and adds:

You and your son, grandson, etc., shall hereditarily enjoy these moveable and immoveable properties with absolute rights,

4. Prima facie this document invests the mother and son with a joint interest in the property. Nevertheless both the lower Courts have held that its effect must have

been to convey the property to defendant No. 1 and not to his mother. In coming to this conclusion they have relied very largely upon the subsequent conduct of the parties in dealing with the property. The question of law-which arises for decision is whether such evidence is admissible to ascertain the true nature of a transaction evidenced by a written instrument like Ex. 2 and if so whether its effect is as found by the Courts below. In *Mulchand v. Madho Ram* 10 A. 431 : (1888) A.W.N. 127 a sale of certain property was executed ostensibly in favour of two brothers, Ganga Prasad and Mul Chand jointly. Subsequently Ganga Prasad brought a suit against Mul Chand in which he prayed for a declaration that he alone was the real purchaser and to eject Mul Chand from a portion of the premises. He alleged that the whole of the purchase-money had come out of his pocket and that he had been in sole possession of the property under the sale-deed though he had allowed the defendant to occupy a room in the house. The defence set up was based upon Section 92, Evidence Act, which excludes evidence of an oral agreement as between the parties to any instrument of the kind contemplated in that section, for the purpose of contradicting, varying, adding to or subtracting from its terms.

5. The case went up to the Allahabad High Court in second appeal and the learned Judges came to the conclusion that Section 92, had no application because the phrase 'as between the parties' meant as between the persons who on one side and on the other came together to make the contract. It would not apply to two joint vendees. Thus between the vendor and themselves, neither of the vendees would be heard to plead or would be allowed to offer oral evidence to show that both were not parties to the buying of the house but the section would not apply to questions raised by the parties on one side inter se, and not affecting the other party to the contract, touching their relation to each other in the transaction. They gave as another instance the case of promisor to a joint note, where it is competent to one of them who has had to pay the entire debt, to show in variation, of the terms of the note, as against his co-promisor, that the payer is a surety only. After expressing these views the learned Judges found themselves unable to dispose of the second appeal owing to the state of the evidence, and remanded it for findings upon certain points. It may be observed that among these points was a question with regard to Mul Chand's subsequent occupation which'

showed that they deemed the subsequent conduct of the parties a relevant matter for adjudicating upon their respective rights. This case was referred to by Devadoss, J., in *Muhammad Sultan Mohideen Ahmed Ansari v. Amathul Jalal* : AIR1927 Mad1102 , In that case a father brought a certain property in the names of his two sons, allotting Schedule A property to one and Schedule B property to the other. Owing to some objection during registration the schedules were struck out of the deed and eventually one son sued the other claiming an exact moiety.

6. It was argued that the document was silent as to the shares and that Section 92 was a bar to any oral evidence being given to show the father's intentions. The learned Judge agreed with the Allahabad case and rejected this contention. I have not been shown anything to lead me to suppose that that case is not still good law. I think accordingly that it is open to one of two joint transferees to prove what interest, if any, is taken by the other where the document does not specify the extent of the shares. It may be that there is a presumption that the shares would be equal, but it is rebuttable presumption and if as in the Allahabad case one transferee may be shown to be no more than a mere trustee for the other and to possess no beneficiary interest in the property, so too I think may a mother be shown to have taken the property as between two transferees who are sui juris, on the understanding which existed between them, and where as here, one is a parent and the other a minor child, of the intention with which the parent received the property. I do not think that evidence of the manner in which the mother and son subsequently dealt with the property is inadmissible to prove such intention. I have already mentioned that the Bench in the Allahabad case seems to have thought such evidence relevant. Of course, where a document is clear and unambiguous and contains no omission to be supplied no amount of proof of subsequent conduct will justify the reading of it otherwise than its plain sense demands: *North Eastern Ry. v. Hastings* (1900) A.C. 260 : 69 L.J. Ch. 516 : 28 L.T 429 : 16 T.L.R. 325. But it is not sought here to give an unnatural construction to the language of Ex. 2 in order to bring it into accord with the subsequent conduct of the parties. Such conduct is to be used only to ascertain what the document leaves undecided, the rights of the transferees inter se. For this purpose I hold that evidence of it is admissible.

7. I have already enumerated the several items of property and the manner in which they were disposed of one after the other by defendant No. 1. The last remaining portion was this one-half house, which, as I have said, defendant No. 1 had mortgaged in 1904. From all these transactions it appears that Narasamma regarded the property as her son's and 'defendant No. 1 regarded it as his own. Indeed, if the terms of the original transfer had not been known one would have inferred from the subsequent transactions that it must have been a conveyance to the mother as guardian. An obvious criticism, of course, is that if such a transfer had been intended Ex. 2 would have been framed accordingly and would not have described the property as Narasamma's stridhanam. Where, however, the finding is that notwithstanding certain recitals in the original document the subsequent conduct of the transferees establishes a certain intention I do not think it is open to me in second appeal to re-assess the considerations which led to that conclusion. It is enough to find that it is not based on inadmissible evidence or otherwise contrary to law. I think that it was open to the learned District Judge upon an appreciation of the evidence to find that Ex. 2 was in effect a conveyance of the property to the son with the mother as guardian, a finding which entitles the plaintiff to the decree given to him.

8. The second appeal is dismissed with costs.