

**Pachayammal Vs. Devanaimmal**

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**SooperKanoon Citation :** [sooperkanoon.com/820753](http://sooperkanoon.com/820753)

**Court :** Chennai

**Decided On :** Mar-27-1925

**Reported in :** 91Ind.Cas.776

**Judge :** Waller, J.

**Appellant :** Pachayammal

**Respondent :** Devanaimmal

**Judgement :**

**Waller, J.**

1. The suit is as regards the title to and possession of a house. Plaintiff alleges that she bought the house for Rs. 2,800 in August 1917 and allowed the defendant, who is her brother's widow, to occupy part of it. As the latter is now setting up a title in herself, plaintiff sues for a declaration of her title and possession. Defendant replies that she bought the house with own funds in the name, of plaintiff 'for fear of her dayadies' why, if the funds were her own, she should have been afraid of her husband's dayadies is not apparent. The reason, of course, is that if her real defence is true, the funds out of which the house was acquired were not, strictly speaking, hers at all. What happened was this. Defendant, a widow in possession of her husband's estate, sold part of it, a house in April 1917 for Rs. 2,800. The reversioner at once filed a suit impeaching this and other alienations by the widow. In August, the house now in question was

purchased by plaintiff for Rs. 2,800 precisely the same amount as had been received by defendant for the sale in April. In October defendant filed her written statement in the reversioner's suit, pleading that the alienations had been for necessary purposes. In March 1918, a compromise was arrived at, the reversioner accepting the sale for Rs. 2,800 as having been bona fide and for necessary purpose.' Had he been aware that the proceeds had been devoted to the acquisition of another house by defendant, in the name of a third party, he would certainly not have agreed to the compromise.

2. The real defence, then, is this: That defendant sold part of her husband's estate, purchased a house in plaintiff's name out of the proceeds and successfully deluded the reversioner into believing that the proceeds had been devoted to the payment of debts binding on the estate. It is, I think, clear that if the positions of the parties were reversed, that is to say, if defendant came into Court as a plaintiff and asked for relief against plaintiff as a defendant, on the basis of her present story, she would be non-suited. As matters stand, she is a defendant in possession and there is a considerable body of authority, in favour of the view, that a litigant in her position is entitled to show the real nature of the transaction, as against a confederate in the fraud; *in pari delicto potior est conditio possidentis*. The decisions are summarised in *Raghupati Chatterjee v. Nrishingha Hari Das* 71 Ind. Cas. 1 : A.I.R. (1923) (C.) 90, a case of a fraudulent conveyance in which the grantor was allowed to plead his own fraud in defence against a suit by his confederate. This ruling expressly dissents from *Sidlingappa v. Harisa* 9 Bom. L.R. 542, there it was held that the defendant could not set up his fraud against a claim to inv moveable property conveyed by him to a benamidar. The Bombay case has been followed in Madras, *Voddina Kamayya v. Gudisa Mamayya* 32 M.L.J. 484 in which Courts Trotter, J., pointed out that the effect of the decisions was that 'that party fails who first has to allege the fraud in which he participated.'

3. The question is one of public policy and I think that public policy will be best served by following the rule that a man should not be allowed to plead his own fraud. As Sir Lawrence Jenkins showed in the Bombay case, it is the rule which 'will be most apt to deter persons from 'frauds of this kind.' It is the fraudulent grantor, who expects to extract the entire, or the main benefit from the fraud. And if

he realises that the law will give him neither a remedy nor a defence against his confederate, the temptation to commit the fraud will, be minimised. In this case, plaintiff has a title by purchase, which is, on the face of it, perfectly valid. I find that it is not open to defendant to show that it was she that provided the funds for the purchase, by means of a fraud on the reversioner, to which she and plaintiff were parties.

4. Issue No. 1 is found against defendant. There will be a declaration of plaintiffs title and a decree for possession with costs. Plaintiff claims mesne profits at the rate of Rs. 20 per month, for 18 months, before the date of the suit. Profits will be allowed, at that rate, for the period claimed, upto the date of delivery. It should be noted that, as a result of the view taken by me, defendant was not permitted to adduce any evidence.

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