

Muniammal and ors. Vs. Venkitammal and ors.

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Court : Chennai

Decided On : Dec-20-1991

Reported in : (1992)2MLJ425

Appellant : Muniammal and ors.

Respondent : Venkitammal and ors.

Judgement :

Mishra, J.

1. Three questions, (1) Whether Ex.A-1 had the character of a testament alone or is a deed of settlement of rights and interests in the property of the executrix for life and on her death upon the plaintiffs and the defendants 3 to 5 and the heirs and legal representative of the deceased daughter of the executrix (defendants 6 to 9) in O.S.No.156 of 1978 of the court of Subordinate Judge, Coimbatore, (2) whether the deed of cancellation (Ex.A-2) is valid and legal in the sense that it cancelled the right sand interests of the plaintiffs and the defendants 3 to 9 in the suit and (3) whether the suit filed beyond the period of three years for a declaration that Ex.A-2 is null and void is maintainable, arise for our consideration in this Letters Patent Appeal.

2. Before we enter into the examination on the above questions, we may state briefly the facts. It is the admitted case of the parties that the site or the land in dispute was in the name of the first defendant acquired under two documents, one

dated 19.8.1931 (Ex.B-1) and the other dated 3.6.1932 (Ex.B-2). According to the plaintiffs, the land was acquired by the first defendant out of her own funds and the buildings thereon were also put up by her. On 30.11.1970 as per Ex.A-1, a document purported to be a settlement deed was executed by her in favour of the plaintiffs and the defendants 3 to 5 in respect of the suit property. On 17.3.1971, she (first defendant) executed a deed as per Ex.Ar2 cancelling Ex.A-1. On 7.4.1971, the first defendant executed a fresh settlement deed in favour of the second defendant (her husband) in respect of the plaintiffs and thus they filed the instant suit for a declaration that the alleged cancellation deed dated 17.3.1971 is null and void. Although the suit as originally framed sought declaration only, the plaintiff preferred an amendment to the plaint at the stage of the appeal in the court below seeking for the declaration as above that they are entitled to vested remainder in the plaint schedule property along with the defendants 3 to 5. as per the settlement deed (Ex.A-1).

3. A common plea has been raised on behalf of the defendants, which has been summarized in the impugned judgment as follows:

The suit site was purchased by the second defendant with his funds benami in the name of the 1st defendant; the construction over the suit site were put up by the second defendant; the first defendant had no right, title and interest to execute the Settlement Deed Ex.A-1; Ex.A-1 was vitiated by fraud and undue influence and is liable to be set aside; Ex.A-1 even if true was in the nature of a will and hence it stood revoked by the subsequent document; the suit is barred by limitation, and in any event the second defendant has perfected title to the suit property by adverse possession.

4. The trial court answered the main disputes between the parties as follows:

The suit site was purchased by the second defendant with his funds benami in the name of the first defendant. The construction in the suit site were put up by the second defendant. The first defendant had no title to convey or right to execute the settlement deed dated 30.11.1970. The settlement deed dated 30.11.1970 was vitiated by fraud and undue influence and is liable to be set aside.

On the question that Ex.A-2 was brought about by threats and fraud and undue influence and hence null and void and Ex.A-1 was in the nature of a will and hence the subsequent document executed by the first defendant cannot be questioned by the plaintiffs, the trial Court held that the plaintiffs failed to establish that Ex.A-2 was brought about by threats and force, fraud and undue influence and that Ex.A-1 was in the nature of a will and hence the subsequent document executed by the first defendant cannot be questioned by the plaintiffs. The trial court also held that the second defendant had perfected title to the suit property by adverse possession long prior to the year 1970. It also said that the suit filed on behalf of the plaintiffs was barred by limitation.

5. The court below formulated the following four questions and answered them as follows:

1. Whether the suit site was acquired by the second defendant benami in the name of the first defendant?
2. Whether the constructions over the suit site were put up by the second defendant?
3. Whether Ex.A-1 had the character of a testament alone, and hence it has got to be ignored by virtue of the subsequent document executed by the first defendant?
4. Whether the suit as laid by the plaintiffs is barred by limitation?

While considering the first two questions, the learned Judge has said,

It is true that the burden of proving that a particular transaction is benami is on the person, who sets forth that plea. But where the controversy has been put in issue and the parties have placed their evidence in substantiation of their respective cases, then it will be the duty of the court to deal with the question on the basis of reasonable probabilities and legal and factual inferences to be drawn from the materials exposed. The initial burden is certainly on the party, who sets forth the plea of benami. The significance of the burden of proof need not be carried too far after the parties have placed their evidence on the issue. It is only in that context it has to be stated that the burden of proof is not a static and a rigid proposition. The

entire evidence has got to be scanned on the question in issue and to import consideration of will be certainly out of place and the duty of the court is to weigh the evidence and to decide the issue on a careful assessment of the totality of the evidence on the basis of reasonable probabilities.

On the third question above, the learned Judge has said, the express dispositive words used in Ex.A-1 are clinching and they do indicate that the vesting should take place only after the life time of the first defendant. In my view, this can be taken to be a clear indication that the document could have only the character of a will. If this is so, the subsequent documents executed by the first defendant, namely the original of Ex. A-2, the deed of cancellation and the settlement deed, dated 7.4.1971 executed by the first defendant in favour of the second defendant could certainly survive and Ex.A-1 has got to be ignored....

On the fourth question, the learned Judge has said, As per Art;58, the plaintiffs with one prayer which they projected in their plaint ought to have laid the suit within three years from that date. But that was not done. Hence, I have to hold the suit as laid is barred by limitation.

Disposing of the C.M.P. for amendment of the plaint, the learned Judge has said,

Obviously, the present move is to get over the hurdle of limitation by changing the prayer. As already held the plaintiffs prayer for declaration as they projected in their plaint could not be granted on account of the bar of limitation. I do not think at this stage it will be just, fair and appropriate to allow the amendment.

Regarding another petition to receive two documents as additional evidence, namely, (1) the settlement deed dated 7.4.1971 executed by the first defendant in favour of the second defendant, and (2) a communication from the Coimbatore Co-operative Milk Supply Society to the first plaintiff dated 5.11.1980, the learned Judge has said,

The averments made in the affidavit filed in support of this petition do not bring the case within the ambit of Order 41, Rule 27 of the Code of Civil Procedure. I do not find any warrant to admit and receive additional evidence at this stage.

6. Before we take up the questions posted before us, we may here state that the approach of the court below as to the title, whether vested in the first defendant or in the second defendant, has substantially affected the consideration of the main question as to the determination of the character of Ex. A-1. We are compelled to state that the cases in which the burden of proof loses significance are those in which specifically certain facts are not required to be proved by a particular party but found proved on the evidence on record, whether adduced by the party upon which the burden lies or the party opposing. The significant omission in this case of the presumption of title in favour of the first defendant in the suit though admittedly the two documents Exs.B-1 and B-2, dated 19.8.1931 and 13.6. 1932 stand in the name of the first defendant, and acceptance straightaway of a case of benami, ignoring altogether the proof of ingredients thereof, has almost determined all the questions against the plaintiffs. The presumption that certain properties belong to the co-parcenary or to a joint family arises when the properties stand in the name of a male member of the family. This presumption is not available when the property is in the name of a female member of the family. A male or female member of the family can claim right or interest in such property only by establishing that the ostensible purchaser shown in the transfer document was a benamidar and or represented the interests of the real owner, whether a husband, a brother, a friend or any other close associate. There has been absolutely no attempt by either of the courts below to go into this aspect of the case and ignore any claim of the second defendant until the second defendant established by cogent evidence that the first defendant stood as a benamidar for him in the sale transactions in August, 1931 or in June, 1932 (Exs.B-1 and B-2). We may here assumes in favour of the defendants that the first defendant was a benamidar for the second defendant. She was not the ostensible owner and she firstly executed Ex.A-1 so much so that she executed a further document to cancel Ex.A-1 and, it is said, she executed a deed of settlement in favour of the second defendant on 7.4.1971. These facts are not disputed. The second defendant thus sought to obtain title in the property by a document of transfer by the first defendant. Unless she was the owner, why the second defendant wanted such a document? If the second defendant was the real owner, no such document was required at all. The documents (Exs.B-1 and B-2) are admittedly in favour of the

first defendant. Section 91 of the Evidence Act states,

When the terms of a contract, or of a grant, or any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained.

The defendants produced Exs.B-1 and B-2. They thus establish that the title in respect of the suit site in dispute vested in the first defendant. It is well-settled that a document of sale proves title of the vendee in the property. Plaintiffs thus proved the title of the first defendant. They also corroborated Exs.B-1 and B-2 by Exs.A-11 and A-2 and the admitted transaction dated 7.4.1971 of transfer of interest in the property by the first defendant to the second defendant, her husband wherein she claimed that she possessed title and that she had the power of disposition. The question thus was of great significance how the second defendant proved that the first defendant was a benamidar and that he is the real owner of the property and not his wife the first defendant.

7. Coming to Ex.A-1, one has to see what this document does? It is not unknown that any absolute owner of a property decides either to leave a testament and convey in future his or her right either for consideration or subject to the laws that govern such transactions. In the case of a testament or a will, the conveyance is postponed until the death of the testator and devolves only when a probate is granted or letters of administration. In the latter case, however, it is more in the nature of recognition of a right and the right postponed for a future date to accrue, but conveyance completed by way of a settlement or a family arrangement. There is hardly any difference in the relief of declaration originally asked for in the suit and the relief asked for in the amendment petition in the sense that in case the validity of Ex.A-1 is upheld it will give nothing to the plaintiffs and other beneficiaries, (the defendants in the suit) except the vested remainder, the right which they shall get only after the life time of the first defendant. The court below

has treated the recitals in Ex.A-1 as if the first defendant recognised who were the beneficiaries of her estate. There can be no dispute that her exercise of disposition was not confined to her life alone. She held the property absolutely and so she could encumber the property either absolutely or for life or postpone the encumbrance to operate on a future date. That has always been the thrust and we say so with respect that this view is not inconsistent with the view expressed by a Bench of this Court Venkatachalam Chetty v. Govindasamy Naicker : AIR1924 Mad605 . That is why we hold that Ex.A-1 has been misconstrued as a will. It is a deed conveying such interests which the first defendant possessed in the property to the plaintiffs and some of the defendants. The approach taken by the court below thus that Ex.A-1 has got to be ignored and Ex.A-1 and the settlement deed dated 7.4.1971 executed by the first defendant in favour of the second defendant would survive is thus vitiated to the extent that Ex. A-2 can survive only if the first defendant still possessed such interests in the property that she could cancel the transfer in favour of the plaintiffs and some of the defendants under Ex.A-1 and the settlement deed dated 7.4.1971 would survive only when Ex. A-2 is held to be valid.

8. Once we have found that Ex.A-1 is a valid document of transfer of interest by way of settlement in favour of the plaintiffs and some of the defendants, unless we find that the first defendant has still got a right to cancel the transfer deed, it is obvious that Ex.A-2 cannot be found to be a valid document. A right already created under a deed of transfer cannot be taken away by a deed of cancellation. A disposition once effected cannot be withdrawn. Ex.A-2 for that reason alone must be found to be invalid. The invalidity of Ex.A-2 shall automatically invalidate the deed of settlement dated 7.4.1971 in favour of the second defendant.

9. We must give credit to the learned Counsel for the respondents that he realised in the course of the arguments that Article 58 of the Limitation Act shall have no application on the facts of this case. The error which the trial court committed in applying Article 59 of the Limitation Act, which is applied to suits relating to decrees and instruments was no doubt rectified by the court below, but the error committed in applying Article 58 is obvious. Article 58 falls in Part III of the Schedule to the Limitation Act. This part deals with suits relating to declaration.

Part V deals with suits relating to immovable property. Article 65 thereof reads that for possession of immovable property or any interest therein based on title, the period of limitation is twelve years. The instant suit based upon Ex.A-1 is undoubtedly a suit for interest based on title in immovable property. The period of limitation in such a situation will be 12 years and not three years.

10. The view that we have taken thus leads to the irresistible conclusion that the courts below erred in holding that the first defendant was a benamidar and the title in reality vested in the second defendant and not in the first defendant and so Ex.A-1 executed by the first defendant conveyed no property to the plaintiffs. Since the suit concerned immovable property and interest therein, the limitation period for the suit was 12 years and not 3 years as held by the courts below.

11. Since we have concluded that the first defendant conveyed her title to her heirs under Ex.A-1 and thus ceased to have any interest therein and she could not cancel Ex.A-1 by Ex.A-2. The plaintiffs, in our opinion, have proved their case of title and accordingly became entitled to a decree.

12. For the reasons aforesaid, the appeal has to be allowed. The judgment and decree of the courts below are accordingly set aside. The suit is decreed as prayed for. On the facts and in the circumstances of the case, parties shall bear their own costs. The appellants shall pay the court-fee throughout.