

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 27.01.2015

CORAM

THE HON'BLE MR.JUSTICE R.MAHADEVAN

S.A.Nos.626 and 627 of 1996

Manimegalai

...Appellant in both Appeals/
Plaintiff

vs.

1. Sriram
2. Chandrasekaran (died)
3. Sundaramurthy (died)
4. Damodaran
5. Tamilselvi
6. Rani
7. Sarasu
8. S.Sundharesan
9. S.Suthansen
- 10.Minor. S.Suresh Raj
Rep. by his mother 5th respondent
(R8 to R10 have been impleaded as LRs of
the 3rd respondent vide order dated
05.03.2003 made in CMP.Nos.19028 to 19033
of 2003)
11. Sundhari
(R11 has been impleaded as LR of the 11th
respondent vide order dated 08.09.2006 made
in CMP.Nos.16371 to 16372 of 2005)

...Respondents in both Appeals/
Defendants

Common Prayer: Appeal filed under Section 100 of C.P.C. against the Judgment and decree dated 28.04.1995 made in A.S.Nos.154 of 1991 and 29 of 1992 on the file of the learned II Additional District Judge, Pondicherry, reversing the Judgment and Decree dated 02.07.1991 made in O.S.No.648 of 1983 on the file of the learned Principal Sub Judge, Pondicherry.

For appellants : Mr.V.Ragavachari

For respondents : Mr.T.R.Rajagopalan, Senior Counsel
for Mr.T.R.Rajaraman

JUDGMENT RESERVED ON : 27.11.2014

COMMON JUDGMENT

The plaintiff has filed these Second Appeals against the Judgment and decree dated 28.04.1995 made in A.S.Nos.154 of 1991 and 29 of 1992 on the file of the learned II Additional District Judge, Pondicherry, reversing the Judgment and Decree dated 02.07.1991 made in O.S.No.648 of 1983 on the file of the learned Principal Sub Judge, Pondicherry.

2. The case of the plaintiff before the Trial Court is as follows:

(i) The suit schedule property originally belonged to one Varada Reddiar, who sold the suit properties to one Pattu @ Pattammal, W/o. Late Vijayarangan and D/o.Kandasamy Gounder, by sale deed dated 18.06.1960. From the date of purchase, the said Pattu @ Pattammal was enjoying the property till her life time and she died on 05.09.1983 leaving behind 1) Arumugham, S/o.Sivalinga Gounder 2) Govindasamy, S/o.Manicka Gounder, 3) Rangabashyam, S/o.Damodarapillai, 4) Pounambal, W/o.Govindasamy and D/o.Muthia Gounder, 5) Danalakshmy, W/o.Marimuthu and D/o.Govindasamy, 6) Mani, S/o.Damodaran, 7) Kasthuri, W/o.Ramasamy and D/o.Damodaran, 8) Amirtham, W/o.Thangavel Gounder, D/o.Late Krishna Gounder as her legal heirs. The patta and adangal stand in the name of Pattu @ Pattammal and she also raised Sugarcane crops in the suit lands.

(ii) All the above said eight persons sold the suit property to the plaintiff by sale deed dated 20.10.1983 along with sugarcane crops. Now, the defendants illegally trespassed into the suit property after the purchase of the suit property by the plaintiff and they are making untenable claims over the suit property. The plaintiff made several efforts for vacating the defendants from the suit property, but, they did not pay any heed. Therefore, the plaintiff filed the suit for declaration of title and also for recovery of possession of the property.

3. The suit was resisted by the first defendant stating that the sale claimed by the plaintiff is one without any basis of title. It is a collusive document between the vendors and the plaintiff. It is false to state that the suit properties belonged to Pattu @ Pattammal and she enjoyed it during her life time. It originally

belonged to one Varada Reddiar, S/o.Muthukrishna Reddiar. The suit item and other items which are forming part of one single block belonged to Varada Reddiar. He offered to sell all the four items of which the suit property is a part. The said offer was made to Rengasamy Gounder, the first defendant herein. They entered into an agreement to sell the totallity of the property of 8 kanies 21 Kulies 7/16 for a total consideration of Rs.33,500/-. D1 paid an advance of Rs.8,500/-. In pursuance of the agreement D1 obtained the suit property and other properties and enjoying it. Pattu @ Pattammal became widow in 1944 without any issues and lived with D1 as his wife since then. At the time of the sale of the suit property, Pattu was living with D1 took the sale of the suit property in her name, even though the suit property including the other property remained with him as Pattu was only a name lender. The suit property and other properities were also mortgaged in favour of a third party by name Subramania Chettiar by D1 with his other wife Janaki Ammal and Pattu @ Pattammal and secured Rs.18,000/-. The mortgage was also discharged by D1. D1 held possession of the suit property by raising various crops. The revenue records also stand in his name. The antecedent title deeds, original sale deeds, agreement to sell, tax receipts were also with D1. The nature of relationship stated in the plaint as in the documents would indicate the impossibility of inheritance even as per law. Therefore, the suit sale deed dated 20.10.1983 is not capable of giving any title to the plaintiff. The vendors described in the sale deed are in no way related to the deceased Pattammal. The claim of trespass into the suit property by the defendants is false. As per the Hindu Succession Act, 1956, the first category of heirs would succeed to the properties of a female Hindu dying intestate, namely first upon the issues and husband and in the absence of any issue, the husband will take her property except the property inherited from her father or mother. The question of mesne profits does not arise as the possession held by the defendants is legal. The mode of valuation of the suit property is wrong and the proper Court fee has not been paid. Hence, the first defendant prayed to dismiss the suit.

4. During the pendency of the suit, the first defendant, Rangasamy, died and defendants 5 to 8 were brought on records as legal heirs of the deceased first defendant. In the written statement filed by D5 and adopted by D6 to D8, it is stated that there is no averment against them why they were brought on record. They are unnecessary parties to the suit. Hence, they prayed for dismissal of the suit.

5. The Trial Court framed necessary issues, additional issues and recasted them. Before the Trial Court, on the side of the plaintiff, P.W.1 to P.W.8 were examined and Exs.A1 to A31 and Exs.X1

to X14 were marked and on the side of the defendants, D.W.1 to D.W.8 were examined and Exs.B1 to B15 were marked. The Trial Court, based on the oral and documentary evidence, decreed the suit upholding the plaintiff's title to the suit property but dismissed the claim for mesne profits leaving it open for fresh suit to be filed for such relief. Aggrieved against the said Judgment, the defendants 2 to 8 filed A.S.No.154 of 1991 and the plaintiff filed A.S.No.29 of 1992. On appeals, the appellate court allowed A.S.154 of 1991 filed by the defendants 2 to 8 and dismissed A.S.No.29 of 1992 filed by the plaintiff. Aggrieved against the common judgment and decree of the first appellate court, the plaintiff has filed the present second appeals.

6. The second appeals have been admitted identifying the following questions to be the substantial questions of law involved in the second appeal:

i) Whether the admitted facts viz., Pattammal was the purchaser of the suit properties under Ex.A1 and the patta, adangal and tax receipts were standing in her name till her death as evidenced by Ex.A6 to 13, Ex.X1 to 13 and Ex.B11, 11(a) and 12(series) and the oral evidence, more particularly the admissions of DW.1, would not establish that she was the wife of Vijayaranga Gounder and the absolute owner and possessor of the suit properties till her death and consequently, whether the onus of proving the case of the deceased D1 that she was his wife, he had purchased the suit properties in her name benami and hence, he was the real owner of the same, would not lie first on the shoulders of the respondents? and

ii) Whether in view of the clear oral and documentary evidence including documents produced by the respondents to the effect that Pattammal was the owner and possessor of the suit properties till her death in the year 1983, ie., for 23 years, the respondents cannot be treated as trespassers and their possession of the same as an illegal one and consequently, whether they are not liable to deliver possession of the same to the appellant and also to pay mesne profits as claimed by her?

7. The arguments advanced by Mr.V.Ragavachari, learned counsel for the appellant and by Mr.T.R.Rajagopalan, learned Senior Counsel appearing on behalf of the respondents are heard in detail. The materials available on record are also perused.

8. The learned counsel for the appellant has submitted that the suit property originally belonged to one Varada Reddiar, who sold them to one Pattu @ Pattammal, under a sale deed, dated 18.6.1960 and she was in possession and enjoyment of the suit property till her death and after her death, the respondents have trespassed into the suit property and therefore, the suit has been filed by the plaintiff seeking declaration and recovery of possession.

9. Further, the learned counsel for the appellant has submitted that considering the evidences, both oral and documentary, the trial court decreed the suit as prayed for, except the relief of mesne profits, but the lower appellate court has committed an error in dismissing the suit and therefore, the judgment and decree of the lower appellate court have to be set aside.

10. The learned counsel for the appellant has relied on the following decisions in support of his contention that to establish that the party claiming benami transaction must prove the same.:-

a. Jaydayal Poddar (deceased) through L.Rs. and another vs. Mst. Bibi Hazra and others (1974 (1) SCC 3). The learned counsel relied on paragraph-6 of the above judgment, which is extracted hereunder:-

6. It is well settled that the burden of proving that a particular sale is benami and the apparent purchaser is not the real owner, always rests on the person asserting it to be so. This burden has to be strictly discharged by adducing legal evidence of a definite character which would either directly prove the fact of Benami or establish circumstances, unerringly and reasonably raising an inference of that fact. The essence of a benami is the intention of the party or parties concerned; and not unoften such intention is shrouded in a thick veil which cannot be, easily pierced through. But such difficulties do not relieve the person asserting the transaction to be benami of any part of the serious onus that rests on him; nor justify the acceptance of mere conjectures or

surmises, as a substitute for proof. The reason is that a deed is a solemn document prepared and executed after considerable deliberation and the , person expressly shown as the purchaser or transferee in the deed, starts with the initial presumption in his favour that the apparent state , of affairs is t he real state of affairs. Though the question, whether a particular sale is Benami or not, is largely one of fact, and for determining this question, no absolute formulae or acid tests, uniformly:applicable in all situations, can be laid down; yet in weighing the probabilities and for gathering the relevant indicia, the courts are usually guided by these circumstances: (1) the source from which 'the purchase money came; (2) the nature and possession of the property, after the purchase; (3) motive, if any, for giving the transaction a benami color; (4) the position of the parties and the relationship, if any between the claimant and the alleged benamidar; (5) the custody of the title-deeds after the sale and (6) the conduct of the parties concerned in dealing with the property after the sale."

b. Valliammal (D) by L.Rs. vs. Subramaniam and others (2004 (7) SCC 233). The above said decision is followed in this case.

c. Gojabi w/o.Bajirao Kolohkhe vs. Gangabaikk Ramachandra Pawar and another (1980 (2) SCC 329).

11. On the other hand, the learned senior counsel for the respondents has submitted that the suit property originally belonged to one Varada Reddiar and the first defendant herein, viz., Rangasamy Gounder had entered into an agreement of sale, dated 12.9.1959 with the said Varada Reddiar for a total consideration of Rs.33,500/- and Rs.8,500/- was paid towards sale consideration and thereafter, a lease deed was also executed on 26.10.1959 and that the first defendant has been in possession and enjoyment of the suit property and therefore, the question of trespass does not arise.

12. The learned senior counsel for the respondents further submitted that the tax and kists are paid by the defendants regularly and that the revenue records stand in the name of the defendants, which also would show that the defendants alone are in possession and enjoyment of the suit property.

13. The learned senior counsel for the respondents contended that the said Pattu @ Pattammal became a widow in the year 1944 and thereafter, she lived as wife of the first defendant until her death and the suit property was purchased by the first defendant in his name as well as in the name of the said Pattammal in the year 1959, i.e., after the said Pattammal became the wife of the first defendant. Had the pattammal purchased the said property even in the year 1944 or before that, then the vendors of the appellant can have a right to claim as her legal heirs, whereas the property was purchased by the first defendant only in the year 1959 and therefore, it cannot be said that the suit property was purchased by the said Pattammal out of her own money.

14. Further, the learned senior counsel vehemently contended that when the said Pattammal died issueless and lastly died as the wife of the first defendant, the properties stood in her name shall devolve firstly, upon the sons and daughters and the husband and therefore, even as per Section 15 of the Hindu Succession Act, the vendors of the appellant are not entitled to the suit property and they cannot seek for any declaration and recovery of possession and considering all these aspects, the lower appellate court dismissed the suit and hence, nothing warrants the interference of this Court.

15. In support of his contention, the learned senior counsel for the respondents has relied on the decision reported in AIR 1983 (SC) 684 (State of Bihar .vs. Radha Krishna Singh and Others), with regard to the principles governing genealogy and the relevant portions are extracted as under:-

"18. After a brief narration of the facts, mentioned above, before going to the oral, documentary and circumstantial evidence, it may be necessary to state the well established principles in the light of which we have to decide the conflicting claims of the parties. It appears that the plaint genealogy is the very fabric and foundation of the edifice on which is built the plaintiff's case. This is the starting point of the case of the plaintiff which has been hotly contested by the appellant. In such cases, as there is a tendency on the part of an interested person or a party in order to grab, establish or prove an alleged claim, to concoct, fabricate or procure false genealogy to suit their ends, the courts in relying on the genealogy put forward must guard themselves against falling into the trap laid by a series of documents or a labyrinth of seemingly old

genealogies to support their rival claims.

19. The principles governing such cases may be summarized thus:

(1) Genealogies admitted or proved to be old and relied on in previous cases are doubtless relevant and in some cases may even be conclusive of the facts proved but there are several considerations which must be kept in mind by the courts before accepting or relying on the genealogies:

(a) Source of the genealogy and its dependability.

(b) Admissibility of the genealogy under the Evidence Act.

(c) A proper use of the said genealogies in decisions or judgments on which reliance is placed.

(d) Age of genealogies.

(e) Litigations where such genealogies have been accepted or rejected.

(2) On the question of admissibility the following tests must be adopted:

(a) The genealogies of the families concerned must fall within the four-corners of s. 32 (5) or s. 13 of the Evidence Act.

(b) They must not be hit by the doctrine of post litem motam.

(c) The genealogies or the claim cannot be proved by recitals, depositions or facts narrated in the judgment which have been held by a long course of decisions to be inadmissible.

(d) Where genealogy is proved by oral evidence, the said evidence must clearly show special means of knowledge disclosing the exact source, time and the circumstances under which the knowledge is acquired, and this must be clearly and conclusively proved,

20. We shall now proceed to scan and analyse the evidence in the light of the principles adumbrated above referring to the important authorities on the questions arising

out o f the evidence, oral and documentary, Although both the parties have cited a very large number of decisions we would not like to load or crowd this judgment with all the authorities cited before us and would confine ourselves only to the important and relevant authorities of this Court and those of the Privy Council and we shall refer to the judgments of the High Court only if there is no decision of the Privy Council or of this Court directly in point."

16. As far as the first substantial law of question is concerned, in the plaint, it is stated that the said Pattammal, w/o. Late Vijayarangan had purchased the suit property from one Varadha Reddiar under a sale deed, dated 18.6.1960. But it is not stated when her husband died and thereafter, where she had lived and with whom. On the contrary, in the written statement filed by the defendants, it is stated that the said Pattammal became a widow in the year 1944 without any issues and she began to live with Rangasamy Gounder, who is the first defendant, as his wife till her death. The fact that the said Pattammal had already married one Vijayarangan, was not denied by the defendants and so also, it was not denied by the plaintiff that after she became a widow in the year 1944, she lived with the first defendant as his wife till her death. This fact has been proved by the defendants by oral evidence and also the documentary evidence, namely, Exs.B1 Photograph of Rangasamy, his grandson and Pattammal, Ex.B2 Ration Card No.167105 of Pattammal, Ex.B3(a) Ration Card No.045564 (photocopy) of Pattammal and Ex.B3 Photocopy of ration card of Pattammal. These are the proofs to show that the said Pattammal had lived with the first defendant as his wife.

17. Further, at the time of her last days, because of her illness, she was admitted in Ashoka Nursing Home, Pondicherry, for treatment and she was treated there and she died in the hospital itself. This fact has been stated in paragraph No.7 of the written statement and Ex.B.14 Cash Bill issued by Ashoka Nursing Home, Pondicherry, has been marked in support of it.

18. With regard to her cremation, in the written statement, it is stated that the permission for cremating the deceased Pattammal was obtained only by the first defendant, which shows clearly the relationship between them as husband and wife and the entire funeral ceremonies were performed only by the first defendant and his sons and not by the plaintiff or the so-called vendors of the plaintiff. Even to prove the same, the defendants have marked Ex.B.15 Photocopy of the cremation permission.

19. The above pleadings and evidence both oral and documentary clearly prove that the said Pattammal after becoming a widow lived as the wife of the first defendant till her death. This fact was not rebutted by the plaintiff by way of oral and documentary evidences.

20. During her life time, the first defendant had purchased the suit property in his name and also in her name out of love and affection. It is not the case of the plaintiff that the said Pattammal had purchased the property even before she became a widow. Even as per the plaintiff's case, the suit property was purchased only in the year 1960. Since the property was purchased in the year 1960, it should have been purchased by the first defendant in the name of the said Pattammal. Since the property was purchased in the name of the deceased Pattammal out of love and affection, it cannot be treated as Benami transaction and it is also not the case of the defendants and therefore, the first defendant and his sons have been in possession and enjoyment of the suit property in the capacity of owner along with the deceased Pattammal.

21. Now the question does arise that after the death of the deceased Pattammal, the properties stand in her name will devolve on whom ?

22. To find an answer to this question, it is pertinent to take the assistance of the provisions of the Hindu Succession Act, 1956 (30 of 1956).

23. Section 15 of the Hindu Succession Act deals with 'General Rules of Succession in the case of female Hindus, which reads as under:-

"15. General rules of succession in the case of female Hindus - (1) The property of a female Hindu dying intestate shall devolve according to the rules set out in section 16 - ,

(a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;

(b) secondly, upon the heirs of the husband;

(c) thirdly, upon the mother and father;

(d) fourthly, upon the heirs of the father; and

(e) lastly, upon the heirs of the mother.

(2) Notwithstanding anything contained in sub-section (1) -

(a) any property inherited by a female Hindu from her father or mother shall devolve,

in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter), not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the father; and

(b) any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the husband."

24. As per sub-clause 'a' of sub-section (1) of Section 15, after the death of the deceased Pattmmal, who died intestate, her properties shall devolve, firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband. It is an admitted fact that she died issueless and therefore, her properties automatically devolve on her husband and now since her husband also died, it devolves upon the heirs of her husband as per sub-clause (b) of sub-section (1) of Section 15. Therefore, the respondents/defendants are entitled to the properties left by the deceased Pattammal.

25. In view of the above, the first substantial question of law is answered in favour of the respondents/defendants.

26. As far as the second question of law is concerned, since it has been discussed elaborately in the first question that the respondents have been in possession and enjoyment of the suit properties as it was purchased by the first defendant in the name of the deceased Pattammal out of love and affection, the defendants cannot be treated as trespassers and their possession cannot be said to be illegal in view of the answer to the first question that they are entitled to the suit properties and their title cannot be questioned by anybody and that they need not be paid any mesne profits to anybody.

27. In view of the above, the second substantial question of law is also answered in favour of the respondents/defendants.

28. For the forgoing reasons, the second appeals fail and the same are dismissed without costs. The common judgment and decrees of the first appellate court are confirmed.

Sd/-
Deputy Registrar (Judicial)

/true copy/

Sub Asst. Registrar

mra

To

1. The II Additional District Judge
Pondicherry.
2. The Principal Subordinate Judge
Pondicherry.
3. The Section Officer,
V.R. Section,
High Court,
Madras.

2 ccs to Mr.V.Ragavachari, Advocate, sr. 3181, 3182

2 ccs to Mr.T.R.Rajaraman, Sr. 4352, 4353

S.A.Nos.626 and 627 of 1996

TEJ (CO)
kk 4/3

सत्यमेव जयते

WEB COPY