

(1924) 10 MAD CK 0117
In the Madras High Court

Anappindi Somayya

APPELLANT

Vs

Ayyalasomayajula Venkayya and Others

RESPONDENT

Date of Decision : 22-10-1924

Acts Referred:

Citation : AIR 1925 Mad 673 : (1925) 22 LW 81 : (1925) 48 MLJ 224

Hon'ble Judges : Venkatasubba Rao, J

Bench : Division Bench

Judgement

Venkatasubba Rao, J.—The plaintiff instituted the suit as the reversioner to the estate of one Eswarappa who died in the year 1869 or 1870. After his death, his property was taken possession of by his widow Rajamma, and she died in the year 1917. In 1871 she sold some items of property in favour of the first defendant's father for Rs. 250. The sale is now questioned by the plaintiff on the ground that there was no necessity justifying the alienation. The vendor as well as the vendee have died and the question had to be tried after the lapse of about half a century from the date of the sale. As might be expected, there is no direct evidence as regards the existence of the necessity for the alienation. The deed of sale contains a recital that the sum of Rs. 250 was required for the purpose of discharging the debts incurred by the deceased husband of Rajamma. The burden was upon the alienee to show that the sale was made for a necessary purpose and the District Judge agreeing with the Subordinate Judge held that in the circumstances of the case the onus was discharged.

2. The Judicial Committee have clearly laid down in *Banga Chandra Dhur Biswas v. Jagat Kishore Acharjya Chowdhuri* ILR (1916) C 186 : 31 MLJ 563 and in *Venkata Reddi v. Rani Saheba of Wadhwan* ILR (1919) M 541 : 38 MLJ 393 that in respect of ancient alienations the amount of evidence that should reasonably be demanded is not the same as in the case of recent transactions. Full and detailed evidence which may otherwise be forthcoming will not, owing to the lapse of time, be available and, in such circumstances, presumptions are permissible to fill in the details which have become obliterated by time.

3. For the transaction to be upheld the alienee may establish that the alienation was made in circumstances of necessity. But he is not required to go so far. It is sufficient for him to prove that a representation was made that such necessity existed and that he acted honestly and made proper enquiry to satisfy himself of its truth. I shall deal first with the case where he seeks to make out that necessity actually existed. In respect of ancient transactions, what is the kind of proof that is required? Ordinarily, recitals in deeds are evidence only as between the parties to the conveyance. But their Lordships point out that in case of transactions evidenced by ancient deeds, the recitals cannot be disregarded although no inflexible rule can be laid down as to the weight they are entitled to receive. But recitals consistent with the probability and circumstances of the case assume importance and may be acted on. In other words, ordinarily the recital regarding necessity in a document is not direct evidence of the existence of the necessity. If hearsay evidence or second-hand proof is altogether rejected the recital cannot be relied on at all. Hearsay is excluded because it is not given on oath or cannot be tested by cross-examination and also for the reason that every witness must give his testimony under such circumstances as would subject him to the penalties of falsehood. Although a recital in a deed is not direct but only second-hand evidence, still their Lordships of the Judicial Committee say that it should not be disregarded. This is an exception to the general rule that direct evidence must be given of a fact. Recital in a document, not of a recent date, regarding the existence of necessity is some evidence of its existence and if the recital is consistent with the probability and circumstances of the case the Courts will generally act upon it. That is to say, full and detailed evidence which is ordinarily required is in such cases dispensed with and presumptions are made to till in gaps.

4. Let me secondly take the case where the alienee seeks to prove that a representation was made to him, that he made proper enquiry, that he became satisfied of its truth and acted upon it. The recital in the deed is evidence of the fact that a representation was made to him. He acted upon that representation. This admits of no doubt. Then, regarding the enquiry, can full and detailed evidence be expected? In this respect again, Courts do not insist upon strict proof and if the circumstances are such as to justify an inference that an enquiry was made, the Courts will hold without rigid proof that an enquiry was actually made.

5. This is the general rule and the omission of full details may be made good by presumptions at whatever point the proof is wanting. It is difficult to lay down any hard and fast rule. A sound exercise of judicial discretion is the only safe guide.

6. Their Lordships of the Judicial Committee, having special regard to the facts with which they were dealing, illustrated the application of the rule regarding relaxation of proof in respect of ancient alienations in the following passage which occurs in their judgment in *Banga Chandra Dhur Biswas v. Jagat Kishore*

Acharjya Chowdhuri ILR (1916) C 186 : 31 MLJ 563 :- The recital is clear evidence of the representation, and, if the circumstances are such as to justify a reasonable belief that an enquiry would have confirmed its truth, then, when proof of actual enquiry has become impossible, the recital, coupled with such circumstances, would be sufficient evidence to support the deed." These observations were made only by way of illustration. I make this remark because I have found a tendency to unduly restrict the application of the beneficent rule laid down in the judgment of the Judicial Committee. It is forgotten that these observations, very useful as they are, were made with reference to the facts of the particular case then under consideration and that there are other observations in the judgment which are at least equally important. I have been tempted to dwell on this matter at some length on account of the long argument, which Mr. Lakshman, the learned vakil for the appellant, addressed to me on the subject. It is, however, sufficient to say that judged even by the test which is laid down in the passage extracted above, the alienee in the present case is fully protected and it has been established that the sale is valid.

7. The learned District Judge has, in a very full and exhaustive judgment, found that the circumstances of the case are such as to justify a reasonable belief that if an enquiry had been made it would have confirmed the truth of the representation contained in the recital. To mention only a few facts, the portion of the property sold was very small. The consideration was inconsiderable being only Rs. 250. The lands were dry lands and yielded very little income, if they yielded any at all. The properties that fell at the partition to the plaintiff's branch of the family were sold away at some time, presumably to pay off the family debts. If the plaintiff wanted to make out that those properties were sold at a different time or for a different purpose, these being matters exclusively within his knowledge, he should have given direct proof. In the absence of it, the inference must be against him. There then is the further fact that the plaintiff's father acquiesced in the alienation and did not seek to set it aside. The learned Judge's inference from these and other facts is, in my opinion, perfectly correct and the Second Appeal fails and is dismissed with costs.