

(1924) 10 MAD CK 0106
In the Madras High Court

Avugaddi Jogamma and Others

APPELLANT

Vs

Lalian Pothanna

RESPONDENT

Date of Decision : 24-10-1924

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 24
Contract Act, 1872 — Section 2(b)

Citation : 88 Ind. Cas. 903

Hon'ble Judges : Venkatasubba Rao, J

Bench : Single Bench

Judgement

Venkatasubba Rao, J.—The plaintiff sties for the recovery of certain lands from the possession of the defendants. The 1st defendant is the

sister of the plaintiff. She gave her-daughter in marriage to him. The plaintiffs" daughter was married to the 3rd defendant, a son of the 1st

defendant. The parties are thus very near relations. The immediate occasion for the suit was the death of the plaintiff's daughter, that is the 3rd

defendant's wife. The plaintiff lost his mother when he was just an infant. The 1st defendant who was his senior in age by over 20 years came over

to her father's house and began to look after and bring up her brother, the plaintiff. Shortly after, the plaintiff lost his father; and throughout the 1st

defendant brought him up, and it would seem that he was practically regarded as her child after the plaintiff grew up, he became the Village Munsif

and was unable to manage his own land. The sons of the 1st defendant cultivated the plaintiff's lands and generally had supervision over them. This

state of things continued till the plaintiff who was then 40 years of age executed on the 18th April 1910 in favour of the 1st defendant what is

termed a "puroni" or an agreement (Ex. 1). By this the plaintiff gave away to the

1st defendant the suit lands and since the date of the document

she has been in continuous and undisturbed possession. Misunderstandings having arisen, as pointed out, owing to the death of the 3rd defendant's

wife, the plaintiff has sued to recover the lands. The question to be decided is can the defendant rely upon Ex. I and resist the plaintiff's suit?

2. Exhibit I is unregistered. Before dealing with the law on the subject, it is necessary to notice another circumstance. Till 1910 all the parties

appear to have lived together. Shortly before the execution of Ex. 1, the 1st defendant and her sons laid a claim to a portion of the property in the

possession of the plaintiff on the ground that they had contributed by their labour to the acquisition and expansion of the property. In consideration

of the defendants waiving their rights to the rest of the property, the plaintiff gave away the lands in dispute to the 1st defendant and executed Ex. I.

The facts as 1 have stated are found by the District Munsif, but on this part of the case the Subordinate Judge has given no finding. u/s 103 and

Order XLI Rule 24 of the C.P.C., I have considered the evidence of the record and satisfied myself that the District Munsif has come to the

correct conclusion on the facts. What then is the position of affairs? The 1st defendant and her sons advanced some claims to the property in the

possession of the plaintiff. The plaintiff agreed, in consideration of the defendants, giving up these claims, to transfer to the first defendant the lands

now in dispute. There was thus a contract supported by consideration. So far as the other antecedent facts are concerned, namely, the looking

after of the plaintiff by the 1st defendant, the cultivation of the plaintiff's lands by her sons these and other similar facts to which 1 have referred,

would not in law amount to consideration, as u/s 2(b) of the Indian Contract Act it would be essential that any act done by the promisee should

have been so done at the desire of the promisor. There is no proof that acts done by the 1st defendant or her children were done at the desire of

the plaintiff, and accordingly so far as these facts are concerned, they would not constitute a valid consideration for the contract. It is not,

necessary to further dwell on this matter as I have pointed out there was a contract supported by consideration.

3. Acting on Ex. I the 1st defendant took possession of the property and from 1910 to 1919 when the suit was filed, she was in possession of the

property and she still continues to remain in possession. What then would be the effect of the absence of a registered conveyance in favour of the

1st defendant? Muhammad Musa v. Aqhore Kumar Ganguli 28 Ind. Cas. 930 : 17 Bom. L.R. 420: 28 M.L.J. 548 : 17 M.L.T. 143 : (1915)

M.W.N. 621 is a direct authority on the point. Their Lordships of the Judicial Committee held that whatever defects of form there might have been

in relation to the compromise agreement in question in that suit, were cured by the conduct of the parties in continually acting upon it. At page 6

Page of 42 I.A.--[Ed.] their Lordships observed thus: ""For the points against opening up the transaction are manifold, and are in their Lordships"

opinion conclusive. The compromise had been acted upon by all the parties to it, and by their successors-in-title from that date to this. The suit was

dropped, the division of shares of the property was made, and it may be said generally that from its date until the date of Khodajanessa's death in

the year 1830, and, indeed, from that date until the present time the property has been managed upon the footing of that division."" They observed

again ""In a suit, said Lord Selborne in Maddison v. Alderson (1883) 8 App. Cas. 467 : 52 L.J.Q.B. 737 : 31 W.R. 820 founded on such part

performance the defendant is really "charged" upon the equities resulting, from the acts done in execution of the contract, and not upon the contract

itself. If such equities were excluded, in justice of a kind which the Statute cannot be thought to have had in contemplation would follow."" This

Court gave effect to this principle in Vizagapatam Sugar Development Co. v. Muthurama Reddi 76 Ind. Cas. 886 : 45 M.L.J. 528 : AIR (1924)

(M.) 271 : 33 M.L.T. 53 : (1924) M.W.N. 14, the learned Judges referring to the fact of the purchaser under the contract of sale being in

possession of the property, as part performance of the contract which would take it out of the operation of the Statute.

4. The point is concluded by authority and as a matter of fact the lower Courts especially the District Munsif would have dismissed the suit but for

the circumstance that the then prevailing view so far as this Court was concerned was different.

5. In the result, the judgment of the learned Subordinate Judge is reversed and the second appeal is allowed and the suit is dismissed with costs

throughout.