

(1929) 08 MAD CK 0038
In the Madras High Court

(Bethu) Venkataratnam and Another	APPELLANT
Vs	
(Satnam) Venkataswami and Others	RESPONDENT

Date of Decision : 16-08-1929

Acts Referred:

Citation : AIR 1929 Mad 807

Hon'ble Judges : Ananthakrishna Aiyar, J

Bench : Division Bench

Judgement

Ananthakrishna Aiyar, J.—Suit to eject the defendants and to recover Rs. 600 being the value of 100 bags of paddy for past rent and for

future mesne profits, on the basis of a Kadapa executed by the defendants in favour of Veerasami, the power-of-attorney-holder of plaintiffs"

father. The defence was that the kadapa Ex. B represented only a nominal transaction. The second issue raised in the case was whether the suit

lease was nominal, and the third issue-whether such a defence was open to the defendants. Now it is necessary to state the case of the parties with

some more details. The case of the plaintiffs was that their father purchased the suit lands from the defendants under Ex. A on 26th September

1919, for Rs. 2,000 that he was in possession of the properties, and that he delivered possession to the defendants when Ex. B was executed by

them on 20th June 1922. The case of the defendants was that Ex. A the sale-deed, was a nominal transaction, that the lands mentioned in Ex. A

were worth about Rs. 25,000 that the defendants had urgent necessity for Rs. 2,000 and so executed Ex. A, the understanding being that the

plaintiffs" father should lend Rs. 2,000 to pay off urgent debts of the defendants, and that as soon as Rs. 2,000 together with 12 per cent interest

thereon was paid, the plaintiffs' father was to re-convey the lands to the defendants, that the suit land was always in the possession of the

defendants, that the amount had been paid to the plaintiffs' father,; and that Ex. B, was executed nominally to protect the properties from the

Zamindar of Uyyur to whom the defendants: owed money.

2. The trial Court framed issue (1) with reference to the agreement relied on by the defendants. After discussing the oral evidence of witnesses and

after considering the documentary evidence and the circumstances the trial Court came to the conclusion that Ex. A, was a nominal transaction.

With reference to Ex. 1 the kararnama executed by the plaintiff's father in favour of the defendants on the same date as Ex. A, the trial Court held

that it was admissible in evidence. It found issues 1 to 3 for the defendants, and in the result it dismissed the suit.

3. On plaintiffs' appeal, the lower appellate Court having regard to the circumstance that the defendants admitted that Rs. 2,000 had been paid by

the plain-tiffs' father to clear off the defendants' debts, was of opinion that Ex. A could not be said to be a nominal transaction. With reference to

Ex. A, the learned Subordinate Judge observed as follows:

The recital in Ex. A, shows that the plaint lands have been put in the possession of the plaintiff's father. Ex. (1) also shows the same. Ex. B, shows

that the lands have been in the possession of the plaintiff's father since the date of Ex. A. It is thus clear that the plaintiffs' father was in possession

of the lands from the date of Ex. A, to the date of Ex. B. Hence plaintiffs' father had enough interest in the plaint lands to grant a lease to the

defendants under Ex. B. The argument of the defendants that Ex. B. is a nominal transaction is meaningless.... The lessee must surrender the lands

to the lesser before he denies the title of the lessor... The defendants have executed a counter part of the lease to the plaintiffs' father. They cannot

set up that plaintiffs' father is not their lessor. Once the relationship of landlord and tenant is established a tenant must surrender possession before

ha can set up title that he is the real owner. Besides, court-fee is paid upon one years' rent only. Hence the Court cannot go into the title. It is

unnecessary to decide whether Ex. A, is a mortgage by conditional sale or an out and out sale and that the Rs. 2,000 due to plaintiffs' father was

paid. This is a matter to be considered in a property framed suit.

4. The decree of the first Court was reversed and decree was given in plaintiffs' favour as sued for.

5. The defendants have preferred this second appeal. The main complaint in the appeal is that the lower appellate Court has not decided the case

on the evidence adduced by the parties since it proceeded only on the recitals in Exs. A, (1) and B. It was urged by the learned Advocate for the

appellants that any document could be shown by relevant evidence to represent only a nominal transaction and that the same rule holds good in

cases of documents of lease also. The defence that a document of lease evidences only a nominal transaction is open to the defendants, so that

there should be no difficulty in answering the third issue framed in the case. With reference to Ex. A, the appellants' contention, if I understood the

learned advocate for the appellants rightly, was that Ex. A, does not evidence a genuine sale, that Ex. (1) is admissible, and that plaintiffs' father's

right was only to recover Rs. 2,000 and interest from the defendants. As regards Ex. (1) the learned Advocate contended that it was admissible in

evidence as held by both the lower Courts. If the plaintiffs' father had no title to the properties and it his only right was to recover Rs. 2,000 and

interest, then the moment the said amounts were paid to him, he would have no further rights with reference to the suit properties. In considering

whether Ex. B, was nominal or not, it was urged, that the lower appellate Court erred in confining its attention only to the recitals in Ex. A (1) and

B, when the complaint of the defendants was that the recitals were not true, and that the questions in dispute between the parties ought to have

been decided on a confederation of the whole evidence and circumstances in the case.

6. The contentions of the learned Advocate General who appeared for the plaintiffs-respondents were that Ex. A, could not be said to be a sham

transaction when plaintiffs' father advanced Rs. 2,000 the consideration mentioned in Ex. A, to pay off the defendants' creditors, and that it was

not open to the defendants to contend that Ex. A, was a nominal transaction when it was admitted that Rs. 2,000 was paid by plaintiffs' father. If

Ex. A, is not nominal, then Ex. B could not be said to be nominal either and therefore the lower appellate Court was right in its view. Further he

contended that Ex. (1) was not admissible in evidence as it was not registered.

7. The plea of the defendants that Ex. A was a nominal transaction when it is admitted that Rs. 2,000 was paid by the plaintiffs' father surely

requires explanation. In considering the arrangement pleaded by them, the provisions of Section 92, Evidence Act should not be lost sight of. The

decisions of the Privy Council reported in *Balkishen Das v. W.F. Legge* [1900] 22 All. 149, *Narasingerji v. Parthasarathi Rayanim Garu* AIR 1924

P.C. 226, *Maung Kyin v. Mashwe La* AIR 1917 P.C. 207 and *Baijnath Singh v. Hajee Vally Mahomed* AIR 1925 P.C. 75 should be kept in

view when considering the nature of evidence that could be adduced in such cases. Oral evidence of intention of parties is inadmissible. But

evidence regarding the attendant circumstances is admissible.

8. In the Judgment of the Privy Council reported in *Narasingerji v. Parthasarathi* AIR 1924 P.C. 226 (of 47 Mad.) their Lordships observe:

thus informed of the circumstances surrounding the execution of X and U, their Lordships are now in a position to examine those documents so as

to ascertain from their provisions and necessary implications the real nature of the transaction to which they give effect.

9. Later on at p. 744 (of 47 Mad.) it is stated:

when all these provisions of the documents are viewed in the light of the surrounding circumstances the inference is, in their Lordships' view,

irresistable, that etc.

10. Similarly in the case reported in *Baijnath Singh v. Hajee Vally Mahomed* AIR 1925 P.C. 75 (of 3 Bang.) the Privy Council remarked:

section 92, Evidence Act merely prescribes a rule of evidence; it does not fetter the Court's power to arrive at the true meaning and effect of a

transaction in the light of all the surrounding circumstances. To these circumstances their Lordships will briefly advert.

11. In this connexion Proviso 6, Section 92, Evidence Act should be kept in mind:

any fact may be proved which shows in what manner the language of a document is related to existing facts.

12. Further the provisions of Section 81, Trusts Act, have also to be remembered,

When the owner of property transfers it and it cannot be inferred consistently with the attendant circumstances that he intended to dispose off the

beneficial interest therein, the transferee must hold such property for the benefit of the owner.

13. The lower appellate Court was in my opinion in error in confining its attention to the mere recitals in Exs. A (1) and B. It ought to have

considered the relevant evidence adduced in the case and then come to his conclusion.

14. It was argued that Ex, (1) was not admissible in evidence as it was not registered. The question whether a document is compulsorily registrable

to be admissible in evidence should be decided by a persual of the contents of the document. Ex (1) is a kararnama executed by the plaintiff" father

to the defendants. It states:

the sale amount of Rs. 2,000 relating to the sale-deed executed by you in my favour with interest at one per cent per month shall ha liquidated from

the income derived from the said lands and by selling a portion of the said lands. I shall sell the remaining lands to any person to whom you might

ask me to sell and deliver possession. If you act contrary to any of these terms, this document is of no effect.

15. The undertaking that the plaintiffs" father will sell the remaining lands to any person to whom the defendants might ask him to sell and deliver

session does not create any interest in land, land therefore does not therefore bring it under the compulsorily registration provisions of the

Registration Act. I am not able to find anything in Ex. (1) which creates any interest in land so as to require Ex. (1) to be registered. In this view

Ex. (1) is not inadmissible fox-want of registration. It was argued by the learned Advocate General that the decision of the Full Bench of the

Madras High Court reported in Rao Sahib Pydah Venkatachalapathi Garu and Others Vs. Muthu Venkatachalapathi (died) and Another, , is

against the contention that Ex. (1) is admissible in evidence. On the other side, the decision of Phillips, J., in Nomula Ramayya Vs. Nadipineni

Appayya and Another, , was cited to me, where the Full Bench case referred to above is distinguished. In Ramayya v. Appayya, it was held:

that a letter written by the vendee under a registered sale-deed immediately - thereafter in which ho stated that ho was entitled only to money and

not to the lands was, though unregistered, admissible in evidence to show that the sale-deed was only a nominal transaction.

16. For the purpose of disposing off this second appeal, I think it is only necessary to point out that the contents of Ex. (1) are different from the

unregistered documents mentioned in the Full Bench case and the Ramayya v. Appayya (6) and as I already remarked, there is nothing in Ex. (1)

which creates or limits or extinguishes any interest in immovable property; and on this short ground I hold that Ex. 1 is admissible in evidence,

though not registered. The question whether Ex. B is nominal or not will largely depend also upon the finding arrived at on the first issue.

17. Then it was argued by the learned Advocate General that in the face of the defendants' plea that Ex. A was executed to defeat or delay one of

their creditors viz., the Zamindar of Vuyyur, they (the defendants) could not be heard to say that Ex. A was not a genuine transaction. In support of

this contention the learned Advocate General quoted the decision of the late learned Chief Justice reported in Subharaya Chetty v. Subbaraya

Chetty AIR 1926 Mad. 1196. It was there decided that:

if a party enters into a transaction the object of which is to defraud creditors, he is debarred from relying upon the transaction, and setting up his

fraud, whether the fraud in fact did prove infructuous or not.

18. But having regard to the decision of the Privy Council in the case reported in Pethaperumal Chetty v. Muniandy Servai [1908] 85 Cal. 551, I

regret I am unable to follow that decision. The Privy Council decided that if the purpose of the fraud had not been effected, there was nothing to

prevent the plaintiff from repudiating the transaction as being benami. The following observations of Lord Atkinson at pp. 558 and 559 of the

report are pertinent:

to enable a fraudulent confederate to retain property transferred to him, in order to effect a fraud, the contemplated fraud must, according to the

authorities, be effected. Then and then alone, does fraudulent grantor, or giver, lose the right to claim the aid of the law to recover the

property he has parted with.

19. The Privy Council decision in Pethaperumal Chetty v. Muniandy Servai, was not evidently brought to the notice of the Court in Subbaraya

Chetty v. Subbaraya Chetty. Unless the intended fraud on the Vuyyur Zamindar was carried out, it is open to the defendants to raise the plea set

forth above.

20. As I am of opinion that the way in which the lower appellate Court has disposed of this case is not satisfactory, and as it has not referred to the

material relevant evidence adduced in the case, I reverse the decree of the lower appellate Court and remand the appeal for fresh disposal in

accordance with law. The lower appellate Court should consider what evidence on record is admissible to support the case of the defendants

having regard to the provisions of Section 92, Evidence Act, and Section 81, Trusts Act, and also having regard to the pronouncements made by

the Privy Council in the cases mentioned by me. I have refrained from saying more at this stage, lest it might cause embarrassment at the fresh

hearing of the appeal by the lower appellate Court in appreciating the evidence. Costs of the second appeal to abide the result. Court-fee paid on

the second appeal memorandum will be refunded to the appellants.