(1929) 01 MAD CK 0020

In the Madras High Court

(Chodavarapu) Subha Rao and Others — APPELLANT

Vs

Veeranjaneyaswami — RESPONDENT

Date of Decision : 29-01-1929

Acts Referred:

Citation : AIR 1930 Mad 298

Hon'ble Judges : Ramesam, J

Bench : Division Bench

Judgement

Ramesam, J.—These appeals arise out of the same original suit, O.S. No. 61 of 23, on the file of the Principal Subordinate Judge''s Court of

Masulipatam. The plaintiff sues as the trustee of Sri Veeranjaneyaswamuluvaru temple at Gudivada. Defendant 1 is in possession of item 1,

defendant 2 is in possession of item 2 and defendants 3 and 4 are in possession of items 3 and 4, these being the four items which are the subject

matter of the suit. The plaintiff''s adoptive father Kameswara Pakayya and his father one Brahmaraju, endowed certain lands belonging to them in

Gudivada for the purposes of the temple. They built the temple in 1886 and conducted it for three years. In 1889 they executed a gift deed Ex. A,

by which they endowed the suit land for the purposes of the temple, making themselves dharmakarthas. The document shows that some portions

were intended to be built upon. A thatched house was built upon item 1 in 1893. Afterwards, some time in 1905 it was replaced by a tiled house:

vide D.W. 1. The evidence shows that from the beginning there was an intention on the part of Brahmaraju and Kameswara Rao to give item 1 to

defendant 1 who is the brother''s daughter of Kameswara Rao. A house was built upon item 2 in 1892. The evidence shows that it was intended originally for a sister of Brahmaraju, defendant 2 being her grandson. Item 3 was given to defendants 3 and 4 by means of a rent letter Ex. V (c),

which purports to grant a perpetual lease of that item reserving an annual rent of Rs. 2. This was in March 1913. Item 4 is a vacant site placed in

the possession of defendants 3 and 4 by a letter Exs. V (b), dated March 1910. It appears that there was a scheme suit in respect of the temple,

and after that suit was disposed of the present plaintiff filed this suit to recover the various items from the respective defendants in possession. The

lower Court granted a decree against the defendants and each of the defendants has filed a separate appeal. Appeal 33 is by defendant 2, Appeal

34, is by defendant 3, Appeal 35 is by defendant 4 and Appeal 36 is by defendant 1.

2. Each of the items will now be taken up for consideration. In the case of item 1, as I have already stated, a tiled house was built up6n it in 1905.

In 1913 Kameswara Rao applied to the chairman of the union to transfer the house to the name of defendant 1. In that document he says:

It had been assigned by my father himself to my sister''s son Boddapati Ponniah (husband of the said Ambamma)... The said house and site stand

nominally in my name in the accounts and the tax is being paid through me and the entry in the accounts stands in my name but neither I nor my

heirs, have any right in respect to it. It belongs to the said Boddapathi Ambamma herself.

3. The chairman ordered the change of name by an endorsement Ex. 1 (b), on 26th January 1914. There was no registered instrument transferring

the right to the house to defendant 1 nor is it possible to regard such possession as defendant 1 and her husband had up to 1913 as adverse to

Brahmararaju or his son Kameswara Rao. Under Article 134, Lim Act, assuming for the present that the article applies to the case of a temple,

there must be a transfer and time runs only from the date of transfer. This means that there must at least be a valid transfer between the transferred

and the transferee though it might not be operative as against a trust or any other person. Here we have nothing of the kind. The present suit which

was filed in 1923 is within 12 years from Ex. 1 (b). It cannot be said that the transfer was made for any necessity binding upon the trust. The result

is this appeal must fail so far as item 1 is concerned.

4. Taking up item 2, we find from the account books Exs. 3 and 3 (a) that some money was spent on the construction of a house by defendant 2''s

father who was then employed elsewhere and used to remit money to Brahmararaju and Kameswara Rao. The genuineness of these accounts is

attacked by the respondents but we think it is unnecessary to say anything on this question. Assuming they are genuine and assuming that some

money was spent by defendant 2''s father and by defendant 2''s grandmother: vide Ex. 4 series, on the construction and upkeep of the house we

find that some time prior to 1906 the house was attached by certain creditors of defendant 2 and then a claim petition was filed by Kameswara

Rao claiming that the site belongs to him and the house was constructed by him and that defendant 2''s father had nothing to do with the house.

This claim petition was allowed. Obviously, the claim petition was instigated by defendant 2 himself. The creditors having been successfully

defeated, it does not lie in the mouth of defendant 2 to say now that ho possessed any kind of interest in the house after the order on the claim

petition. He cannot claim either the ownership in the whole house and site or the equitable interest to the extent of the sums spent in building the

house. In 1906 Ex. C was executed by Kameswara Rao in favour of defendant 2 in which those facts are set forth, and the house was purported

to be transferred by the document. This document is registered and therefore there is no question of there being a valid transfer as between the

transferrer and the transferee. The document reserves a rent of 8 annas a year payable to Sri Veeranjaneyaswamuluvaru and the transferee is to

pay the Government revenue himself which comes to about 7 annas proportionately to the area of the site.

5. Now, by 1906 the town of Gudivada had altered. In 1886 it was a mere village. Some time about 1892 the District Munsiff''s Court was

opened and other public offices also have been existing there. A number of houses were built. As I have already said there was already a tiled

house on item 2. It cannot be said that the only rent of 8 annas reserved in favour of the idol of the temple is a valuable consideration within the

meaning of Art? 134. In Vidya Varutki v. Baluswami Ayyar A I.R. 1922 P.C. 123 it was observed by the Judicial Committee in respect of lands

which were the subject matter of that case that an annual rent of Rs. 24 could not be regarded as a valuable consideration. In that case the land was six kulis in extent and the rent reserved was Rs. 24 at the rate of Rs. 4 a kuli. The permanent lessee afterwards sub-leased them for Rs. 1,250

In the present case on the footing that by the date of Ex. C the whole of the items belonged to the temple, it cannot be said that a rent of 8 annas a

year is other than a mere cloak to cover, what was really intended to be a gift to defendant 2. Therefore, the terms of Article 134-of the Act are

not satisfied. The respondent argued that Article 134 does not apply to a temple at all relying on the decision in Vidya Varuthi v. Baluswami Ayyar

A I.R. 1922 P.C. 123. That question has been very elaborately argued before us but we do not think it necessary to decide in this appeal whether

Article 134 applies generally to temples. The plaintiff''s case is that there is a specific trust under Ex. A. It is argued that Article 134 would apply.

Though Article 134 may apply to a specific trust for a temple, the other conditions are not satisfied here. Mr. Ganapathi Iyer appearing for the

appellant argued at the end of the case that if Article 134 does not apply Article 144 may apply. But we think if the conditions were satisfied,

Article 134 is the proper article because we find there is a specific trust and if the conditions are not satisfied there is no limitation at all. On this

ground the appeal in respect of item 2 fails.

6. The next item is item 3. A house was built upon this item and an account book was produced as Ex. 8 in respect of this item by defendant 3''s

husband. The evidence including even the plaintiff''s evidence shows that defendant 3 was not a poor woman and however much Kameswara Rao

wanted to help his daughters it does not follow that we must assume that defendant 3 was unable to incur the expense of building a house. We

have no reason to suspect the genuineness of Ex. 8. It is true that defendant 4 does not appear to be a well-to-do lady; but defendants 3 and 4

were acting together, their interests were never separated except in filing the appeals and even if one of them is not well-to-do we must find that

defendants 3 and 4 were together able to incur the expenses of building a house on item 3. Ex. 8 shows that a sum of Rs. 1,470-15 0 was spent in

building the house. There is no question of the title of defendants 3 ana 4 in respect of this item being completed by prescription. The only question

is whether we should not allow the value of the building in favour of the appellants before the plaintiff can get a decree. The respondent relied on three decisions of this Court Perumal Gramani v. Mohamad Kasim Sahib 1905] 28 I.C. 840, Govindswami v. Ellinajammal [l916] 1 M.W.N. 180

and Venkatappier v. Ramaswami Iyer [1919] M.W.N. 548, in which it has been held that the word ""absolutely"" in Section 51, Transfer of

Property Act shows that the person entitled to the equity under that section must show that he believes he has absolute and not limited interest in

the property. In the of course of the argument it was pointed out by my learned brother (Jackson, J.) that this section was based upon Act 11 of

1855 which applied only to cases governed by English Law. In that Act the words used are:

If any person shall erect any building or make an improvement upon any lands held by him bona fide in the belief that he had an estate in fee simple

or other absolute estate.

7. This shows that the main principle of this section is that a person must show that he believed that he was entitled to the land in such a way that he

is not to be disturbed, whether it is a sale or perpetual lease he claims under. There are a number of English cases referred to before us in which

tenants were held entitled to such improvements. I will only refer to one decision in Attorney General v. Davey [1854] 19 Beav. 52, though this

decision was reversed by the House of Lords on another point. Another is Attorney General v. Prattyaman [1854] 19 Beav 538, in which it was

held that the lessee was entitled to the improvements though the lease was not actually completed. The case of a lease is therefore an a fortiori

case. In Mahalatchmi Ammal v. Palani Chetti 6 M.H.C.R. 245, and Kunhammad v. Narayanan Mussad [1889] 12 Mad. 320, it was held that a

tenant was entitled to improvements. A similar view was taken in Dattatraya Rayaji v. Shridhar Narayan [1892] 17 Born. 736, and Dattaji v.

Kalka [1997] 21 Bom. 749, and two decisions of this Court, namely, Gopalakrishna Ayyar v. Suhirtha Theenathara [1914] 24 I.C. 790, and

Thavasi Ammal alias Mahalakshmi Ammal and Others Vs. Salai Ammal, , also take the same view. We prefer these cases to the other cases relied

on by the respondent and, hold that before the plaintiff can eject defendant 3 he should pay to defendants 3 and 4 the present cost of the

improvements effected on the site by way of the construction of the house. We direct the lower Court to estimate the cost of building the house now existing on the item. The plaintiff must pay the value of the improvements before taking possession of the house.

8. We now come to item 4. This item was placed in the possession of the appellants in March 1910; but there was no deed of transfer beyond Ex.

5 (b) which is a mere letter and was not registered. Even Article 144 cannot help the appellants so, far as this item is concerned because the whole

oral evidence does not show that anything was done upon this item so that there is not even adverse possession so far as this item is concerned.

The appeal therefore fails in respect of item 4 also.

9. One argument is addressed by Mr. Ganapathi Ayyar, namely, that in the case of items 1, 3 and though there is no registered instrument, as

possession was given the doctrine of part performance as has been laid down in the Full Bench case in Vizagapatam Sugar Development Co. v.

Muthurama Reddy AIR 1924 Mad. 271 might be applied. But that doctrine is only used to complete an intended transfer between the transferrer

and the transferee, where there is no other objection to complete the transaction. It has rover been used to complete a transaction against a third

person such as the idol of a temple or a cestui que trust or a minor against whom it could not be regarded as operative.

10. The result is Appeals Nos. 33 and 36 are dismissed with costs. In the lower Court, they will be liable only for the plaintiff''s costs referable to

the items separately. In Appeals Nos. 34 and 35 we call for a finding from the lower Court as to the present cost of the improvements in the house

on the site. Two months and ten days.

