
(1890) 12 MAD CK 0015
In the Madras High Court

Jake and Others

APPELLANT

Vs

Sankayya and Others

RESPONDENT

Date of Decision : 10-12-1890

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 580

Citation : (1892) 2 MLJ 277

Judgement

1. The plaintiffs, respondents, are the children of one Bachu Banta by his wife Pammunhi. Their claim is based upon two documents executed by their late father in 1863 and 1870 in favor of the 1st plaintiff and his mother. Although these documents are in the form of mortgages, it has in effect been found that the intention of Bachu Banta was to make a gift and it has been found that such intention was effectuated by delivery of possession. Bachu Banta, the last survivor of his family, died in 1881 and disputes arising as to the right to his property, an order was passed by the Magistrate u/s 580 of the Criminal Procedure Code declaring the property to be in possession of one Subbannah. Among the persons who were parties to the proceeding before the Magistrate, was the present 1st plaintiff. He was certainly a person bound by the order being the party to whom it was adverse.

2. The first question is whether the other plaintiffs, children of Pammunhi, who neither personally nor by their mother were parties to these proceedings can be said to be bound by the order. It should be stated that the mother died about 1885 sometime after the date of the order. The further question which arises is whether, inasmuch as the 1st plaintiff is certainly bound by the order and has not brought this suit within the time required by the law of limitation, the suit is maintainable in the interest of the other plaintiffs.

3. In both the courts below, the property which is the subject of the gift made by Bachu is treated as if it was the family property of the plaintiffs and their mother. We cannot, however, accept this view. It may have been intended that the mother and her children should take the property as an Aliyasantana family; but

under both documents the persons taking an immediate interest are the 1st plaintiff and his mother only, and in their hands the property was not family property in the nature of self-acquired property. As such, it might have been taken in execution at the instance of a judgment-creditor of either of them. It does not, however, follow that on the death of plaintiff's mother the whole property went by survivorship to the 1st plaintiff. Thus to construe the gift would be to defeat the intention of the donor to benefit the family of Pammunhi. The plaintiffs are her natural heirs and, as such, entitled to her moiety of the property. Nor can they in that capacity be affected by the order of the Magistrate to which their mother was no party. Seeing, however, that the 1st plaintiff was possessed of a separate moiety in the property and that he cannot now question the Magistrate's order, the suit is only maintainable in respect of one half of the property.

4. We think that the decree should be modified accordingly and we allow proportionate costs throughout.