

(1948) 04 MAD CK 0020
In the Madras High Court

M. Narayanaswami Naidu (died) and Others	APPELLANT
Vs	
Parvati Bai and Others	RESPONDENT

Date of Decision : 20-04-1948

Acts Referred:

Citation : (1948) 61 LW 542 : (1948) 2 MLJ 211

Hon'ble Judges : P.V. Rajamannar, O.C.J.; Mack, J

Bench : Full Bench

Judgement

P.V. Rajamannar, Officiating C.J.

1. The only question which arises for decision in this appeal from the judgment of Kunhi Raman, J., sitting on the Original Side is whether one

Ammani Animal had any right to or interest in the suit property which is a house No. 65, Ashtabujam Street, Choolai, Madras., If she had, then the

respondents who were the plaintiffs before Kunhi Raman, J., would be entitled to relief on the basis of a deed of settlement executed by Ammani

Ammal on. 1st June, 1943.

2. The property in suit was purchased on 14th December, 1922, by a deed of sale bearing that date executed in favour of the said Ammani Animal

and her brother, T. Perumal Naidu. The agreement of sale entered into before the completion of the sale was in favour of Perumal Naidu only. It

appears from the evidence that Perumal Naidu was himself at Rangoon and he had executed a power of attorney in favour of his sister Ammani

Ammal, Ex. D. 17, to manage her affairs. Perumal Naidu died on 16th June, 1924, unmarried and intestate. He left behind him surviving Ammani

Ammal, his elder sister. He had a brother, one Ramaswami Naidu who had predeceased him leaving him surviving his widow Govindammal;

Narayanaswami Naidu, the defendant, was Govindaswami's brother and was married to Govindammal's daughter. He appears to have been

adopted to Ammani Ammal's husband. There was a dispute as regards this adoption. For the purposes of this litigation, it must be assumed that he

was validly adopted. Immediately after the death of Perumal Naidu, Narayanaswami Naidu filed an application, O.P. No. 106 of 1924 for grant of

Letters of Administration to the estate of the deceased Perumal Naidu which was stated to comprise the suit property. It then bore a different door

number. Notice of this application went to Ammani Ammal. She thereupon filed an affidavit into Court (Ex. D. 4) in which she stated that

Narayanaswami Naidu was the only heir and legal representative as nephew of the deceased Perumal Naidu and to the best of her knowledge and

information, there was no other kith or kin left by the deceased except herself, Narayanaswami Naidu and Govindammal, the widow of

Ramaswami Naidu. She therefore had no objection to the grant of Letters of Administration to the defendant. In this affidavit she made two further

admissions which are important. She admitted that she was the adoptive mother of the defendant and that Perumal Naidu died possessed of

properties in the City of Madras of the value of Rs. 27,099-0-8, which was the value given in the defendant's application for Letters of

Administration which included the value of the suit property. On the 6th April, 1926, she filed another affidavit in which she reiterated the

admissions she had made in her prior affidavit that the defendant was her adopted son and that the suit property was one of the properties which

belonged to the deceased Perumal Naidu. She stated in this affidavit also that she had no objection to the defendant enjoying the properties

absolutely as the only heir and legal representative of the deceased Perumal Naidu. Letters of Administration were granted to the defendant on the

5th February, 1925.

3. More than four years after the grant of the Letters the defendant, Ammani Ammal filed an application in 1929, No. 2047 of 1929, for a

revocation of the grant of the Letters of Administration to the defendant herein and for the grant of fresh Letters of Administration to her as the heir,

and legal representative of the deceased Perumal Naidu. In the affidavit filed by her in support of this application on 17th August, 1929 (Ex. P. 4)

she went back on the statement she had made in her previous affidavit and alleged that Perumal Naidu left, no heirs except herself, his only sister.

In that affidavit for the first time she also alleged that she had contributed a moiety of the sale price of the suit property, though the allegation is

certainly confused. Paragraph 7 of the affidavit runs thus :

My brother Perumal Naidu was earning about Rs. 200 a month until he retired. From and out of his earning he purchased the immovable properties

in Madras (sic) and improved them at a considerable cost. Out of them one of them was purchased jointly in my name and in the name of Perumal

Naidu as I contributed a moiety of the sale price and we continued to be co-owners thereof.

4. She tried to get over her previous affidavits by saying that they were obtained from her on false and fraudulent misrepresentations and that she

put her mark to them without clearly understanding their full significance. It may be mentioned that she even, denied the adoption of the defendant.

On account of This application O.P. No. 106 of 1924 was converted into a suit, T.O.S. No. 9 of 1929 and disposed of by Wallace, J., on 26th

January, 1932, Ex. D. 12. He held that the defendant herein was the adopted son of Ammani Ammal and that there was no proof of any fraud

having been played on her or on the Court. The learned Judge refused to accept Ammani Ammal's story that she swore to the affidavits without

fully understanding their contents. In the result her application to revoke the Letters of Administration was dismissed. No attempt was made to

carry this in appeal. Nearly eleven years after this judgment, Ammani Ammal executed a deed of settlement on the 1st June, 1943 (Ex. P. 9)

purporting to convey the suit house to one Govindasami Naidu and his wife Krishnaveni Ammal alias Unnamalai Ammal for their lifetime and

thereafter to their issue, male or female. This Govindasami is described in the settlement deed as the son of a sister of Ammani Ammal (referred to

as Lakshmi Ammal in the evidence). There is a curious recital in this deed of settlement that it was being executed in accordance with the promise

made by her at the time of the death of her brother, Perumal Naidu. The plaintiffs-respondents are the issues of Govindasami and Unnamalai and

their claim to the suit property is based on the provisions of the deed.

5. The defendant in this suit filed O.S. No. 275 of 1943 on the Original Side of

this Court against Govindasami Naidu and Unnamalai Ammal for recovery of possession of the suit property and for mesne profits. The defendants to that suit, the parents of the present plaintiffs, pleaded in defence their right under the settlement deed, Ex. P. 9. They alleged inter alia that the property, belonged to Ammani Ammal and in the alternative they raised also a plea of adverse possession by Ammani Animal. The suit was heard and disposed of by Chandrasekhara Aiyar, J. The learned Judge held that Ammani Animal had no title to the suit property and that she had not acquired any title by adverse possession. He therefore granted a decree for possession and for mesne profits in favour of the present defendant. This decree was allowed by the parents of the present plaintiffs to become final. On the 21st March, 1945, the present plaintiffs, children of the defendants in the prior suit, claiming under the same settlement deed, instituted this suit for a declaration that they were entitled to absolute rights of ownership in and to the suit property under the deed of settlement, dated the 1st June, 1943.

6. Among the pleas raised by the defendant, the most important was that the present suit was barred by the rule of res judicata by reason of the decision in C.S. No. 275 of 1943. Kunhi Raman, J., who tried the suit under appeal held that the suit was not barred by res judicata. On the question of title he held that Ammani Ammal was entitled to a moiety and the settlement deed was therefore valid in respect of that moiety, He overruled the plea of the plaintiffs that Ammani Ammal had acquired a title by adverse possession. He therefore granted a declaration to the plaintiffs that they were entitled after the death of their parents to a half share in the suit property under the deed of settlement executed by Ammani Animal. The defendant has filed the present appeal and the plaintiffs have filed a memorandum of cross-objections. Pending the appeal in this Court the defendant died and his legal representatives have been brought on record as appellants 2 to 4.

7. Mr. K. Krishnaswami Aiyangar, learned Counsel for the appellants, contended that the learned trial Judge erred in holding that the suit was not barred by the rule of res judicata, and he relied in particular on Explanation 6 to Section 11, Civil Procedure Code, which runs as follows:

Where persona litigate bona fide in respect of a public right or of a private light

claimed in common for themselves and others, all persons

interested in such right shall for the purposes of this section be deemed to claim under the person so litigating.

8. Kunhi Raman, J., refused to accept the appellants' contention on the ground that there were two distinct rights in this case, one right conferred

on the parents of the plaintiffs and the other right conferred on the plaintiffs themselves and therefore it could not be said that there was a private

right claimed in common for themselves and others. With due respect to the learned Judge, we are of opinion that he overlooked the fact that in

this case both the plaintiffs and their parents rely on the same settlement deed as the source of their title. In the prior case the parents relied upon

the deed and in the present case the children rely upon the same deed. We think on principle the parents of the plaintiffs in the prior case must be

deemed to have represented not only their interest but also the interests of their children under the same deed. This is a salutary principle which

prevents multiplicity of proceedings and the anomaly of conflicting decisions on the effect of the same deed in respect of the same land. As early as

1789 in *Pyke v. Crouch* 1 Lord Raymond 731 : 91 E.R. 1387 it was ruled thus:

If several estates in remainder be limited in a deed, and one of the remaindermen obtains a verdict for him in an action brought against him for the

same land; that verdict may be given in evidence for the subsequent remainderman, in an action brought against him for the same land, though he

does not claim any estate under the first remainderman, because they all claim under the same deed.

9. That this principle would apply to the construction of Explanation 6 to Section 11 of the Code appears to be clear to us--vide also

Hukumchand's Treatise on Res Judicata, page 192. If this principle were not accepted it would mean that the parents and after them their children

and probably the children one after the other can be permitted to agitate the same question over and over again in respect of the same title to the

same land. The rule of res judicata was certainly intended to cover this class of cases in which all the donees under the settlement claim a common

right.

10. It follows, that for the purposes of this suit it must be taken to have been adjudicated already that Ammani Ammal had no title to the property

and the plaintiffs therefore would not obtain any rights under the settlement deed executed by her. This decision of ours on the question of res

judicata would likewise prevent the plaintiffs from raising the question of adverse possession of Ammani Ammal because that question also was

decided by Chandrasekhara Aiyar, J., against Ammani Ammal in the prior litigation.

11. Apart from the question of res judicata, we also consider that the plaintiffs would be bound by the several admissions made by Ammani

Ammal under whom they claim, to which reference has been made earlier in our judgment. Therein she had unequivocally admitted that the suit

property was one of the properties which belonged to the deceased Perumal Naidu and the defendant was his sole heir. She tried no doubt to get

out of these admissions by putting forward the case that she did not know the contents of the affidavits before she set her mark to them. This case

of hers was not accepted by Wallace, J., and must be rejected. Her original admissions therefore stand and in the face of those admissions, the

plaintiffs cannot be permitted to assert any title in derogation of the title of the defendant to the suit property.

12. For these reasons the appeal must be allowed and the suit dismissed with costs throughout. The memorandum of objections filed by the

plaintiffs must also be dismissed. There will be no separate order as to costs in the memorandum of objections. The costs will be recovered from

the next friend. The Plaintiff's will pay the court-fee due to Government on the plaint and the memorandum of cross-objections.

Mack, J.

13. I entirely agree.