

(1922) 05 PRI CK 0005

In the Privy Council

Case No : Privy Council Appeal No. 146 of 1920

Medai Dalavoi Thirumalaiyappa Mudaliar

APPELLANT

Vs

Nainar Tevan and others

RESPONDENT

Date of Decision : 31-05-1922

Acts Referred:

Citation : (1922) AIR(PC) 307

Hon'ble Judges : John Edge, Carson, Sumner, Atkinson, Buckmaster, JJ.

Advocate : Douglas Grant, John Joscelyn, Kenworthy Brown, Dunne, DeGruyther, for the Appearing Parties.

Judgement

Sir John Edge, J.

This is an appeal by the plaintiff in the suit against a decree, dated the 9th December, 1914, of the High Court at Madras, which reversed a decree, dated the 22nd April, 1912, of the Subordinate Judge of Tinnevely and dismissed the suit. The parties to the suit are Hindus, and the suit is for a declaration to protect the interests of the plaintiff as a reversioner in certain immoveable property which was sold for Rs. 5,300 on the 22nd November, 1897, by the defendant 1 to the defendants 3 and 4.

The defendants 1 and 2 are the widows of one Medai Dalavoi Shanmuga Kumaraswami Mudaliyar (hereafter referred to as Shanmuga), who died childless in 1892. Shanmuga was a separated Hindu, and at the time of his death was possessed of a considerable estate, which was more or less encumbered. That estate included a one-third share in the village Aiyankulam. That village will be hereafter referred to as the Mouza.

On the death of Shanmuga the defendants 1 and 2 succeeded to his estate as Hindu widows. After the defendants 1 and 2 had succeeded to the estate they divided the estate or part of it between them, and thereafter each of them enjoyed separately those parts of the estate which had fallen to her on the division. Part of the estate which was so divided was the one third share in the

Mouza, and thereupon each of the defendants 1 and 2, as between themselves, was entitled to and enjoyed separately her moiety of that one-third share. That one-third share was subject to a mortgage which Shanmuga and a brother of his had granted on the 25th May, 1879; on that mortgage the mortgagees had obtained a decree for sale on the 30th March, 1897, if the amount due with interest thereon should not be paid on the 15th August, 1897. There was also due on the 22nd November, 1897, the sum of Rs. 1,605-5-0, the first defendant's agreed share of liabilities under a mortgage of the 6th November, 1888, which Shanmuga had granted.

The total amount due by the first defendant under those two mortgages on the 22nd November, 1897, was Rs. 4,588-2-2, and in order to provide for the discharge of those debts the defendant 1 sold, on the 22nd November, 1897, to the defendants 3 and 4 her moiety of the one-third share in the Mouza for Rs. 5,300. The balance of Rs. 711-13-10 of the Rs. 5,300 it is alleged, on behalf of the defendant 1, that she appropriated to reimburse herself for expenses which had been incurred in connection with the marriage, three years before the sale, of a daughter of Shanmuga's brother. That is the sale which the plaintiff alleges was invalid as against him as a reversioner.

The plaintiff is a son of a separated uncle of Shanmuga, and he admittedly is the nearest surviving agnate of Shanmuga. The plaintiff brought this suit on the 13th December, 1909, to obtain a declaration that the sale of the 22nd November, 1897, is void as against him as a reversioner. In his plaint he stated that his cause of action arose on the 22nd November, 1897 ; he was of full age in 1897, but no explanation is given of the cause of the delay in bringing the suit.

He is a co-sharer in the Mouza, and it appears to their Lordships that it would have been idle for the plaintiff to have suggested, if he had given evidence in the suit, that he did not know of the sale at the time of the sale or very soon afterwards. The sale was effected by a registered deed.

The other 94 defendants are persons whose titles to parts of the lands in question depend on the validity of the sale of the 22nd November, 1897.

In the plaint it is alleged :-

"VIII. The small debt owed by the said estate could have been discharged by defendants 1 and 2 from the surplus income of the said estate and from the outstandings due to it. But without doing so, defendants 1 and 2 have, with the evil intention of causing damage to the reversioner's right and fraudulently and against law and justice, been making separate alienations, by way of sale, mortgage, etc., of the properties forming their respective shares, having secretly received larger sums than those mentioned in the particulars of payment set forth in the several deeds, and have been causing damage to the plaintiff's right.

" IX. In like manner, the first defendant, on 22nd November, 1897, intentionally sold to defendants 3 and 4 her half share of the entire properties mentioned in

the schedule hereof and situate within the jurisdiction of this Court, for the low price of Rs. 5,300, of which a sum of Rs. 4,588-2-2 was directed in the deed to be paid towards the debt incurred by the original owner and Rs. 711-13-10 was received in cash, and she executed the sale deed and had it registered. The said properties are worth more than Rs. 15,000. Further, the sale, made as it was by the first defendant without the permission of the second defendant, cannot be valid after the life time of the first defendant. According to Hindu law she is not entitled to make such a sale."

The case which the plaintiff endeavoured to make out at the trial was that the price for which the defendant 1 had in fact sold her half of the one-third share was Rs. 7,300, and that Rs. 2,000 of that price was secretly paid to her by the defendants 3 and 4 as an inducement to her to sell her one-half of the one-third share to them.

The witnesses who were called on behalf of the plaintiff in support of that case of fraud were not believed by the Subordinate Judge or by the High Court. Their evidence has not been relied upon in support of this appeal, and it may be taken that the charge of fraud had no foundation.

The Subordinate Judge who tried the suit, found as fact that Rs. 4,588-2-2 was employed in discharging debts of Shanmuga, and that to that extent there was a legal necessity for selling the moiety of the one-third share in the Mouza. With that, so far as it goes, the High Court and their Lordships agree.

As to the sum of Rs 711-13 10, the Subordinate Judge was not satisfied that the defendant 1 was legally bound to pay the expenses of the marriage or that there was any necessity for raising money to the extent of Rs. 711-13-10 by selling the property. He overlooked the fact that the Rs. 711-13-10 merely represented the balance of the sale price of Rs. 5,300 and that it was not to raise that Rs. 711-13-10 that the property was sold. The High Court Judges were of opinion that it might be accepted that the Rs. 711 13-10 had been required for the marriage of Shanmuga's brother's daughter.

From this conclusion their Lordships are not prepared to differ, and the sale would not have been invalid no matter what may have been the purpose to which the defendant 1 applied that Rs. 711-13-10. The purchasers, defendants 3 and 4, were not bound to see that the defendant 1 applied it to any particular purpose.

The Subordinate Judge came to the conclusion that the defendant 1's moiety of the one-third share was, at the time of the sale, worth Rs. 12,100, and consequently that the defendant 1 had sold it for less than half its value. He came to that conclusion partly from the fact that the defendants 3 and 4 had re-sold the lands which represented the moiety of that one-third share for some Rs. 11,500. The defendant 3 had been in the employment of Shanmuga and afterwards in the employment of the defendant 1 at and before the date of the sale, and neither of the defendants 3 and 4 had apparently any capital; they

obviously purchased the moiety of the one third share as a speculation, and they sold it bit by bit to the cultivating ryots, among whom it is reasonable to conclude that there was great competition to acquire lands suitable for cultivation.

The defendant 3, from his having been in the employment of Shanmuga and afterwards in that of the defendant 1, must have known all the ryots who would be competing for the purchase in small quantities of land suitable for cultivation. It is not reasonable to suggest that the defendant 1 should have gone about endeavouring to find persons who would purchase her moiety of the one third share in small quantities ; it was urgently necessary to satisfy the decree for sale which had been made. Although the defendants 3 and 4 bought the moiety of the one-third share as a speculation, the sale was a genuine and not a sham sale

The conclusion of the Subordinate Judge that Rs. 12,100 was the value of the moiety of the one third share was no doubt, as the High Court pointed out, argely based on a valuation which was made in 1892 by a Revenue Inspector of the one-third share which had belonged to Shanmuga in his life-time. That valuation was made by the Revenue Inspector for the purpose of ascertaining the stamp duty payable on a deed which related to that one-third share.

The valuation was not a valuation of a moiety of the one-third share ; it was a valuation of the whole one-third share, which the Revenue Inspector valued at Rs. 24,200. As to that valuation the Subordinate Judge in his judgment said :-

" I think that the valuation made by the Revenue Inspector in 1892 under Ex. F "Copy of statement showing the estimated value of lands" should be accepted as correct. According to the valuation the first defendant's moiety was worth Rs. 12,100. This price would have been paid by a bona fide purchaser if the vendor (that is, the first defendant) could confer on him an absolute title. A prudent man will not, perhaps, go in for a transaction of this kind, and a widow desiring to part with her husband's lands partly for paying her husband's debts and partly for her private purposes will not certainly get the best price for it."

The "private purposes" to which the Subordinate Judge referred had reference to the balance of Rs. 711-13-10 of the sale price of Rs. 5,300. The Revenue Inspector in making that valuation was assisted by two local men, the village munsif and an assistant karnam. The Revenue Inspector valued each field, wet and dry, and each tree separately, with a total result of Rs. 24,200. The Revenue Inspector was not called as a witness, and there is nothing to explain on what principle he valued, but the two local men who assisted him say that the valuation is correct.

It appears, however, from their evidence that no one on behalf of the defendant 1 was present when the valuation was being made, and that neither of the local men nor the Revenue Inspector asked the owners for any accounts showing income and expenditure for the purpose of valuing the lands. One of those local men, giving his evidence on the 12th April, 1912, twenty years after the

valuation was made, said in re-examination :-

" The land has become dear and there are many tenants competing. The Revenue Inspector verbally asked the ryots about the price of lands.""

The "price of lands." What price ? The price which competing cultivating ryots would give for small portions of land adjoining or near to their holdings, or the price which the buyer of an area representing the one third share of the Mouza would give? How would an ordinary ryot know anything about the price which a man would be likely to give for an area of land representing the one-third share of the Mouza ?

Their Lordships agree with the learned Judges of the High Court that it would be easy to attach an exaggerated importance to that valuation as a piece of evidence in the case.

As those learned Judges observe in their judgment, the price " at a private-sale of a considerable extent of land purchased in lump would depend not so much on the valuation of its component parts, calculated on a regular scale, as on the need of the vendor for money and the competition for lands in that locality at the time of the sale."

It would be interesting to know what the Revenue Inspector would have said had he been a witness in this suit and been cross-examined as to his knowledge, if any, of the prices paid for similar areas of similar lands in that district.

At the time of the sale the defendant 1 was living with her father at Idakal. At the hearing of this appeal their Lordships were informed that the father of the defendant 1 was a village munsif. Whether he was a village munsif or not, there is nothing to suggest that he was not a respectable man who would give impartial advice to his daughter, and it is proved that he arranged the sale. It is fair to assume that he arranged the sale for the best price which was in his opinion obtainable.

As the Judges of the High Court point out, " No obvious motive is apparent for the first defendant to wish to benefit the third and fourth defendants, who are not related in any way to her.

They also observe : " The fact that the vendor in this case was a widow would tend rather to low values (prices) being obtained owing to the risk of litigation which intending purchasers might apprehend."

They also refer to some other transactions relating to lands, from which it might be inferred that the price obtained by the defendant 1 for the sale of the 22nd November, 1897, was under the circumstances a reasonable price; and they say : " The increased values (prices) obtained in recent years on the shares of both the widows appear to be commensurate with the natural rise in prices that has obtained generally in recent years in this Presidency."

In conclusion, the learned Judges of the High Court stated : " we are of opinion

that the plaintiff failed to prove that the price realised under Ex. A (the sale-deed of the 22nd November, 1897) was an improper price or that it indicated that the defendants 3 and 4 were not bona fide purchasers."

The High Court by its decree dismissed the suit, and from that decree this appeal has been brought.

At the hearing of this appeal it was, on behalf of the plaintiff (appellant), contended that Shanmuga was a wealthy man when he died and the defendant 1 could have been under no necessity to sell the moiety of the one-third share, and that, she, as his widow, should have paid the Rs. 4,588-2-2, out of the personal property which he left at his death and not by a sale of the immoveable property. As to that contention, the short answer is that there is no reliable evidence that at his death Shanmuga was a wealthy man or left personal property out of which his debts could have been paid ; there are some vague statements of witnesses that he had been a wealthy man. He died on the 15th January, 1892, and he had been borrowing money on a mortgage on the 25th May, 1879, and further money on a hypothecation bond on the 6th November, 1888, and he died leaving those debts unpaid, and it was to satisfy the debts secured by those mortgages that the defendant 1 sold her moiety of the one-third share in the Mouza.

In their Lordships' opinion there was necessity in law and in fact for the sale of the moiety of the one-third share. They are much impressed with the fact that it was on the advice of her father that the defendant 1 accepted Rs. 5,300 as the price of her moiety of the one-third share, and with the fact that she had no apparent motive for benefitting, to her own loss, the defendants 3 and 4 by selling to them her moiety of the one-third share at an under-value, It may be observed that the plaintiff, who must have known all about the sale in 1897, did not bring his suit to challenge the validity of that sale until the 13th December, 1909.

The plaintiff's contention relating to the Rs. 711-13-10 was again put forward in this appeal their Lordships need not repeat what they have already said on that subject.

Their Lordships will humbly advise His Majesty that this appeal should be dismissed with costs.