

(1979) 07 MAD CK 0043
In the Madras High Court

Muthuswamy Gounder and Another

APPELLANT

Vs

Rangammal and Others

RESPONDENT

Date of Decision : 31-07-1979

Acts Referred:

Citation : (1980) 1 MLJ 21

Hon'ble Judges : T. Ramaprasada Rao, C.J

Bench : Division Bench

Judgement

T. Ramaprasada Rao, C.J.—We agree with Sethuraman, J., and his conclusions. Plaintiffs 1 and 2 in O.S. No. 861 of 1968 on the file of the District Munsif, Tirupur, are the appellants. There was another plaintiff (third plaintiff) who claimed to be a lessee of the suit property through plaintiffs 1 and 2. One Palani Gounder whose wife is Palaniakkal (hereinafter referred to as "Akkal") had two sons and one daughter. The plaintiffs' case is that the suit property which was purchased admittedly in the name of Akkal on 30th May, 1932 is a joint family property or, in any event, the property belonging to Palani Gounder and that property has to be inherited by them along with the first defendant who is the daughter and the claim of the first defendant that the suit property is streedhana property of Akkal and that she is the only heir entitled to it has to be discountenanced and the suit decreed as prayed for, by them.

2. The District Munsif who tried the suit held that the property was the property of Akkal, that there was no evidence to show that Palani Gounder ever asserted his rights over the property and that his possession either during the lifetime of Akkal or after her death was not in his own right but in a representative capacity either representing his wife or his daughter, the first defendant. The learned District Munsif referred to the fact that the plaintiffs have come to Court with a false case because the third plaintiff who claims to be a lessee of the suit property is not even aware as to what crops were raised. Naturally, therefore, the Court came to the conclusion that the third plaintiff was only brought into the picture to speak for the plaintiffs and he could never have been in possession of

the property. In the light of his findings that the beneficial interest over the property always belonged to Akkal and the possession, if any, by Palani Gounder should be held to be on her behalf and after her death on behalf of the first defendant, he rejected the claim of the plaintiffs.

3. On appeal, the learned Subordinate Judge reversed the said decision and was of the view that even though the title to the property stood in the name of Akkal as per the recitals in Exhibit A-I, it should be held to be a benami purchase and that Palani Gounder was the real owner of the property. He also held, in the circumstances, that Palani Gounder should be held to be a person in possession of the property as manager of the joint Hindu family. In the light of such findings rendered by him and as after the passing of the Hindu Succession Act, the first defendant would be entitled as class-1 heir to a 1/9th share in the suit property, he decreed) the suit to the extent of 8/9th share therein and held that that plaintiffs 1 and 2 would equally be entitled to the same. The first defendant and along with her, the second defendant, her husband came up in appeal. Sethuraman, J., did not agree with the judgment of the learned Subordinate Judge but accepted that of the District Munsif and dismissed the action.

4. Before Sethuraman, J., it was contended that the purchase in the name of Akkal should be deemed to be a benami purchase whilst the real title always vested in Palani Gounder and that in the absence of proof that Akkal provided the money for the purchase of the property and having regard to other surrounding circumstances, the purchase under Exhibit A-I of the suit property by Akkal in 1932 should be deemed to be a benami purchase. The learned single Judge was of the view that having regard to the well-known tests which decided whether the property stood, in the name of a person benami for another found as a fact: (a) that the patta always stood in the name of Akkal till her death: (b) that the father for a period of 28 years thereafter till 1968 when he died never attempted to effect mutation of the registers, so as to bring himself on record as the real pattadar of the property; and (c) that the enjoyment of the property during the life time of Akkal and thereafter should, in the circumstances, be deemed to be for the benefit of Akkal and the first defendant and in the absence of proof that such enjoyment by Palani Gounder was in his own right as owner thereof, the contention that the property was originally purchased benami in the name of the wife could not be countenanced. The learned Judge also expressed the view that though there was no clinching evidence to support the stand of the defendants that Akkal had her own resources, yet, the conduct of Palani Gounder throughout his life and after the death of Akkal would lead to a fair inference that the original purchase was intended for the benefit of Akkal and none else. In those circumstances, therefore, he was of the view that the property should be held to be the streedhana property of Akkal and the first defendant being the only streedhana heir, she was solely entitled to the exclusion of the plaintiffs. He, therefore, set aside the appellate judgment and restored the judgment of the trial Court. On leave being granted by the learned Judge, the present Letters Patent Appeal has been filed.

5. We are of the view that the present case could be disposed of on a more substantial ground. The case of the plaintiffs is that the property is joint family property. No iota of evidence has been let in by the plaintiffs to prove that Palani Gounder was possessed of ancestral properties and that he had any surplus income from such imaginary joint family properties from and out of which he could have improved the same by adding to it by purchasing more properties. On the other hand, the admitted case is that Palani Gounder was possessed of several properties and he has executed a settlement deed in respect of such properties which he owned and settled those properties in favour of the plaintiffs' children. These documents should be in the custody of the plaintiffs and they have discreetly kept them out from the purview of the Court obviously because the documents will disclose the true story that all such properties gifted or settled by Palani Gounder were his own or self-acquired properties without reference to any joint family properties or any nucleus thereunder. If a coparcener claiming himself to be a member of a Hindu undivided family pleads that he is entitled to a share in certain properties having the characteristic, according to him, of joint family properties, then it is for him to establish such characteristic being attached to the said property. In the instant case, the plaintiffs, if they intended to establish their contentions, should have let in acceptable proof that there were joint family properties which Palani Gounder secured as a member of the quondam coparcenary and he was in possession of such properties as manager of the family and that from and out of the surplus income available from the family properties several other properties were accreted and those properties were dealt with by Palani Gounder and later settled in their favour. We have already referred to the fact that the plaintiffs who had the benefit of the settlements made by their father in favour of their children would not even produce the documents which should be in their custody to prove or to sustain their case of the existence of ancestral properties. On the other hand, they were relying only upon the fact that the property which stood admittedly in the name of one of the female members of the family and which was purchased as early as 1932 should be deemed to be a joint family property or, in any event, the property purchased by their father benami in the name of the wife but for his benefit and for the benefit of the family. In the absence of proof as to the existence of ancestral property and the effort on the part of Palani Gounder to improve these properties by having the benefit of the income from such properties, the story weaved out by the plaintiffs that the suit property is joint family property is absolutely an untenable one. This would have been sufficient to dispose of the case.

6. The plaintiffs, however, wanted to sustain the subject-matter by setting out an alternate contention. Their case was that the property though standing in the name of the female member of the family and though it has stood in her name for nearly four decades and more, should still be considered to be a property held by her originally as a benamidar and that the benefit of the ownership in that property should go to her husband and her husband's heirs. This is a very

curious proposition. Repeatedly this. Court has pointed out in many of its decisions, to wit, in C.K. Krishnan Vs. C.K. Shanmugham and Others, and Kandaswami Chettiar and Others Vs. Gopal Chettiar and Others, , that if the property stands in the name of a female, no presumption arises that the source has emanated from the joint family funds or its income. If a challenge is made by a member of the family that the property standing in the name of a female member should enure to the benefit of the family in general, then he has to necessarily bring home such hypothesis and date to the knowledge of the Court in an action initiated by him and establish, at least reasonably, that his contention is plausible and maintainable. If, on such data made available to the Court, the ostensible title of the female holder is likely : to be tilted, then the female member, in whose name the property stands, is obliged to give contrary evidence to set at naught that inference.

7. Let us just look at the facts of this case to find out whether the well-known tests laid down in the above cases have been satisfied. The property was purchased in or about 1932 under Exhibit A-I. The recitals therein clearly show that apart from the mortgage which Akkal undertook to discharge, she has paid the balance of the consideration herself to the vendors under the said document and these recitals, therefore, are sufficient to hold that she was the person who provided the funds. This is so for the reason that the document is more than thirty years old and proves itself. This apart, the mortgage which she undertook to discharge was a mortgage in favour of her own husband. The husband was alive till 1968 and there is no evidence that he ever claimed the said amount or the mortgage was not discharged! or otherwise given up by him. On the other hand, he did not even care to effect a change in the name of the pattadar from Akkal's name to his own. He was prepared to pay the kist being conscious of the fact that the patta stood in the name of Akkal. He was no doubt in possession of the property as the husband of Akkal. After Akkal's death, he continued to be in possession and obviously such possession was and has to be understood to be for the benefit of his own daughter who was by then married and who was living six miles away from the village in which the property was situate. It is not unreasonable to expect the husband or the father to look after the wife's or daughter's properties, he himself being a property owner as is seen from the admitted fact that he has settled large extents of property in favour of his grandchildren through his sons. These circumstances have to be considered as a whole. Admittedly, this is a case in which there was no motive which could have prompted Palani Gounder to have purchased the property in the name of his wife. No doubt, the evidence at this late stage is scarce as to the origin of the consideration which was the subject-matter of the sale under Exhibit A-I. But this has to be ignored having regard to the recitals in Exhibit A-I wherein there is the categorical assertion by the vendors themselves, who, however, gave a volte face to the said recitals in the course of their examination in this case, that it was Akkal who paid the balance of consideration to them.

8. One other feature in this case which highlights on the contention of the first

defendant that the property is streedhana property and not the property of Palani Gounder is that he did not want to disturb the title of the wife when he meticulously transferred all other properties of his in favour of his grand children through his sons. In our view he meticulously avoided treating the subject-matter of the suit property as his property because he was conscious of the fact that it was Akkal who was the owner of the property and, in any event, he never wanted to disturb such ownership which by then became perfect in her by his own conduct and this relevant circumstance was also noted by the learned Judge when he disagreed with the appellate Court. Having regard to the conduct of Palani Gounder himself and in the light of the express recitals in Exhibit A-I and bearing the well-known principle in mind that the property standing in the name of a female has to be taken to be her property until it is clinchingly shown to the contrary, we are of the view that the conclusion arrived by the learned Judge is correct and there being no other question which arises from and out of the judgment of the learned Single Judge, the appeal fails and is dismissed. No costs.