
(1935) 08 MAD CK 0054
In the Madras High Court

Pillavil Illath Sankaran Nambi and Others APPELLANT
Vs
Pillavil Illath Nangeeli Amma (deceased) and Others RESPONDENT

Date of Decision : 19-08-1935

Acts Referred:

Evidence Act, 1872 — Section 115

Citation : (1935) 42 LW 725 : (1936) 70 MLJ 592

Hon'ble Judges : Wadsworth, J

Bench : Division Bench

Judgement

Wadsworth, J.—This appeal arises out of a suit brought by plaintiffs claiming as the reversioners and heirs to the property of one Kesavan Nambi after the death of his widow, Kunjiri. The matter came up before the High Court in CM.A. No. 283 of 1926 and it was then decided that a clause in the will of Kesavan Nambi, whereby provision was made that on the death of Kunjiri her rights should go to certain persons now represented by the legal representatives of the first defendant, referred only to the contingency of Kunjiri dying before the testator and was not intended to affect the devolution of the property in case of Kunjiri's death after the death of the testator. Strengthened by this decision, the plaintiffs as the nearest reversioners and heirs of Kesavan Nambi and stridha-nam heirs of Kunjiri claim to succeed to the properties. After the decision of C.M.A. No. 283 the Court of first instance took up the suit and decided it adversely to the plaintiffs on the ground of estoppel, and this decision has been confirmed by the first appellate Court.

2. Now it is unquestionable that the view taken by the High Court of the proper interpretation of the will was one which had never been present in the minds of either the plaintiffs or the defendants until the matter came up to the High Court. The plaintiffs in their plaint pleaded:

Owing to the death of the said wife, the abovesaid properties merged to us the plaintiffs who belong to the three other branches under the karar of 1074, in our capacity as "attaladakkam" heirs. If in opposition to it there are any stipulations

or anything of the kind in Kesava Nambi's will they are invalid and worthless under the law.

3. Thus the plaintiffs seem to have brought their suit on the assumption that the will contemplated the devolution of property after Kunjiri's death to the first defendant and her children, but that this provision was invalid as against the plaintiffs. The written statement meets this case by asserting the validity of the arrangements made in the will and pleads in paragraph 12:

Since, after the death of the abovesaid Kunjiri all the properties that were in her possession were held in possession by this defendant and management thereof was carried on in the capacity of full owner thereof, and since the plaintiffs also acted hitherto agreeing to the same, and the plaintiffs have admitted in suits and in registered documents that they have no right whatsoever to the said properties, and because of the acts of the plaintiffs till now, and because other people have, in good faith, obtained several rights in the properties during the past years, the statement made that this defendant has no right to the, properties that were in the possession of the said Kunjiri and that it is the plaintiffs that have the right is barred by estoppel.

4. Now this pleading is not very happily worded but it appears to mean that the plaintiffs had agreed to the possession of the first defendant, had admitted in suits and in registered documents that they have no right to the properties and had led other people (not specified) to obtain rights in the properties, so that the plaintiffs are estopped from asserting their rights. It is to be noted that the written statement, while setting forth conduct and representations by the plaintiff which are inconsistent with the right that the plaintiffs now claim, does not specifically plead that the first defendant was led by that conduct or by those representations to act upon the belief engendered by those statements and representations of the plaintiffs, and it will be apparent that consequential action on the part of other persons who are not parties to the suits cannot support an estoppel as between the plaintiffs and the first defendant and her representatives.

5. It is noteworthy that fourth defendant (an alienee) does not plead any estoppel. When the question of estoppel was considered in the first Court, the various statements and conduct of the second plaintiff's father were summarised and the learned District Munsif, finding that the second plaintiff's father had on several occasions disclaimed all interest in the property and acquiesced in the possession by the first defendant, was estopped from setting up his title to the property, without considering specifically the question whether these representations and this conduct on the part of the second plaintiff's father were representations of fact, or whether these representations had in fact led to any action on the part of the first and her representatives.

6. It will be convenient now to summarise the grounds upon which the estoppel is based. The learned District Munsif finds that Narayana, the father of the second plaintiff, knew about the will. He does not anywhere suggest that

Narayana or any of the plaintiffs were aware of the possibility of the legal interpretation of the will embodied in the judgment of this Court in the Civil Miscellaneous Appeal. He refers firstly to a statement of Narayana in a suit wherein he was impleaded as next friend of the daughter of the present first defendant. In this suit an objection was raised that Narayana had interests opposed to those of the first defendant's daughter. Thereupon Narayana filed in Court two statements which are Exs. IX and X wherein he asserts explicitly that he has "no right in the suit property (which covered parts of items 1 and 5 in the present suit), other than his interest as next friend of the minor daughter of the first defendant. The next piece of evidence with regard to this alleged estoppel arises out of a mortgage by the first defendant for herself and her daughter of item 2 in the present Suit, to strangers, the mortgagees being authorised to recover rent from the second plaintiff who was in possession. On the basis of this contract, one of the mortgagees obtained a decree for rent against the second plaintiff and the second plaintiff paid the decree amount without claiming that he was entitled to item 2 otherwise than as a lessee. The documentary evidence for this transaction is contained in Ex. VII. The third piece of evidence on the case of estoppel arises out of a mortgage of items 3 and 5 of the suit property by the deceased testator, Kesava Nambiar, under Ex. XVI. Subsequently, the testator assigned item 5 to the second plaintiff who undertook to discharge the entire debt and get item 3 released from the mortgage. After the death of the testator, his widow Kunjiri and the present first defendant sent a registered notice to the second plaintiff requiring him to discharge the mortgage as undertaken by him. Thereupon the second plaintiff made a statement embodied in Ex. V, wherein he denied that he had any right over the property, repudiated the assignment and denied that he had ever been in possession of the property. This statement is made in the written statement, filed in the suit of the year 1917. But it is not clear that this statement is anything more than a repudiation of the alleged agreement whereby the deceased testator assigned properties to the second plaintiff on condition of discharging a mortgage-debt. Lastly, there is the fact the second plaintiff and his father took no action when, to their knowledge, the first defendant was behaving as the owner of the suit properties, taking renewals, discharging liabilities of the testator, paying rents and taxes and making mortgages. The learned District Munsif observes,

In the full and bona fide belief that she was the owner, the first defendant was made to enter into all these transactions and undertook the numerous liabilities.... The long course of dealings by the first defendant as owner, the discharge of the debts of Kesava by her, the numerous suits in connection with these properties, as well as the conduct of Narayana and the second plaintiff during all these years, show conclusively that the second plaintiff is estopped from setting up his right, as Streedhanam heir of Kunjiri and the reversionary heir of Kesava, in this suit.

7. The learned District Munsif also holds that, though the specific statements of the second plaintiff and his father relate only to items 1, 2 and 5, because in all

these matters the question who is the heir of Kesava was the essential question, the estoppel would operate as to the whole estate.

8. In appeal, the learned Subordinate Judge of Tellichery adopts the reasoning of the District Munsif, and says,

As the facts have disclosed, the second plaintiff's father by his omission to set up his right and the second plaintiff by his declaration as well as omission have permitted the first defendant to believe that she is entitled to all the properties in the will. The conduct of both these persons had been throughout as if they had no right to the properties. The first defendant has been incurring debts in the belief that she was entitled to the properties. She has been discharging also debts due by Kesava Pitarar. She has been taking renewals from the jenmi and spending for the same.

9. Then the learned Subordinate Judge, quoting the observations in the case of Ashtamoorthi Nambudripad v. Rama Mudali AIR 1926 Mad. observes that,

even if the first defendant believed that the properties belonged to her under the will before the representation, act or omission by the second plaintiff and his father, yet their representation must have strengthened the belief that she already had and had some influence in determining her subsequent" conduct.

10. The argument in the present appeal may be summarised as follows: - Firstly, the representations and acts of the second plaintiff and his father relied upon as the basis for the estoppel are really representations of an erroneous view of the legal consequences of the will of Kesava Nambi, and since there can be no estoppel on a point of law, the basis for the alleged estoppel fails. Secondly, though there is evidence that the first defendant, after these representations and this conduct, conducted herself as the owner of the property, there is no evidence that her conduct was caused by the representations relied on. Thirdly, when all the facts were known to both parties, and both parties were under a common error regarding the legal consequences of the known facts, there can be no estoppel. Fourthly, if there is an estoppel, it can only relate to items 1, 2 and 5 regarding which specific representations were made.

11. With reference to the first argument, that there can be no estoppel on a question of law, Mr. Sitarama Rao has quoted a number of authorities. In Jagwant Singh v. Silam Singh I.L.R.(1899) 21 All. 285 it was held that an admission on a point of law is not an admission of a "thing" so as to make the admission matter of estoppel within the meaning of Section 115 of the Evidence Act. That was a case in which the plaintiff admitted in mutation proceedings that he and certain of the defendants were owners of the suit property in equal shares, making a mistake as to the truth of the legal position in accordance with which he was in, fact the sole owner. It was held that he was not, by this erroneous admission regarding his legal rights, estopped from contending in a later proceeding that he was the sole owner. In a recent case of this court, Muthuswami Aiyar v. Loganatha Mudali (1934) 41 L.W. 364, it was held that an

admission regarding the legal effect of the doctrine of part performance made when both parties were in full possession of the facts would not estop the party from contending that his view of the law was wrong. The Privy Council in *The Secretary of State for India in Council v. Srinivasachariar* (1920) 40 M.L.J. 262 : 48 I.A. 56 : ILR 44 Mad. 421 (P.C.) had to deal with a case in which the Government were contending that an inam grant did not pass to the grantee mineral rights in the land, and with reference to evidence of conduct on the part of Government indicating, that the Government behaved as if the inamdar had acquired the mineral rights, their Lordships observed,

At most these proceedings can amount to no more than action taken under a misapprehension of the Government's legal rights, and this could not make the law one way or the other, nor could it affect the Government's title.

12. In *Goura Chandra Gajapati Narayana Deo Rajah of Parlikimedi v. Secretary of State for India in Council* (1904) 32 I.A. 53 : ILR 28 Mad. 130 : 1 C.L.J. 460 (P.C.), the Judicial Committee had to deal with the question whether certain lands were included within the grant to the Zamindar of Parlikimedi, and it was held that the conduct of the Court of Wards when in charge of the estate in spending Zamindari funds on the improvements of the lands in suit, under the mistaken idea that they belonged to the Zamindari, and the acquiescence of Government officials in this error could not constitute an estoppel against the Government from subsequently contending that the land did not form part of the Zamindari. In the well known English case of *Beattie v. Lord Ebury* (1872) L.R. Ch. 777 the question was whether the Directors of a Railway Company were personally liable for making a representation to the Manager of a Bank to the effect that they had power to overdraw the account, that representation being incorrect and it was then laid down that it was a rule of the Chancery Court" that a person cannot be made liable for making a representation, unless it is a misrepresentation in point of fact and not merely in point of law. In the case of *Hookey Hill Rubber and Chemical Co. and Royal Insurance Co. Ltd. In re* (1920) 1 K.B. 257 an agent of an Insurance company was asked by the manufacturers whether the company's ordinary fire policy covered damage done by an explosion following a fire. The agent quoted the terms of the relevant clause and stated that damage caused by an explosion resulting from a fire would be covered, except for loss or damage as specified in the condition, and the manufacturers understood the qualification to refer only to an explosion due to hostile action. It was held that the representation by the agent was a representation, not of fact, but of law, - namely, as to the meaning and effect of the condition - and that therefore, the Insurance Company, when sued on the policy, was not estopped from contending by way of defence, that the loss was caused by an explosion. On behalf of the respondents, reliance is placed on a passage contained in *Halsbury's Laws of England*, Vol. XIII p. 472, wherein it is observed that,

while a true statement of facts, accompanied by an erroneous inference of law,

will not estop the person who made it from afterwards denying the correctness of that inference, it has been held that a representation as to the legal effect of a document will create an estoppel, if there is no qualification in the representation suggesting that the document, and not its effect as represented, is to govern the relationship of the parties.

13. On the other hand, Lord Halsbury points out that,

mere misrepresentation of a matter of legal inference from facts which are known to both parties is not a ground of estoppel.

14. There is a Privy Council decision in *Vertannes v. Robinson* (1927) 53 M.L.J. 71 : 54 I.A. 276 : ILR 5 Rang. 427 (P.C.) wherein it has been held that mere acts of acquiescence will not constitute an estoppel when the plaintiff has not acted on the strength of any representation, but on an error common to himself and the opposite party. I have also been referred to a Full Bench ruling of the Allahabad High Court in *Jai Narain v. Jafar Beg* ILR (1926) 48 All. 353 wherein the effect of acts of acquiescence is considered, and it is held that the party claiming the benefit of the equitable doctrine of acquiescence must have made a mistake as to his legal right and must have expended some money or done some act on the faith of his mistaken belief, while the possessor of the legal right must have known of the existence of his own right which is inconsistent with the right claimed by the other party, he must have known of the other party's mistaken belief in his own rights, and must have encouraged the other party in his expenditure of money or in the other acts which he has done either directly or by abstaining from asserting his legal right.

15. Now applying the principles embodied in these decisions to the facts of the present case, it appears that both parties were under the impression that the clause in the will of Kesava Nambi regarding what should happen to the property on the death of the widow, Kunjiri, was in fact a testamentary, disposition of a remainder on the termination of the life-interest of the widow. Neither party appears to have had any idea until after the present litigation had made some progress that this clause was, as this Court has found it to be, a mere alternative provision for the disposition of the property, in case the widow should die before the will took effect. It follows that on the interpretation of the will adopted by both parties, until the present litigation had advanced some distance, the second plaintiff and his father could not have claimed title on the basis on which it is now claimed by virtue of the decision of this court. When therefore the father of the second plaintiff declared "I have no right in the property" he was stating what he believed to be the legal position as a result of this erroneous construction of the will which was adopted by both parties. He did not say to the first defendant "I bind myself to the following legal construction of this will and permit you to act on that footing". All he did was to assume that his position with reference to the will was that of a person who was excluded by reason of a disposition in favour of the first defendant. It seems to me that the representations made by the second plaintiff's father are representations made

under the influence of an erroneous view of his legal rights, which error was common to both parties, and I do not think that in such circumstances, his repudiation of right can estop him from contending, after he has discovered his legal error, that on a true interpretation of the will he has title. Nor can I see how acts of acquiescence in the possession by the first defendant of the properties can estop the second plaintiff, when he was ignorant of his legal rights and did not deliberately allow the first defendant to suffer detriment by suppressing any knowledge of a defect in her title.

16. I am moreover doubtful whether it can be said on the facts of this case that the first defendant acted in consequence of any representations made by the father of the second plaintiff. Undoubtedly, she has enjoyed the properties paid the rents and taxes and discharged the debts of the testator, presumably out of the income from the properties. It is not to my mind established that she has suffered any detriment as a consequence of the representations of the second plaintiff's father. Her acts in relation to the suit properties appear to have been the result not of these representations, but of the common error of both parties regarding the legal effect of this will, an error which has now been set right by the decision of this court. I do not think it can be said that the second plaintiff or his father has, by his declaration act or omission, intentionally caused or permitted the first defendant to believe a thing to be true and to act upon such belief. No doubt second plaintiff's father said regarding 3 items that he had no right, thereby putting into words the view taken both by him and by the first defendant regarding the effect of the will. It does not appear to me that the second defendant's acts of ownership were in fact caused by these statements. It must be observed that the fourth defendant who is an alienee does not allege any estoppel. I find that it is not established that the first defendant has acted in consequence of the representations made by the second plaintiff's father.

17. Even if there were an estoppel, I do not see how it can be extended by inference to properties which were not covered by the representations alleged to have been made. The fact that the second plaintiff's father repudiated his title to items 1, 2 and 5 of the suit property is not to my mind a sufficient reason for preventing him from adducing evidence that he has title in items 3 and 4, even though similar considerations may govern the claim to all the items. And as I have already indicated, though these other items may be covered by general evidence that the second plaintiff acquiesced in the possession of the first defendant, mere acquiescence cannot bar a subsequent claim unless it can be shown that the second plaintiff knew of his rights and deliberately refrained from asserting those rights.

18. It follows therefore that this appeal must be allowed. It is regrettable that though this litigation started in 1923, there are numerous issues on which no finding has yet been recorded by the lower courts. The suit must therefore be remanded to the court of first instance for recording findings on the remaining issues. Costs will abide the result.