(1926) 09 MAD CK 0015

In the Madras High Court

R. Sivaramakrishnaier APPELLANT

Vs

Sivakami Achi RESPONDENT

Date of Decision : 23-09-1926

Acts Referred:

Citation : AIR 1927 Mad 498

Judgement

1. The plaintiff is the appellant. One Sivaraman Chetti, the son of the defendant, executed a trust deed appointing the defendant his mother as

trustee and empowering her to manage his properties for a period of 15 years. Under the provisions of the deed, the defendant was to collect the

income from the properties, pay maintenance to persons mentioned in the trust deed and hand over the balance to her son. The deed also provided

that at the end of the term mentioned in it the defendant was to place Sivaraman Chetty in possession of the properties covered by it. On 14-9-

1909, this trust dead was revoked by Sivaraman Chetty by a registered document and four days thereafter, the properties covered by the deed

about 5 Velis of land were sold by him to the plaintiff. O. S. No. 366 of 1909 was instituted by the plaintiff to recover possession of the properties

on the strength of the sale deed executed to him. In that suit the present defendant contended amongst other things that Sivaraman Chetty had no

power to revoke the trust and the plaintiff was not entitled to possession of the properties. The District Munsif overruled the contentions of the

defendant and gave the plaintiff a decree for possession. This decree was set aside on appeal by the Subordinate Judge who decided that the trust

was not capable of revocation. In second appeal the decree of the Subordinate Judge was confirmed. After the decision by the High Court the plaintiff instituted the suit out of which this second appeal arises for a declaration of his right to the properties sold to him under Ex. A after the

expiry of the period mentioned in the trust deed and also for the taking of an account according to the terms of the trust deed. To this suit only the

trustee was made a party. Amongst the various issues raised in the suit, issues 1 to 3 related to the validity of the sale deed under which the plaintiff

claims. The 4th issue is to this effect.

Whether the plaintiff is entitled by virtue of his sale deed to claim the net income from the suit properties till the period fixed in the trust deed or to

recover possession thereof at the end of that period.

2. After the decision by the High Court that this suit was not barred by res judicata by reason of the decision in the prior Suit the District Munsif

heard the case and without taking any oral evidence decided it in favour of the plaintiff, mainly on the ground that the sale deed was admitted by

the defendant. Holding that there was no such admission, the Subordinate Judge on appeal directed the District Munsif to decide the issues 1 to 3

after taking evidence and to submit his findings. The District Munsif found on an exhaustive examination of the evidence that the sale deed was not

supported by proper consideration (see para. 41). Accepting the findings, the Subordinate Judge set aside the decree of the District Munsif and

dismissed the plaintiff''s suit. Against this decree the plaintiff has preferred this second appeal.

3. Mr. Ramachandra Aiyar on behalf of the appellant argued that in the circumstances of the case it was not open to the appellate Court to call for

a finding on issues 1 to 3, that it was not open to raise quesisons of undue influence and consideration as regards the sale deed and that therefore

the appellate decree should be set aside. It appeared to us that even if we accept Mr. Ramachandra Aiyar''s view regarding the decision by the

appellate Court on issues 1 to 3, still the plaintiff''s suit will have to be dismissed if the defendant''s plea raised in the 4th issue is found in her favour.

The 4th issue as already pointed out raised the question whether the plaintiff is entitled by virtue of his sale deed to claim the not income from the

suit properties till the period fixed in the trust deed or to recover possession thereof at the end of that period. In passing, it may be pointed out that

the plaintiff confines his relief in his second appeal to get the income from the properties till the period fixed in the trust deed is over. When the suit

was instituted, the 15 years period provided for in the deed had not run and neither Sivaraman Chettiar nor his reversioners had been made parties

to the suit. Sivaraman Chetty is now dead. The question as regards the possession of the properties at the end of the 15 years namely, the latter

part of issue 4, cannot therefore now be decided. The first part of the issue is mainly a question of law. The respondent in her memorandum of

appeal to the lower Court had pointed out that the District Munsif had erred in law in not deciding this issue in her favour. In the view that the

Subordinate Judge took of the case as regards issues 1 to 3 he also did not consider it necessary to decide the 4th issue. We came to the

conclusion that arguments should be heard on this issue before considering the Subordinate Judge''s judgment on the other issues; for as already

observed if the defendant succeeds on the question raised in this issue, the plaintiff''s suit will have to be dismissed, irrespective of other

considerations. This course was accepted by the learned vakil appearing for the plaintiff as well as the defendant.

4. The appellant''s claim in this second appeal is a very simple one. His right to recover possession of the properties under his sale deed based on

the revocation of the trust deed by Sivaraman Chetty having been found against, h e now says that he is entitled to get at least the income reserved

in the trust deed in favour of his vendor, the vendor being entitled to deal with as he liked. The trust deed no doubt states that the surplus funds

after meeting all payments mentioned in it shall be paid to vendor of the plaintiff. Whether the plaintiff would be entitled to get this or not would

depend mainly upon the construction of the document Ex. A and the intention of the parties that can be gathered from it and the surrounding

circumstances. Ex. A begins by saying that it is an absolute sale-deed of nunja, punja, etc., lands"" described later. It is stated that the specified

properties ""have this day been absolutely sold unto you for Rs. 10,000 being the price money settled by mutual consent."" After describing the

details of consideration, the document runs as follows:

As thus I have in all received Rs. 10,000 as per the aforesaid particulars, and as I have left to you all the rights, interest and enjoyment belonging to

me in the said properties, with all the absolute rights derivable under an absolute sale, you shall therefore hold and enjoy the said properties with all

the absolute rights derivable under an absolute sale, those of alienating the same by means of gift, sale or otherwise, and as long as the sun and

moon exists.

5. It appears to us that the initial difficulty in the way of the appellant is that at the date of the sale his vendor had no ownership in the property at

all, because it was vested in the trustee by the deed. Under the law the trustee is the absolute legal owner of the property; the revocation of the

trust being found to be invalid, Sivaraman Chetty had no saleable right in the property covered by the deed. Mr. Ramachandra Aiyar''s argument

that notwithstanding the trust deed some ownership still remained with the plaintiff'' s vendor and he could convey this interest assumes that the trust

deed is only a power of attorney for managing the properties but this assumption is unwarranted in view of the High Court''s decision in the prior

suit. That being so and there being no specific transfer of interest in immovable property, it is argued by the learned vakil for the respondent that the

interest of the cestui que trust which is only a minor interest cannot be conveyed under Ex. A. Assuming it can be transferred, it is clear that the

document does not convey the interest of the cestui que trust. It is equally clear that it was not at all the intention of the plaintiff''s vendor to convey

any such interest. This is evident from Ex. A itself. A bare perusal of the deed is enough to show that what was intended to be conveyed was the

absolute property in the lands and nothing else. The deed is called an absolute sale deed and it purports to convey all the rights, interest and

enjoyment belonging to the vendor in the said properties. It is therefore clear that the vendor did not intend at the time when he executed the sale

deed that if it failed to take any effect, the vendee should get something else in its place. What the appellant claims is a benefit under the trust. It

appears to us that it is not open to him now to say that he should be allowed to receive this benefit under the trust when he himself has repudiated,

the trust deed. It will be observed that the appellant''s suit to recover possession of the property was based on the assumption that the trust deed is

not binding on his vendor and that it had been revoked by him. How can the plaintiff then claim any benefit under a document which he had

repudiated?

6. For these reasons we are of opinion that the appellant is not entitled by virtue of the sale deed to claim the net income from the suit properties till

the period fixed in the trust deed. In this view, the other questions raised in the. second appeal need not be considered. We dismiss this second

appeal with costs.

7. We do not say anything here about the appellant''s right to recover the suit properties after the 15 years as that period, though now over, had

not run out when the suit was first instituted and persons whose presence would be necessary for the decision of the question have not been made

parties to this suit.