

(1944) 11 PRI CK 0001

In the Privy Council

Case No : Privy Council Appeal No. 45 of 1943

Rajammal alias Sundarammal and others

APPELLANT

Vs

Sabapathi Pillai and another

RESPONDENT

Date of Decision : 20-11-1944

Acts Referred:

Citation : (1945) AIR(PC) 82

Hon'ble Judges : John Beaumont, Lord Wright, Lord Thankerton, JJ.

Advocate : Hy. S.L. Polak and Co., White, Lambert, R. Ritson, J.M. Pringle, for the Appearing Parties.

Judgement

Lord Thankerton

This is an appeal by special leave from the judgment and decree of the High Court of Judicature at Madras, dated 7th November 1941, which reversed the appellate judgment and decree of the Subordinate Judge of Salem, dated 21st November 1938 (which had affirmed the judgment and decree of the District Munsif of Sankaridrug at Salem), and decreed the respondents' suit to recover immovable property forming part of the estate of one Annusami Pillai. Annusemi Pillai died in 1894 without issue, leaving him surviving two widows, namely, the senior, Akilandammal, who died in 1899, and the junior, Sundarammal, who died in April 1934. The present suit was filed by Subbaraya Pillai, as nearest reversioner of Annusami, at the time of Sundarammal's death, against the present appellants, who claimed to retain possession of the properties under a registered deed of gift dated 25th December 1899, executed a few days after the death of Akilandammal by Sundarammal in favour of her elder brother, Kumaraswami Pillai, whose rights as donee are now vested in the present appellants. It is not in dispute that after the death of Annusami the two widows had a partition effected through mediators of the bulk of his property and that each of them took separate possession of the shares respectively assigned to them. Further, Akilandammal then made a gift of her share to the plaintiff, who was second nearest reversioner at that time, his paternal uncle, Arumugam,

being the nearest one, and the plaintiff thereafter enjoyed possession of Akilandammal's share. Apart from the deductions, if any, which can be derived from the statements and terms of the deed of gift of 25th December 1899, there is no evidence from which the terms of the arrangement between the widows or the terms of the gift by Akilandammal to the plaintiff can now be ascertained, and, therefore, no evidence to show that the widows attempted to interfere with the reversionary interest in Annusami's estate.

Coming to the deed of gift, 1899, it clearly states that the arrangement effected between the widows was on the footing that each should enjoy their respective shares of the estate, being competent to effect gift and sale, and that Akilandammal gave her share absolutely to the plaintiff, it further made clear that the gift thereby made was an absolute one. There were eight attesting witnesses-no unusual number in India-of whom Arumugam was one and the plaintiff was another. The plaintiff further identified the executant, Sundarammal, before the Sub-Registrar. It may be mentioned that counsel for the appellants agreed that the agreement in 1921 between the plaintiff and appellant for the partition of small undivided portions of the estate was not of assistance in the present question. The learned Munsif held, on the evidence before him, that no question of estoppel by conduct arose to prevent the plaintiff from challenging Sundarammal's gift, but he held that the plaintiff had enjoyed a distinct benefit by the transaction and that the doctrine of election operated to prevent him from resiling from the position which he had previously accepted. On appeal, the Subordinate Judge affirmed the judgment of the Munsif, placing his decision mainly on the same ground, i.e., that the plaintiff had derived a substantial interest under the deed of gift under challenge, and was not now entitled to repudiate it. But the learned Judge also stated that there could be very little doubt that the plaintiff and Arumugam, the only reversioners then in existence, had consented to the gift made by Sundarammal and their consent must be sufficient to make the gift binding on them, Their Lordships may say at once that they are unable to discover any evidence of consent, apart from the point as to election, and counsel for the appellants was unable to indicate any such evidence.

On second appeal, the High Court held that there was not evidence from which the lower Courts could legitimately draw the inference that the plaintiff had knowledge of the contents of Sundarammal's deed of gift. Counsel for the appellants rightly conceded that that was a question of law, the determination of which fell within the province of the High Court on second appeal. Their Lordships are of opinion that the decision of the High Court was correct. It is settled that mere attestation is not enough to involve the witnesses with knowledge of the contents of the deed, and this is equally true of the witnesses who identify the executant before the Registrar. While their Lordships' view renders it unnecessary to decide it, their Lordships incline to the view that the language of the deed was so clear as to bring home its meaning and effect to the plaintiff, if he knew the contents, but their Lordships are unable to find any circumstances existing at the time, which could be held to have affixed him with

such knowledge. The circumstance that counsel mainly relied on was that, on Akilandammals death, Sundarammal became entitled, by survivance, to the whole estate, and that the plaintiff could not have resisted a claim by her for the half of which he was then in possession under Akilandammal's gift, of which he had no written evidence, and that he may be held to have arranged with Sundarammal that she should recognise Akilandammal's gift to him as an absolute one, and he should recognise Sundarammal's right to make an absolute gift:-that is the finding of the learned Subordinate Judge, which he described as involving a substantial benefit to the plaintiff. But their Lordships are unable to find any evidence from which such an arrangement can be inferred. The evidence, including the non-disturbance by Sundarammal of the plaintiff's enjoyment of Akilandammal's gift, is equally consistent with an arrangement between the widows which affected their right of survivance, but did not affect the rights of the reversioners, and the statements in Sundarammal's deed of gift cannot be used against the plaintiff unless and until he is proved to have had knowledge of them, and, above all, they cannot prove that he had knowledge of them.

Accordingly, their Lordships are of the opinion that the appeal should fail, and they will humbly advise His Majesty that the appeal should be dismissed, and that the judgment and decree of the High Court should be affirmed. The appellants will pay the respondents' costs of the appeal.