
(1897) 04 MAD CK 0003
In the Madras High Court

Ranga Ayyar

APPELLANT

Vs

Srinivasa Ayyangar

RESPONDENT

Date of Decision : 06-04-1897

Acts Referred:

Citation : (1898) ILR (Mad) 56

Hon'ble Judges : Arthur J.H. Collins, C.J;Shephard, J

Bench : Division Bench

Judgement

1. The District Judge's finding that the transaction was benami and his reason for it do not commend themselves to us.

2. Presumably he means to find that Srinivasa Ayyangar, when executing the sale-deed (Exhibit I), never intended it to have any operation and he

relies on the fact that Srinivasa Ayyangar remained in possession, did not have the patta transferred and retained the instrument of sale. He also

refers to the fact that no valuable consideration passed.

3. We are of opinion that these circumstances afford no evidence of the supposed intention of Srinivasa Ayyangar, when considered in connection

with the relationship of the parties and the previous circumstances. On the contrary, those circumstances are all consistent with the intention on the

donor's part, which is otherwise clearly established, to benefit his wife and daughter and to save the property from falling into the hands of his next

heir who was his enemy. But for the fact that his wife and daughter predeceased him, he would never have disputed the validity of the deed.

4. We must observe that when a conveyance has been duly executed and registered by a competent person, it requires strong and clear evidence

to justify a Court in holding that the parties did not intend that any legal effect

should be given to it. It needs to be proved that both parties had it in their minds that the deed should be a mere sham, and in order to establish this proof it needs to be shown for what purpose other than the ostensible one the deed was executed. In our opinion, there was in the present case no such proof and, therefore, the Lower Appellate Court ought not to have reversed the judgment of the District Munsif.

5. The Lower Appellate Court not having decided the third issue, which was also raised in the third ground of appeal, namely, as to the right of the plaintiffs to represent the two donees, we must call for a finding on that question.

6. The finding is to be submitted within one month from the date of the reopening of the Court after the recess. Seven days will be allowed for filing objections after the finding has been posted up in this Court.