

(1949) 07 MAD CK 0034
In the Madras High Court
Case No : Second Appeal No. 1080 of 1946

Saraswathi Madthi

APPELLANT

Vs

Rama Shetty and Others

RESPONDENT

Date of Decision : 08-07-1949

Acts Referred:

Limitation Act, 1908 — Article 132
Transfer of Property Act, 1882 — Section 100

Citation : AIR 1950 Mad 39

Hon'ble Judges : Govinda Menon, J

Bench : Single Bench

Advocate : T. Krishna Rao, for the Appellant; K. Srinivasa Rao, for the Respondent

Final Decision : Dismissed

Judgement

Govinda Menon, J.—The plaintiff who is the appellant in this second appeal questions the correctness of the decisions of the lower Courts

on the ground that he is entitled to recover possession of the properties from the defendants' family because there have been a number of chalgeni

chits executed by defendants 1 and 2 who are the ejaman and the senior Anandravan in the family and as such the defendants' family had admitted

that they were in possession of the property under the plaintiff's family. Whatever might be the original title which the plaintiff's family had, we find

that ever since 1809 the property was not in its possession. The learned Subordinate Judge has found that the chalgeni chits executed by

defendants 1 and 2 were collusive, nominal and champertous transactions and did not intend to create any leasehold right so far as the property is

concerned. In more than one place the learned Judge finds that the documents on which the plaintiff relied as showing the admissions by the

defendants" family of their possession under the plaintiffs were got up for the purpose of the kudthala proceedings and as such cannot bind the family. In such circumstances it is difficult for me to dislodge that finding unless it is not based on any evidence. The learned Judge has marshalled the entire evidence for and against the contention put forward by the plaintiff and came to the conclusion that the plaintiff was not in possession of the property within the statutory period; nor has it been shown that the defendants" possession was as lessees under the plaintiff's tarwad. These are findings of fact which cannot be agitated in second appeal. Such being the case, I agree with the lower Courts that the plaintiff has neither proved title nor possession within the statutory period.

2. The next question is whether the plaintiff is entitled to recover from the defendants the Government revenue paid by the plaintiff for the suit land from 1st July 1931 onwards. The learned Judge has given her a decree only for what she has paid for six years prior to the suit and not for any previous period. Mr. T. Krishna Rao for the appellant contends that either on the principle of a salvage lien or on the basis that the plaintiff and the defendants, being co-owners of this property, plaintiff is entitled to get a charge under Article 132, Limitation Act. It is admitted--and there can be no question about it -- that during the time the plaintiff paid the revenue, the property in question was included in her patta. On the finding that the plaintiff did not have any title to the property, at the time the revenue was paid, plaintiff was paying revenue for land included in her patta but which she did not own. In such circumstances the question is whether she is entitled to a charge u/s 100, T. P. Act and Article 132 , Limitation Act. In *Rajah of Vizianagaram v. Raja S. Soma-sekhararaj*, 26 Mad. 686 a Full Bench of this Court has held that where one of two or more co-sharers owning an estate subject to the payment of revenue to the Government pays the whole revenue in order to save, and so does save, the estate from liability to be sold by Government for realising the arrears of revenue, he is by operation of law entitled to a charge upon the share of each of his co-sharers for the realisations of the latter's share of the revenue, as between the co-sharers. On that principle what was decided there was that the co-sharer who paid Government revenue was entitled to recover the share from the other cosharer for a period of 12 years prior to the date of

the suit. But can it be said that in this case the position occupied by the plaintiff is that of a co-sharer with the defendant's family. It is admitted that

to this specific item of property -- if the finding given on the above question is true--the plaintiff has no title at all. It is not as if the plaintiff is the

owner of an undivided share, either half, or any other fraction along with the defendants. If that were so, the decision in *Raja of Vizianagaram v.*

Raja S. Somasekararaj, 26 Mad. 686, would be directly applicable. But in a case like this, it is difficult to hold that the plaintiff and defendants are

co-owners. A direct authority in favour of the respondents' contention is contained in *Shivrao v. Pundlik*, 26 Bom. 437: 4 Bom. L. R. 90 where

Sir Lawrence Jenkins C. J. and Crowe J. have held that where a person in whose name the patta stood paid the Government revenue for an item

of property which in fact belonged to another and claimed contribution for payment and a charge on the property, it cannot be said that he is

entitled to such a lien. The learned Judges discussed the English law on the point and finally came to the conclusion that in India also such a charge

cannot be allowed. The learned advocate for the appellant has not been able to distinguish this case from the facts of the present case. His

contention is that the present case must be viewed as akin to the decision in *Raja of Vizianagaram v. Raja S. Somasekararaj*, 26 Mad. 686 (F.B.)

and not as being similar to the decision in *Shivrao v. Pundlik*, 26 Bom. 437 : 4 Bom. L. R. 90. I am unable to agree with that contention. Since the

decision in *Shivrao v. Pundlik*, 26 Bom. 437 : 4 Bom. L. R. 90 is directly applicable to the facts of this case, I am of opinion that the decision of

the lower appellate Court on this point is also correct.

3. The second appeal therefore fails and is dismissed with costs. (No leave).