
(1949) 07 MAD CK 0021
In the Madras High Court

Saraswathi Madthi

APPELLANT

Vs

Rama Shetty and Others

RESPONDENT

Date of Decision : 08-07-1949

Acts Referred:

Transfer of Property Act, 1882 — Section 100

Citation : (1949) 2 MLJ 419

Hon'ble Judges : Govinda Menon, J

Bench : Division Bench

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 defendant's 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 defendant's 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 of the 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 of the Transfer of Property Act and Article 132 of the Limitation Act. In *Rajah of Vizianagaram v. Raja Somasekararaj* (1900)13 M.L.J. 83 : 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 co-sharer 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 defendants' 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 *Rajah of Vizianagaram v. Raja Somasekararaj* (1900)13 M.L.J. 83 : 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 *Shivarao v. Pundlik* ILR (1902) Bom. 437, 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 *Rajah of*

Vizianagaram v. Rajah Somasekararaj (1900)13 M.L.J. 83 : 26 Mad. 686 and not as being similar to the decision in *Shivarao v. Pundlik* ILR

(1902) Bom. 437. I am unable to agree with that contention. Since the decision in *Shivarao v. Pundlik* ILR (1902) Bom. 437 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.

4. No Leave.