

(1942) 04 MAD CK 0018
In the Madras High Court

Shenbagavadivammal

APPELLANT

Vs

Mupidathi Ammal and Others

RESPONDENT

Date of Decision : 07-04-1942

Acts Referred:

Transfer of Property Act, 1882 — Section 6

Citation : AIR 1942 Mad 720 : (1942) 55 LW 689 : (1942) 2 MLJ 364

Hon'ble Judges : King, J

Bench : Division Bench

Judgement

King, J.—This appeal is concerned with part of the estate of one Thangappa Pillai, who died in 1934 leaving; no issue but two widows, a

sister and a sister's son. The two widows are plaintiff and the 3rd defendant. First defendant is Thangappa Pillai's sister and 2nd defendant is 1st

defendant's son. There was a dispute amongst these persons as to the disposal of Thangappa Pillai's estate and the dispute was submitted to

arbitration. The award of the arbitrators was to the effect that the portion of the estate which forms the subject-matter of the present suit was to be

conveyed by plaintiff and the 3rd defendant to defendants 1 and 2 and that in return for this, the defendants 1 and 2 should release all their rights as

prospective reversioners to the other portions of Thangappa Pillai's estate and defendant 2 should perform the funeral ceremonies of Thangappa

Pillai. It has been found therefore that the consideration for the transfer by the plaintiff and the 3rd defendant to defendants 1 and 2 of the property

which forms the subject-matter of the suit was twofold: (1) the services rendered by the 2nd defendant in performing the funeral obsequies of

Thangappa Pillai and (2) the promise of defendants 1 and 2 to release their rights in other property. A few months after Thangappa Pillai died,

there was a partition between plaintiff and the 3rd defendant, and it is now the plaintiff alone who sues to recover possession of the property which plaintiff and 3rd defendant in accordance with the award of the arbitrators had made over to the defendants 1 and 2. There is no dispute on the part of the 3rd defendant to plaintiff's claim. I have said that plaintiff and the 3rd defendant made over this property in pursuance of the award. It must be mentioned here that this was not the plaintiff's case. According to her, the possession by defendants 1 and 2 was the result of trespass and she sought to recover possession upon her title as against trespassers. It has, however, been found as a fact that the possession was taken by defendants 1 and 2 in pursuance of the award. Whether therefore there was any ceremony by which possession was actually handed over by plaintiff and the 3rd defendant or not, it seems to me quite clear that in effect there was a transfer by plaintiff and 3rd defendant to defendants 1 and 2, and this suit therefore must now be considered as one to set aside a transaction which, on the face of it, was a transfer.

2. The main question which has been argued is whether such a transfer is or is not invalid. It seems to me from a consideration of Section 6 of the Transfer of Property Act that it certainly is invalid. Section 6 (h) says:

No transfer can be made ... for an unlawful object or consideration within the meaning of Section 23 of the Indian Contract Act.

Section 23 says that "the consideration or object of an agreement is lawful, unless it is forbidden by law". One of the items of consideration for the transfer by plaintiff and the 3rd defendant was the promise of defendants 1 and 2 to transfer their rights in the other portions of Thangappa Pillai's estate. That transfer is forbidden by law [see Section 6 (a)]. Therefore Section 6 (h) applies to the transfer by the plaintiffs and the 3rd defendant and therefore that transfer would certainly be invalid if this were the sole consideration.

3. It has been argued for the respondent, that because this was not the only consideration for the transfer but there was also the question of the services rendered by the 2nd defendant in performing the funeral ceremonies, the transfer cannot be set aside as invalid. But it seems to me, that if any portion of the consideration is forbidden by law, the necessary result must be that the whole transfer should be set aside. I accordingly hold

that the transfer by the plaintiff and the 3rd defendant to defendants 1 and 2 of the subject-matter of this suit is not valid and therefore that

defendants 1 and 2 can have no title under it to retain possession of the property.

4. There will, however, now be an obvious situation for the application of Section 65 of the Indian Contract Act. The agreement between the

parties that the 1st and 2nd defendants should release their rights in certain property to plaintiff and 3rd defendant has now been discovered to be

void, and it is the case of the 1st and 2nd defendants, a case which has been found to be true by the Courts below, that the plaintiff and the 3rd

defendant have received an advantage under this agreement. u/s 65, therefore, it is obligatory upon the plaintiff to make compensation to

defendants 1 and 2 before she can recover possession of the property which is the subject-matter of this suit. The learned District Judge refused to

consider these points of law, whether the transfer was invalid, and if so, whether the defendants had any right to compensation; because the

questions were not raised in the pleadings. It seems to me that this attitude cannot be justified. It is the clear duty of the Court to apply the law to

the facts; which it finds. And if the law is, as I have stated it, on the facts found, viz., that the transfer was invalid, it seems to me quite clearly the

duty of the Court to declare it to be invalid, and" to assess the compensation payable to defendants 1 and 2.

5. This appeal will accordingly be allowed and the suit remanded to the Court of first instance. It is not necessary, in accordance with the request

made to me on behalf of the respondent, that the plaintiff should be asked to amend her plaint. The basis of what must now be her claim has been

made quite clear by the judgments of the various Courts. The only question which now requires consideration is what compensation she must pay

to defendants 1 and 2. The next step, therefore, in the conduct of the suit will be for these defendants to set out in an amended written statement

what is the compensation which they claim. The Court of first instance will then proceed to try that particular issue and pass a decree in

accordance with its findings, i.e., that possession of the suit properties shall be restored by defendants 1 and 2 to plaintiff upon payment by her to

them of a certain sum of money. The question of costs will be left to the discretion of the learned District Munsiff. Leave refused.