

(1912) 10 MAD CK 0055
In the Madras High Court

Srinivasa Iyer and Others

APPELLANT

Vs

Krishnaswamy Iyengar and Others

RESPONDENT

Date of Decision : 22-10-1912

Acts Referred:

Citation : 18 Ind. Cas. 274

Hon'ble Judges : Miller, J;Abdur Rahim, J

Bench : Division Bench

Judgement

Miller, J.—The only question that we have to decide in this appeal is, whether the sale to the plaintiffs evidenced by Exhibit A was intended to convey to the plaintiffs any interest in the property which the instrument purports to convey. It was suggested at the outset of his argument by Mr. Ramachandra Iyer that we must take the sale to be an actual and real conveyance because the vendor has come into Court and said that it was so. If the vendor comes and says that he has received the sale price, then we are to take it as concluded that the sale was a real conveyance. Certainly the two cases Mr. Ramachandra Aiyar cited do not support that conclusion, and there are, on the other hand, authorities against it. The fact that the vendor says that he has received money in consideration of the sale is, no doubt, evidence in support of the sale, but there is no authority, I think, and certainly it seems to me it is not right to hold, that his statement is to be conclusive proof of an actual transfer of an interest. The burden of showing that this sale was benami and that it conveyed no interest is, no doubt, on the defendants who alleged it. It was so alleged by the 17th defendant in his written statement and was clearly set fourth in that written statement. But for some reason or other, which is not very clear, no issue upon this point was framed until late in the case, till the whole case had been heard and tried and arguments had been partly heard. The Subordinate Judge then framed two issues and gave the plaintiff an opportunity of producing evidence in support of his position. The plaintiff did not take advantage of the opportunity so afforded, and so we must take it that we have before us all the evidence which could be adduced on the point in question now. I think the case on the evidence is by no means clear. It

may be that the Subordinate Judge has not realised sufficiently that the burden was on the defendant, that is to say, he has not discussed it from that point of view. But he had all the evidence before him and we have it all before us, and I am unable to say that he was wrong. There is undoubtedly evidence, the direct evidence of the defendants' 3rd witness who says he attested the sale-deed Exhibit A, that no money was paid in his presence to the plaintiffs' vendors and that one of the vendors admitted that the sale was benami transaction. If the evidence of that witness stood by itself, I could not say that it would be sufficiently strong to support so great a burden as this. But there is evidence of important circumstances which lend strong support to that statement and point to this conclusion, that the seller Krishnamurthi and his brother were merely putting this property in the name of the plaintiffs in order that the litigation which it was proposed to institute either by themselves or the plaintiffs or some other members of the family to recover the property might not, even though successful, be infructuous. There are circumstances which lend strong support, I think, to that view and having regard to them, I am not prepared to differ from the finding of the Subordinate Judge that the sale was benami transaction. That being so, it seems to me that his decree is right. The decision in *Sree Raja Datla Venkata Suryanaraiana Jagapatiraju v. Golagaei Bapiraju* (1910) M.W.N. 286 is a decision of this Court that a benamidar has no right to sue in a case like this and the contrary was hardly contended, I think, by Mr. Ramachandra Iyer; at any rate towards the close of his argument, he conceded, I think, that if we find that no interest at all was transferred by the document, then his client is not entitled to sue. Accepting the finding of the Subordinate Judge on this point, the appeal must be dismissed with costs.

Abdur Rahim, J.

2. I agree.