

## **PRIVY COUNCIL**

Sura Lakshmiah Chetty

Vs.

Kothandarama Pillai

Privy Council Appeal No.8 of 1924

(Lords Sumner, Blanesburgh J. Salvesen, Sir John Edge and Mr. Ameer Ali JJ.)

22.05.1925

### **JUDGMENT**

#### **SIR JOHN EDGE J.**

1. This is an appeal from a decree, dated the 15th August, 1922, of the High Court of Madras which reversed a decree, dated the 31st August, 1921, of the same Court made in its Ordinary Original Civil Jurisdiction, which had dismissed the suit.
2. The suit in which this appeal has arisen was brought in the High Court of Madras on the 19th November, 1918, by the plaintiff, a minor, by his next friend, against the Official Assignee of Madras and three money-lenders. One of the money-lenders died, and his legal representative was brought on the record as a defendant. The plaintiff is the respondent in this appeal.
3. The plaintiff is the son of V. S. Chocka lingam Pillai, a Hindu of the Vellala caste, by his wife, Lakshmi Ammal, who died before the suit was brought. The plaintiff is the sole heir of his late mother and he claims the property to which the suit relates as her heir. On the 30th September, 1918, the plaintiff's father, Chocka lingam was adjudged insolvent by the High Court of Madras under the Presidency Towns Insolvency Act, 1909, Act III of 1909. The plaintiff claims in his suit, with other reliefs, a declaration that a piece of land with a dwelling-house and buildings thereon, being Nos. 4 and 5, Nainiappa Naick Street, are his exclusive property as the heir of his mother, and that his father, Chockalingam, had no beneficial or other interest in those properties, which could have vested in the Official Assignee or have been assigned by him in mortgage 4 and 5, Nainiappa Naick Street will, in this judgment, be referred to as the property in question.

4. The land and buildings then thereon were purchased by Chockalingam on the 12th May, 1909, and by the sale-deed were conveyed by the vendors to Lakshmi, who had been married to Chockalingam some years previously. The question upon the answer to which this suit depends is whether Chockalingam had purchased that property in 1909 for his wife Lakshmi in performance of an ante-nuptial agreement alleged to have been made by him to settle a house upon her, or whether the purchase was made in her name as benamidar for Chockalingam. There can be no doubt now that a purchase in India by a native of India of property in India in the name of his wife unexplained by other proved or admitted facts is to be regarded as a benami transaction by which the beneficial interest in the property is in the husband although the ostensible title is in the wife. The rule of the law of England that such a purchase by a husband in England is to be assumed to be a purchase for the advancement of the wife does not apply in India. See *Gopeekrist v. Gunga pursaud*, *Moulvie Sayyud Uzhur Ali v. Mt. Bebee Ulfat Fatiwa*, and *Bilas Kunwar v. Desraj Ranjit Singh*. If the plaintiff failed to prove that ante nuptial agreement and that it was in performance of it that the property in question was purchased by Chockalingam in Lakshmi's name, his suit fails.

5. Chockalingam has not been called by either side to give evidence in the suit, and his absence from the witness box has not been satisfactorily explained.

6. The facts, so far as they can be ascertained by their Lordships from the record are as follows :- Chockalingam and Vinayatheertha Pillai, who died in 1898 or in 1899, were trading as pea merchants in partnership at 6, Mint Street, in Madras. When that partnership commenced their Lordships do not know. It does not appear what the interest of the partners respectively was in the house, 6, Mint Street, or in the partnership. But 6, Mint Street, was the property of the partnership. Vinayatheertha left surviving him two young children, a son Vadivelu, who was living when the witnesses were giving their evidence in the suit, and a daughter Lakshmi, and his mother Kathayee who gave evidence in this suit. After Vinayatheertha died, his mother Kathayee carried on the family business in partnership with Chockalingam at 6, Mint Street, and Kathayee and the two young children of Vinayatheertha continued to live in that house together with Chockalingam, Chockalingam married Lakshmi, according to the plaint in or about 1907, or, according to the evidence of witnesses who were relations of Lakshmi, in 1909. At the time of the marriage Chockalingam had two wives living, one of whom was living with him, and he also had a son living. According to the evidence of Kathayee and two relations of Lakshmi, if it may be

credited, when Chockalingam asked for Lakshmi in marriage, Kathayee, acting on the advice of relations, said to him that she would give him Lakshmi in marriage if he would make a provision for her, but not otherwise, and asked him what provision he would make for Lakshmi, and he said that if the Mint Street house were sold, another house might be purchased and be given to Lakshmi. Thereupon she, Kathayee, gave Lakshmi to Chockalingam in marriage. That was the ante-nuptial agreement which is alleged by the plaintiff to have been made. A railway company was negotiating for the purchase of the Mint Street house, and purchased it for the price of Rs. 10,315-8-0 from Chockalingam and Kathayee, and paid the price to them. It is to be presumed that the money then paid by the railway company to Kathayee was, or part of it was received by her for and on behalf of her grandson Vadivelu, who does not appear to have had any other person to look after his interests.

7. In 1904 Chockalingam had purchased, apparently with his own money, houses 12 and 13, Memorial Hall Street, in Madras, and he, in 1909, mortgaged those houses for Rs. 9,000, and their Lordships consider it probable that Chockalingam on the 12th May, 1909, had other property apart from his interest in the pea dealing partnership and in the Mint Street house, and there is no reason shown why all the purchase money of the property in question was not Chockalingam's own money. Certainly none of it is shown to have been Lakshmi's.

8. Mr. Justice Phillips, who tried the suit, did not believe the evidence that there had been an ante-nuptial agreement, and he found that the purchase of the property in question on the 12th May, 1909, in the name of Lakshmi was a benami transaction and that she was merely benamidar for her husband Chockalingam. Mr. Justice Phillips in his judgment made a statement with which their Lordships agree. He said :-

"We do not know what really happened to Vinayatheertha's property when he died or what share he had in the business or whether really he did leave any property which was undisposed of at the date of Lakshmi's marriage. There is no evidence about these facts on either side though the plaintiff's family ought to know all that can be known about this."

9. It will be remembered that Vinayatheertha had died in 1898 or in 1899 and the property in question was purchased in May, 1909. Mr. Justice Phillips rightly found as to the money which was invested in the purchase of the property in question that if the purchase money did not belong to Chockalingam it did not belong to Lakshmi, but belonged to her brother Vadivelu. Mr. Justice Phillips by his decree dismissed the suit. From that decree the plaintiff appealed under the Letters Patent.

10. The appeal under the Letters Patent was heard by Sir W. S. Schwabe, C. J. and Mr. Justice Wallace. The Chief Justice stated in his judgment :-

"the question to be decided is whether a purchase of property by one Chockalingam an insolvent, in the name of his wife, Lakshmi, was a settlement on her marriage or was a benami transaction, she being benamidar for him. The evidence called was all one way, namely, that the property was purchased out of funds belonging 6/11 (six-elevenths) to Chocka lingam and 5/11 (five-elevenths) to Laksh mi's infant brother Vadivelu, as the heir to his father, formerly a partner of Chockalingam."

11. If there was such evidence as to the respective shares of Chockalingam and Vadivelu, the attention of their Lordships has not been drawn to it, and if there had been such evidence it would not show that Lakshmi had acquired a beneficial title to the property. Vadivelu was a minor on the 12th May, 1909, and could not make a present of his property to his sister, Lakshmi. Mr. Justice Wallace agreed with the judgment of the Chief Justice.

12. They accepted the evidence that the alleged ante-nuptial agreement had been made and gave the plaintiff the decree which he claimed. From their decree this appeal has been brought.

13. It would, no doubt, have been prudent on the part of Kathayee and Lakshmi's relations to have insisted before Lakshmi was given in marriage to Chockalingam who was an old man with two wives and a son living, that he should agree to settle some property on her. It is obvious to their Lordships that Lakshmi had no property of her own. She was not the heir to any property and could have had no expectations of succeeding to any property. Possibly Chockalingam may have been asked to promise to make a settlement on Lakshmi, but the question is : Did he agree to do so ? It appears to their Lordships that most probably the story of this alleged agreement to make a settlement was first thought of after Chockalingam's insolvency in order to save for the plaintiff some part of the property of the insolvent. The property in question was purchased in May, 1909, and Lakshmi lived until 1912 and if Chockalingam had agreed to settle the property in question, there was plenty of time in which he could have executed a proper deed of settlement upon her.

14. In their Lordships' opinion it would be unwise to accept as proved such an oral agreement as is alleged on the part of the plaintiff except on the clearest and most satisfactory evidence of credible witnesses and after giving the most careful consider-

ration to the evidence in this suit their Lordships agree with Mr. Justice Phillips and find that Chockalingam did not agree to make any settlement upon Lakshmi and that she had no beneficial interest in the property in question and was a mere benamidar for Chockalingam.

15. If it were necessary in this case to ascertain by evidence whether her position was that of a beneficial owner of the property in question and not that of a mere benamidar for Chockalingam, the transaction which will now be referred to would be material evidence. See *Pandit Ram Narain v. Maulvi Muhammad Hadi* (and the cases already cited. The property in question was purchased on the 12th May, 1909. On the 25th July, 1909, Chockalingam and Lakshmi jointly gave what was apparently treated as an equitable mortgage to S. Krishnaswami Ayyangar of the property which had been purchased on the 12th May, 1909, in her name, which they stated was "in our possession and enjoyment". On the 30th March, 1910, Chockalingam and Lakshmi jointly granted a lease of the property in question to Sirakalai Pillai. On the 4th December, 1912, Lakshmi died. On the 18th March, 1914, Chockalingam on his representation that he "is in possession of and is entitled to" the property in question obtained in the Registration Department the Collector's certificate. On the 21st February, 1918, Chockalingam mortgaged the property in question to C. Vythialingam Pillai and in the deed of mortgage it was stated that he had purchased the property in question out of his own self-acquired earnings and was absolutely entitled to it. As to these transactions by Chockalingam after the 12th May, 1909, it is only fair to the plaintiff to bear in mind that his mother was, until she died, under the influence of her husband Chockalingam, and seems to have had no independent advice, and that the plaintiff was a minor of tender years without any one, except his great grand mother, an aged woman, to protect the interest, if any, which he may have had. But those transactions show how Chockalingam dealt with the property in question.

16. Their Lordships do not decide that an ante-nuptial agreement may not be orally proved in an Indian case, but they consider that it would be unwise of a Judge to act in a disputed Indian case upon oral evidence that there had been an ante-nuptial agreement, which would in effect be a marriage settlement, unless there was contemporaneous written evidence to corroborate the oral evidence. In this case there was no such evidence.

17. Their Lordships will humbly advise His Majesty that this appeal should be allowed with costs and the decree appealed against should be set aside with costs and the decree of Mr. Justice Phillips be restored.

Appeal allowed.

Cases Referred.

(1854) 6 MIA 53 : 2 Suther 13 : 4 WR 46 : 1 Sar 493 (PC),

(1869) 13 MIA 232 : 13 WR 1 : 4 BLR 1 : 2 Suther 279 : 2 Sar 522 (PC)

AIR 1915 PC 96: 37 All 557 : 42 IA 202 : 19 CWN 1207 : 29 MLJ 335 : 2 LW 830 :  
18 MLT 248 : 13 ALJ 991 : 17 Bom LR 1006 : 22 CLJ 516 : (1915) MWN 757 (PC)

1898) 26 Cal 227 : 26 IA 38 : 3 CWN 113 : 7 Sat 425 (PC)