FEDERAL HIGH COURT

Gangadara Ayyar

Vs

Subramania Sastrigal

(Kania, C.J.)

16.12.1948

JUDGMENT

Kania, C.J.

1. I have read the judgment prepared by Mahajan J. I agree with the reasoning and conclusion of the judgment and have nothing to add.

Mahajan, J.

2. This appeal is directed against the decree of the High Court of Judicature at Madras modifying the decree of the Sub-ordinate Judge of Trichinopoly in Original suit No. 86 of 1947. It is unfortunate that the parties who are very close relations are fighting out a matter which should have long been settled by amicable arrangement to avoid bitterness between them.

3. Ayyasami Sastri, an original resident of Nangavaram, was married to Akilandammal, whose parents were residents of Allur. The former place is within twelve miles of Trichinopoly and the latter is situate at a distance of six miles from that place. The following table of the two families indicate the relationship of the parties to the appeal.

4. The plaintiff and defendant 7 are the collaterals of Ayyasami Sastri's son, Sundaram Ayyar, while defendant 1 is his widow and defendants 2, 3 and 4 are his brothers-in-law. This litigation is being fought out between close relations of the, same family.

5. Ayyasami Sastri died in 1889, leaving him surving Sundaram, a minor son eighteen months old, and a widow. The only property admittedly possessed by him was under mortgage. Soon after his death, his widow along with the minor child went to her parents' house in the village of Allur. Apparently she had not any good means of subsistence in her husband's village. When Sundaram came of school-going age, the mother shifted her residence to Trichinopoly and put him in school some time in the year 1894. When he was quite young, she performed his marriage, selecting a daughter of one of her brothers as a bride for him. It appears that to meet the funeral expenses of her husband, the marriage expenses of her son, and to maintain herself and the child she incurred debts. To liquidate these debts the mortgaged property was sold in

1901 for ₹ 1000/-. She was able to save a sum of ₹ 400/- to meet the future needs of herself, her son and daughter-in-law. With :this small amount, however, it was not possible to educate the son and to maintain the family in Trichinopoly. It is alleged that she supplemented her slender resources by opening a boarding house there, in which she kept eight or ten school children. These boys brought their own rations, not only for themselves but for Akilandammal and her son and daughter-in-law, and in all probability she charged a small amount from them as fee for her own labours. This state of affairs continued till the year 1908 when Sundaram matriculated. From 1908 to 1910, the family lived in Allur and it was in that year that Sundaram got a small job in the railway on a salary of ₹ 10/-. He used to go from Allur to Trichonopoly every day and return home after he had attended to his duties. He left this service in 1916 when he was drawing a salary of ₹ 16/-. It appears that whatever little money the mother had was supplemented by the small income of the son and it became possible to effect some savings. In the year 1912, a promissory note for a sum of ₹ 50/- is traced in the name of the mother. In the year 1915 a sum of Bs. 400 was similarly lent, and two other notes for ₹ 646/- and ₹ 200/- were taken in 1916 and 1918 respectively. It is a moot point whether it was the son's money or the mother's that formed part of these transactions. Sundaram Ayyar remained unemployed between 1916 to 1919 and eventually in that year he got a job in the Collectorate of Bellary on a salary of ₹ 40/- where he remained employed, though deputed in different districts on Income Tax duty, till the year 1937 when he died. At that period his salary had gone up to ₹ 65/- a month.

6. It seems that while he was employed in the Collectorate of Bellary, Sundaram acquired considerable wealth. The proof in support of this statement is furnished by the unimpeachable evidence of his bank accounts. In the Imperial Bank of India, Bellary, he had an account, copy of which is Ex. P-16 (a). This account started on 2nd May 1921 with a deposit of ₹ 2517-8-0/- and continued till 8th February 1926. Exhibit P-16 is an account of the fixed deposit of Sundaram in the Trichinopoly District Co-operative Central Bank Limited from 1920 to 1937. The first deposit in this account, as appears from the extract, is dated 3rd April 1923 and is in the sum of ₹ 4000/-. Several deposits were made, renewed and withdrawn up to 1929. In that year he withdrew a sum of ₹ 4,200/- from this account. The savings fund account and the fixed deposit account were running simultaneously. In August 1924, Sundaram invested a sum of ₹ 3000/- in a mortgage of certain property [EX. D-1 (b)]. He also purchased certain Government Promissory Notes of the value of about ₹ 2500/-. On this evidence, the trial Judge found that till 1924 Sundaram had accumulated a sum of ₹ 11,000/- in his own account, though he was drawing a small salary of ₹ 40/- to 50 a month during that period. The accounts since the year 1929, kept by Natesa Sastri have been exhibited and are marked as Ex. P-1 and Ex. D-35 (A point has been raised whether these are Sundaram's accounts or that of his mother.) The first entry in those accounts begins with a credit of ₹ 370/- on account of certain bonds and is dated 11th December 1929. A large number of entries have been made therein showing considerable investments in money-lending business and in purchase of properties. Akilandammal was growing old. By the year 1929 she was nearing her 64th birthday. She had, so far as the record shows, no desire or

necessity to amass separate wealth or to acquire properties for herself after her son had begun to earn well.

7. Between 1919 to 1926 certain promissory notes exist in the name of Akilandammal and from 1929 and 1937, eleven properties were acquired and they stand in her name. The question is whether these are the son's properties, purchased benami in the name of the mother, or whether the mother, who was 64 years old, started acquiring properties in her own name and for her own benefit and out of moneys-earned from sources disclosed by the defendants. The first property was acquired on 23rd October 1929 for a sum of ₹ 5000/-, the second on 28th October 1932 for ₹ 1500/-, the third on 30th October 1932 for ₹ 5000/-, the fourth on 2ith March 1933 for ₹ 1790/-, the fifth the same year for ₹ 1860/-, the sixth on 4th July 1934 for ₹ 1925/- and the seventh on 19th June 1935 for ₹ 2800/-, and the eighth on 24th. June 1935 for Rs 900. The ninth, which is no longer in dispute, was acquired for ₹ 900/- the same year, the tenth was acquired for Rupees 8627 in the years 1936-1937 and the eleventh for ₹ 1000/- during the same period. Had Sundaram outlived his mother, it would not have been very material whether the properties stood in the name of the mother or in his own name (if it was he who acquired them). It would be quite safe for him to put them in the name of his mother. She was the best person to be trusted as a name-lender for the acquisition of properties which could not have been purchased with the savings out of Sundaram's salary. The fates had, how-ever, decreed otherwise and it is this miscalculation on the part of Sundaram that has led; to the present litigation.

8. As already stated, Sundaram died on. 14th September 1937. The family lived amicably till one year after his death. They were living at Allur to which place they had returned after the death of Sundaram at Guntur. Akilandammal got ill and went for treatment to Trichinopoly and within three days of her departure from Allur she executed a will at Trichinopoly on 15th October 1938 in favour of Gangadhara. Ayyar, defendant 2 in the case and witness 7 on behalf of the defendants. Gangadhara Ayyar, as indicated above, is the son of Ramaswami Sastri, elder brother of Akilandammal. The whole benefit under this will was taken by Gangadhara Ayyar and other relations were ignored. The widow of Sundaram was practically left unprovided for. It is this will that is the starting point of troubles in the two families. It was asserted in this document that all the properties that were being bequeathed in favour of Gangadhara Ayyar formed part of the stri-dhanam of the testator. This assertion overlooked the fact that for a period of about eighteen years Sundaram Ayyar had been earning and otherwise acquiring wealth and that he had considerable funds in his possession at the time of his death. No satisfactory explanation was forthcoming on defendants' case as to what happened to the funds which were in the possession of Sundaram Ayyar. Obviously he left nothing if the properties in suit are left out of consideration. The probability is that Sundaram Ayyar had converted whatever moneys he had into immovable properties and what the mother was claiming as her stridhana was really not her stridhanam. It has to be borne in mind that as soon as the son started earning money there was no further need for the mother who was advancing in years to toil and start any business on her own account or think of earning money by her own exertions and labour. There was no necessity to earn any more when the son's earnings were more than ample for the needs of the family and were growing in quantum every year.

9. As soon as the widow of Sundaram Ayyar was apprised of this will, she naturally resented the treatment meted out to her in it. During the absence of her mother-in-law she took possession of all the documents. Her mother-in-law filed a complaint against her. The object was to get back the documents. The widow produced the documents before the police at Tiruchendurai, with the result that some documents were kept by the police; others were handed over to her brother on the assurance that after, taking legal advice a suit to challenge the will would be filed in a civil Court. Before the police she made a statement (Exhibit p-15) on 18th October 1938, and in this she asserted that all the properties belonged to her. Defendants 3 and 4 who were dissatisfied with the will made common cause with the widow against defendant 2 and threatened litigation. Notices were issued to the different debtors not to pay the amounts due from them either to Akilandammal or to defendant 2. These notices were issued on or about 24th October 1938. The result of the trouble created by defendants 1, 3 and 4 was that a registered settlement deed was executed by Akilandammal in favour of defendants 2 to 4, giving the properties mentioned in the different schedules annexed to that document to the various defendants, more or less in equal shares. So far as the widow, defendant 1, was concerned, a maintenance deed was executed in her favour, Exhibit D-22, dated 3rd November 1938, by which she was given 100 kalams of Samba paddy per year, roughly speaking, equivalent to a sum of ₹ 300/- a year. The sum and substance of what took place under this arrangement was that instead of defendant l alone getting all the properties mentioned above, they were divided between defendants 2, 3 and 4, and the widow was given maintenance allowance and a right to adopt, but not outside the families of these three persons. The plaintiff and defendant 7, the reversioners of Sundaram Ayyar, stood completely deprived of all chance of succeeding to these properties under the arrangement above described, and in February 1940 they issued notices challenging this settlement. These notices were followed by the institution of the suit under appeal on 17th June 1940. The plaintiff sued for a declaration that the eleven properties described in the two schedules annexed to the plaint belonged to the estate of Sundaram Ayyar, who died on 14th September 1937 and that the deed of settlement executed by Akilandammal, Sundaram Ayyar's mother, of 3rd November 1938 was void. The contesting defendants, inter alia, pleaded that the properties belonged to Akilandammal and that she was entitled to make this settlement.

10. The learned Subordinate Judge held that six properties out of the eleven in suit had been bought with Sundaram Ayyar's money and therefore his mother must be regarded as a benami-dar, but that it had not been proved that Sundaram Ayyar had provided the funds for the purchases of the other five properties. On these findings, the Subordinate Judge granted the relief claimed in the plaint in respect of the six properties but dismissed the suit so far as the five properties were concerned.

11. An appeal was filed by defendants 2, 3 and 4, contesting the Subordinate Judge's degree about six of the properties. The plaintiff filed a memorandum of cross-objections regarding the rest. The claim to the eleventh property mentioned in Exhibit D-9 was given up. Defendants 5 and 6 had been joined in the suit, as they had effected a mortgage of certain property in favour of Akilandammal on 25th September 1937. As that mortgage had been repaid, the plaintiff was given no relief in respect of it and the matter is no longer in dispute in the appeal.

12. The High Court dismissed the appeal preferred by the defendants and allowed the cross-objections filed on behalf of the plaintiff and in the result decreed the plaintiff's suit in respect of all the properties in suit excepting property 9 and the mortgage. As the judgment of the High

Court varied the decision of the trial Judge and the value of the subject-matter of the suit as well as of the appeal was a sum exceeding ₹ 10,000/-, leave to appeal to His Majesty in Council was granted to the defendants by the High Court. The records in the case had not been transmitted to the Privy Council before the amendment of the law under which the jurisdiction of this Court was enlarged, the appeal was therefore transmitted to this Court and was heard by us.

13. It is convenient first to deal with the appeal preferred on behalf of the defendants as regards the properties covered by the sale deeds, Exhibits D-1, D-5, D-6, D-7, D-10 and D-11, in respect of which the Subordinate Judge and the High Court concurrently found that the consideration for these sale deeds passed from Sundaram Ayyar and hence these must be held to be benami transactions in the name of the mother on behalf of the son.

14. It was contended by the learned Counsel for the appellants that the decision of the Court below against the appellants regarding these properties had been reached because of a wrong approach to this matter in law and that the rule of onus of proof as regards benami transactions had not been fully appreciated. It is settled law that the onus of establishing that a transaction is benami is on the plaintiff and it must be strictly made out. The decision of the Court cannot rest on mere suspicion, but must rest on legal grounds and legal testimony. In the absence of evidence, the apparent title must prevail. It is also well established that in a case where it is asserted that an assignment in the name of one person is in reality for the benefit of another, the real test is the source whence the consideration came and that when it is not possible to obtain evidence which conclusively establishes or rebuts the allegation, the case must be dealt with on reasonable probabilities and legal inferences arising from proved or admitted facts. The Courts below proceeded to decide the case after fully appreciating the above rule and in our judgment their decision does not suffer from the defect pointed out by the learned Counsel for the appellants.

15. There are certain facts which have been held established in the two Courts below and on the basis of which a decision has been reached against the appellants. These are: (1) that Sundaram Ayyar had the means to acquire these properties. The trial Judge found, and the High Court concurred in its finding, that as early as 1924 he had at least funds to the tune of ₹ 11,000/-, standing in his name in different banks and in other form3 of investments and that he was also accumulating wealth during his later employment in the Collectorate at Bellary. (2) That Akilandammalhad some promissory notes in her name up to 1924 approximately of the value of ₹ 2000/-, but she had no other means of acquiring properties. The latter finding was affirmed by the High Court and the former finding was reversed. It had been asserted on behalf of the defendants that she was running a boarding house in Trichinopoly and out of that business she effected certain savings, the extent of which was mentioned in the evidence at about ₹ 200/- a year. It had further been asserted that Akilan-dammal carried on a very successful business in money-lending, her capital being her jewels worth ₹ 400/-, a sum of ₹ 600/- given by her parents after the marriage of her son and ₹ 2000/- which she had obtained from her sister, Kuzhandai Ammal, who lived with her, that when she-went to Bellary with her son, she had a sum of ₹ 15,000/- with her and that she later on started a motor bus service and earned considerable money therefrom and was thus in a position to acquire the properties in suit. The evidence or

these points was given by one Natesa Sastri,. D.W. 8, but his testimony was not accepted and both the Courts negatived these assertions. (3) (i) That the bulk of the consideration for the transaction evidenced by Ex. D-1 came from Sundaram Ayyar and Sundaram Ayyar also de-frayed the costs of repairing the house. (ii) That out of the total consideration of ₹ 1860/- for which the sale-deed, Ex. D.5, was effected, ₹ 1667-4-0/- was directly traced to Sundaram Ayyar as his-money. (iii) That the bus service was the business of Sundaram Ayyar and the money for the sale transaction (Ex. D- 6) ₹ 1925/-, was taken out of the funds earned out of the business, (iv) That the purchase under Ex. D-10 was made by Sundaram Ayyar because negotiations for the purchase were made with him and that he had made endorsements on the mortgage bond which formed part of the consideration for the sale, and that there was evidence of the plain-tiff's witness No. 1 in support of the plaintiff's case as well as direct evidence furnished by the letters, Ex. P.3 series. (v) That the transaction evidenced by Ex. D. 11 for ₹ 1000/- dated 7th July 1937 was done by Sundaram Ayyar. He sent the money and he also conducted the negotiations for the purchase.

16. In view of these conclusions concurrently reached by the two Courts below, I do not consider that the appellants have any case regarding the six properties in dispute and it is not open to them to ask us to reconsider these findings.

17. Their Lordships of the Privy Council have always expressed unwillingness to depart from the general rule which prevents the fresh examination of facts for the purpose of disturbing concurrent findings by the lower Courts. In *Moung Tha Huyeen v. Moung Pan*[1] Lord Hobhouse in delivering the opinion of the Board, observed as follows:

> Although acuta critioisms have been made upon some points in the case, there has been nothing to show that there has been a miscarriage of justice, or that any principles of law or of procedure have been violated in the Courts below. This case is one which very decidedly falls within the valuable principle recognized here, and-commonly observed in second Courts of Appeal, that such a Court will not interfere with concurrent judgments of the Courts below on matters of fact, unless very definite and explicit grounds for that interference-are assigned.

The rule was again restated by Lord Lindley in *Rani Srimati v. Khajendra Narayan Singh*[2] and by Lord Macnaghten in *Saval Singh v. Satrupa Kunwar*[3] and recently by Viscount Sumner in *Mahomed Ali v. William Stansfield Grosvenor Harvey*[4] In *Jehangir Shapoorji v. Revd. Savarkar*[5] Lord Wright observed as follows:

> Their Lordships have examined the whole history in some detail, because in regard to issue No. 7 the question is rather one of law, and in any case there are not on that issue concurrent findings of fact; accordingly the whole case had to be considered in order to deal with that issue. But their Lordships must not be taken to have in any way failed to give effect to the rule that on an issue of fact concurrent findings should be conclusive, unless indeed where the enforcement of the rule would work obvious injustice, or the violation of some principle of law or procedure. The importance of the rule is to

discourage bringing before this Board issues of fact in which the appellant has failed in two Courts. The present case as regards the issue to which the rule applies, affords a complete illustration of the wisdom of the rule. Apart from their decision on the merits, their Lordships are for dismissing the appeal on that issue simply on the ground of the concurrent findings.

All the cases bearing on the point commencing from 1819 have been reviewed by Lord Thankerton while delivering the judgment of the Board in *Bibhabati v. Ramendra Narayan* [6]and a number of propositions have been enunciated explaining the scope of the rule.

18. I have considered it necessary to refer to these cases because this is really the first case that came before us after the enlargement of the jurisdiction of the Court and in which an attempt was made to reopen conclusions on questions of fact concurrently arrived at in the two Courts below. The rule as to concurrent findings is not a rule based on any statutory provision. It is a rule of conduct which the Privy Council had laid down for itself. Following this rule the Judicial Committee usually declined to review the evidence for a third time unless there were special circumstances which would justify a departure from this practice. As observed by Lord Thankerton in *Bibhabati v. Ramendra Narayan 51 A.I.R. (34) 1947 P.C. 19(Supra)*, the practice is not a cast iron one and the grounds given in the decisions justifying departure from the above rule are merely illustrative. In an appropriate case and on a suitable occasion this matter may have to be fully considered and elucidated in all its aspects, but for the purposes of this case it is enough to state that in the absence of circumstances justifying departure from this rule, this Court would adhere to the practice developed by the Judicial Committed during the course of a century.

19. In this case there is no pretence for saying that there is any error of law, and that the concurrent findings of fact are not conclusive. The learned Counsel for the appellants particularly wished to attack the findings of the lower Courts in respect of the sale deed, Ex. D.6, and contended that here the two Courts had erred in law. He contended that the decision of the Courts that the property covered by this deed belonged to Sundaram Ayyar was based on the-conclusion that the motor bus service belonged to him. He urged that this conclusion was vitiated inasmuch as the two Courts in arriving, at the decision as to the ownership of the bus service had failed to apprehend the full extent of the rule of onus of proof. It was argued that all the documents relating to the bus service were in the name of Akilandammal, and that being so, that business should have been presumed to be hers till it was proved by some evidence that the funds invested therein belonged to Sundaram Ayyar or that it was he who really started it. In our view, this contention cannot be sustained. Both the Courts below have approached the question from the point of view which the learned Counsel has urged. On the circumstances of the case, however, it has been found that the business could not have been started by this old lady and that she had really no interest in venturing on an undertaking of this character when she was 64 years old and that it was Sundaram Ayyar alone who invested his surplus income, which he could not legitimately disclose, in this business. The business was carried on in Bellary where Sundaram Ayyar was employed and where he had some influence. The mother was simply living with him and would only be known there in that capacity.

20. Be that as it may. Both the lower Courts on the circumstantial evidence have reached this

conclusion and it is not competent to the appellants to re-open it in this Court. For the reasons given above, it must be held that the appeal relating to these properties is totally void of force- and cannot be seriously considered.

21. As regards the rest of the properties regarding which the High Court reversed the decision of the trial Judge, it has to be considered whether there were substantial grounds for doing so. The High Court's judgement on this part of the case is very brief and the matter has been disposed of rather summarily in the following words:

> There is no evidence directly tracing the consideration for these purchases to Sundaram Ayyar, apart from.' the accounts kept by Natesa Sastri. If Akilandammal had means of her own and these, accounts were kept on her behalf by Natesa Sastri, the memorandum of cross-objections would have to be dismissed. For the reasons-given we have held that Akilandammal had no means of her own and that the accounts kept by Natesa Sastri were Sundaram Ayyar's accounts. We have also pointed out that if Akilandammal had no means, all of the purchases standing in her name must have been made out of Sundaram Ayyar's money. Then it is to be borne in mind that it has been proved that the first loan lent by Akilandammal was of her son's money and no purchase of property was made until Sundaram Ayyar had been in the Income Tax department for ten years. This being the position, the Subordinate Judge should have held that the plaintiff had discharged the burden of proof which lay on him in respect of the transactions represented by Exhibits D-2, D-3, D-4 and D-8.
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> The learned Counsel for the appellants subjected this part of the judgment to a severe criticism and contended that the finding that Akilandammal had no funds of her own was contrary to the evidence on the record, and that no grounds existed for disturbing the decision of the trial Judge on this point. He stressed the point that the High Court had also lost sight of the rule of onus of proof while reaching its conclusions about these properties. It was said that the High Court was not right in the observation that the very first loan lent by Akilandammal was from her son's money, and that there was no justification for the conclusion that three other promissory notes taken between 1915 to 1919 were taken for money which belonged to Sundaram Ayyar, and that from the mere circumstance that one promissory note was taken in the name of the mother out of the son's money it did not follow that the money for the other promissory notes regarding which no evidence was led, was advanced by the son.

22. The trial Court's finding with regard to these properties was based on the following observation:

> Having due regard for the paucity of evidence as to the source of consideration for the pro-notes in the name of Akilandammal and that some of the sale deeds are taken out of amounts realized under the pronotes that stood in her name, I find that Exhibits D-2, D-3, D-4 and D-8 are not benami for Sundaram Ayyar.

The learned Counsel for the plaintiff-respondent urged that the trial Judge failed to notice that the responsibility for the paucity of evidence rested on the shoulder of the defendants and that the accounts and letters produced in the case conclusively proved that all these properties were purchased with Sundaram Ayyar's money in the name of his mother and that since the purchase they were managed by him, the accounts both of income and expenditure were rendered to him, revenue instalments were paid by him and whenever any money was required he sent it and that the salary of defendant 2, who was in actual management of this property, was also paid by him. It was also argued that the High Court was right in its conclusion that the accounts maintained by Natesa Sastri, D.w.8, were not the accounts of the mother but were the accounts of Sundaram Ayyar. We now proceed to examine the validity of these contentions.

23. In the first instance it is necessary to consider the contention of the respondents, whether the defendants are guilty of suppressing material which it was their duty to place before the Court and whether they have been picking and choosing the documents and producing such of them as helped their case and withholding others which would go against them, and they are thus responsible for the paucity of evidence in the case. It has already been pointed out that at the moment when Akilandammal went to Trichinopoly, to execute the will, all the documents and account books of Sundaram Ayyar came into the possession of his widow, Kamakshi Ammal. Her mother-in-law, on her return from Trichinopoly, discovered this and filed a complaint against her. As a result of this complaint, most of the documents were produced before the police officer. Some of these were kept by him, while the others were returned to defendant 2 to be kept on behalf of the widow. It was not denied that these documents did come into the possession of the defendants and were with them. During the pendency of the suit, documents, Exs. D-1 series, on which reliance was placed by the defendants, were produced by them on 7th July 1942. Some of the documents were produced by them in October 1942 as well. These documents did not include the accounts, which are contained in the books, Ex. P-1 or Ex. D-35. They came to the Court from the Stationary Sub-Magistrate, Trichinopoly, on 20th October 1942. How these accounts reached the Court of the Magistrate is disclosed by a copy of the complaint, EX. D-82, filed by Kamakshi Ammal, wife of Sundaram Ayyar, against defendants 2 and 4 under Section 406, Penal Code. In this complaint she stated that the documents were produced before the police at Tiruchendurai, and that some of the documents were kept by the police and the rest were retained by her brother on the assertion that he would keep them with him for legal advice and file a suit on her behalf in a civil Court and that he had not returned these documents in spite of repeated demands. She prayed that a search warrant be issued for seizing the documents from the house of these persons. In pursuance of that complaint a warrant was actually issued and a search was conducted on 8th October 1942 in the houses of the defendants. The account books were discovered in that search along with various other documents. In spite of the fact that the search was conducted thoroughly and these documents came to the Magistrate's Court, these defendants later on produced a number of documents from their possession which are not included in the search list. Exhibit D-25 a letter of the year 1933 and some other documents relating to the years 1935-36 were produced by the defendants on 18th November 1942, i.e., a month and ten days after the search. From this fact, it appears that certain documents that were helpful to the defendants' case were carefully preserved by them in some other place and were not discovered in the search. The letters discovered in the search disclose that Sun-daram Ayyar was writing to

defendant 2 and the letters now discovered are replies given by him to these letters. This defendant was asked to produce Sundaram's letters, but he took shelter behind the answer that be had thrown them in the dustbin, though he had preserved several -documents in his custody of the years 1933, 1934, 1935 and 1936. On these facts there can be no doubt at all that the contention of the learned Counsel for the respondent that the defendants are guilty of suppression of evidence in the case and that therefore no conclusion in their favour should be arrived at merely on the ground of paucity of evidence which is of their own creation, must be upheld. The trial Judge, in our opinion, was not justified in giving his decision as regards these properties on a mere application of the rule of onus of proof in view of the paucity of evidence created by the conduct of the defendants themselves. The circumstances of the case warranted a different conclusion. The withholding of the account books by the defendants was by itself a sufficient ground for an adverse finding against them in regard to all the properties in respect of which account was maintained in these books and for the view that these books did not belong to the mother. There is, however, intrinsic evidence in the case justifying the conclusion that the account books produced in the case are of Sundaram Ayyar. In the letters exhibited as P-3 series, defendant 2 was rendering accounts of all the eleven properties to Sundaram Ayyar. He was managing them on his behalf. No distinction was being maintained as regards these four properties from the other properties which both the lower Courts have found to belong to Sundaram Ayyar. The accounts annexed with these letters and sent to Sundaram Ayyar, were duly entered in the account books. By way of illustration, it may be pointed out that Sundaram Ayyar withdrew ₹ 4000/- from the Co-operative Bank and lent it to various per-sons. Out of this, a sum of ₹ 2000/- was lent to N. Ramaswami Ayyar on a promissory note and other sums of Bs. 1000 and ₹ 650/- were lent to other persons. Rupees 350 remained as balance and this was accounted for in the accounts contained in Ex. P-l. The whole of the sum of ₹ 4000/- which admittedly belonged to Sundaram Ayyar, finds mention in this book. It is clear,, therefore, that Ex. P-1 is an account book which contains entries regarding his money-lending transactions and also contains accounts of the properties held by him. All the eleven proper-ties in dispute are dealt with in this book on the same footing and their income and expenses are-accounted for. The consideration for Exs. D-2; and D-3 is entered in the account book. A part of the consideration for Ex. D-3 was a promissory note executed in Sundaram Ayyar's name. There-can be no manner of doubt therefore that the-High Court was right in holding that the defendants' (plaintiff's?) case in respect of these properties was fully proved by the account book,. Ex. P-1 and that these were purchased out of moneys which belonged to Sundaram Ayyar.

24. The learned Counsel for the defendants-in the first instance argued that these books be-longed to the mother. Later on, he was forced to-resile from that position and to urge that most-likely these accounts were of moneys which belonged both to the son and mother. In our view, this contention cannot be sustained. The accounts started in the year 1929, nine or ten years after Sundaram Ayyar had been amassing wealth, while the lady apparently was doing no business and was not earning any money. Whatever little funds she might have had before 1919, there was no necessity for keeping any accounts in regard to those moneys in the year 1929. The necessity for maintaining accounts arose because of the fact that Sundaram Ayyar had considerable money and acquired considerable property. It is quite possible that he was maintaining some account from 1919 to 1929, but as the whole material has not come before the Court it is difficult to say whether he did maintain such an account or not.

25. It seems to us, however, that the High Court was not quite right in the finding that Akilandammal had absolutely no funds with her and therefore it was not possible for her to acquire any properties. On the facts as stated in-the earlier part of this judgment, it does appear that she had some funds and some savings of her own because without any funds or savings-she could not have educated and maintained her son till he started earning something. Moreover, the earnings of the boy in the early period of his career were not sufficient to maintain the whole family. There is no proof that Sundaram Ayyar was doing any work or was employed anywhere between 1916 to 1919. Presumably the money advanced on promissory notes taken during this period was out of the savings of the lady herself. With respect to the promissory note of the year 1915, however, the High Court was right in holding that this was taken with Sundaram Ayyar's money as it was so admitted by the defendants in the recitals in the mortgage deed taken in Sundaram Ayyar's name, but it has to be pointed out that this was not the first promissory note, the first being of the year 1912. Further, from this fact, a decision could not be reached as regards the ownership of the moneys covered by three other promissory notes which relate to this period. It may therefore be that Akilandammal had some money of her son up to 1924 and was not a pauper, but that fact does not in any way affect the decision of the appeal because there is no evidence that after the year 1919 she did any business or earned any further money. She might have spent the money that she had, or she might have handed it over to her son; but there is no connection of these small sums which she had with the acquisition of properties in the year 1929.

26. It is also relevant to point out that the omission of defendant 4 to give evidence is a circumstance that goes against the defendant's case. He knew all the facts about the purchase of these properties. Emphasis was laid by the learned Counsel for the appellants on Ex. D-25, a letter written by Sundaram Ayyar to Natesa Ayyar on 20th January 1933. In para 3 of this letter Sundaram Ayyar wrote as follows:

> Further, you have not written anything about the lands now purchased by Athai (aunt). What was the rate for them, i.e., was it cheap or dear when compared with the prevailing price? How much has Natesa A than paid for them ? How much has yet to be paid ? Are the lands of a superior class? Please write a detailed reply about all these matters.
>
> The transaction mentioned in this letter is covered by Exs. D-2 and D-3. It was urged that the above statement of Sundaram Ayyar amounts to an admission on his part that these properties had been purchased by his mother Akilandammal and that the High Court had failed to consider this admission or to give affect to it. There would have been considerable force in this contention had the Court been in full possession of all the materials and the letters of Sundaram Ayyar which admittedly were written by him and received by defendant 2 concerning these transactions. Prom a statement contained in an isolated letter, it is very difficult to appreciate the value or judge the true nature of this admission. It was pointed out by the learned Counsel for the respondents that in various letters defendant 2 wrote to Sundaram Ayyar saying that he remembered his contidential matters. Reference may be made to Ex. P-3 (g) dated 2nd March 1937. There is no material on the record disclosing the nature of these confidential matters. It was suggested by the learned Counsel that as Sundaram Ayyar was employed in the Income Tax Department and was carrying on money-lending through defendant 2, this was a

confidence reposed in him. To support the conclusion reached by the High Court reliance was also placed on letters exhibited as P-3 series. In some of these, defendant 2 had asked Sundaram Ayyar to send money for meals of mother and all of them indicate that Sundaram Ayyar was being treated as the owner of all the properties in suit.

27. It was contended that the mother and the son were living together and that the son might be managing the properties of the mother. The cumulative effect of the evidence on the record and the circumstances above narrated however do not warrant that conclusion. The correct conclusion seems to be that the son was making money and whatever little monies were with the mother were in the hands of the son, he was acquiring properties for himself and to please his mother and to save the eye of the officials he was putting the properties in the name of his mother, while he himself was paying the price for them, was negotiating for them and was receiving their benefit. He employed defendants 2 and 4 for managing these properties and for carrying on his business. They were his very near relations and he fully trusted them.

28. The High Court, therefore, correctly reached the decision that Akilandammal had not funds enough to embark on acquisition of the suit properties in the years 1929-37. This conclusion harmonizes with the fact that the only person who had the means to acquire these properties and who was interested in acquiring them was Sundaram. Akilandammal might have been in possession of some funds of her own in 1924, but that fact does not effect the decision of the case. Once the defendants' case about the sources of income of the mother and about her being in possession of over ₹ 15,000/- by the year 1919 is negatived, then the only conclusion possible on the facts disclosed is the one arrived by the High Court and it is difficult to uphold the contention that the properties in suit were acquired by her. The onus that rested in the plaintiff stood discharged in the particular circumstances of the case and the trial Judge was not right in holding otherwise.

29. The result, therefore, is that this appeal fails and is dismissed with costs.

Fazl Ali, J.

30. I agree.

Patanjali Sastri, J.

31. I agree.

B.K. Mukherjea, J.

32. I agree.

Cases Referred.

1Nyo 27 I.A. 166
231 I.A. 127
328 ALL. 215
4A.I.R. (16) 1929 P.C. 63
5A.I.R. (19) 1932 P.C. 231
6A.I.R. (34) 1947 P.C. 19