Privy Council Appeal No. 7 of 1924.

Krishna Reddi - - - - - - - - - *Appellant*

v.

Gandavaram Raghava Reddi and another - - - - *Respondents*

Gandavaram Raghava Reddi and another - - - - *Appellants*

v.

Krishna Reddi - - - - - - - - - *Respondent*

(*Consolidated Appeals*)

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 10TH MARCH, 1927.

Present at the Hearing:

VISCOUNT DUNEDIN.
LORD DARLING.
SIR LANCELOT SANDERSON.

[*Delivered by* SIR LANCELOT SANDERSON.]

This is an appeal by the plaintiff, Krishna Reddi, and a cross-appeal by Gandavaram Raghava Reddi and Kodur Venkata-perumal Reddi, defendants 3 and 4, from a judgment and decree dated the 19th April, 1920, of the High Court of Madras, in Letters Patent Appeal No. 23 of 1918.

The suit was brought as long ago as 1910, and it has had a chequered career. The first defendant, Varada, was the father of the second defendant, Venkatarama, and the plaintiff is the son of the second defendant, and they are members of a joint undivided Hindu family. Venkatarama, the second defendant, had two wives; by his first wife he had a daughter, and by the second he had an only son, viz., the plaintiff.

It was alleged on behalf of the plaintiff that he and his mother were obliged to leave the home of the second defendant and to live with the plaintiff's mother's people for some three and a-half years before the suit was brought.

The third, fourth, and fifth defendants were alleged to be close friends of the second defendant.

By a document dated the 22nd January, 1910, the first defendant, Varada, purported to sell to the third defendant the properties comprised therein and specified in Schedule A to the plaint. The consideration was alleged to be Rs. 15,000, and the property was alleged to be the self-acquired property of the first defendant.

On the same day, the first and second defendants (the second defendant purporting to act for himself and his minor son, the plaintiff), by another document purported to convey to the fourth defendant the property comprised therein, and described in Schedule B to the plaint. The consideration was alleged to be Rs. 20,000, through a bond executed in favour of the second defendant for discharging certain debts specified therein, and also other family debts.

On the 9th February, 1910, the second defendant purported, by means of an alleged deed of gift of that date, to give certain properties specified in Schedule C to the plaint in favour of a temple, of which the fifth defendant was trustee.

The plaintiff alleged that the properties specified in Schedules A, B, and C were joint family properties of the family, of which the plaintiff and the first and second defendants were members, that the above-mentioned alleged deeds of sale and the deed of gift were fraudulent and devoid of consideration, that there was no legal necessity, and that the alleged deeds were nullities.

On the 31st January, 1910, the alleged deeds of sale were registered, in spite of the plaintiff's mother's objection before the Registrar.

The suit was brought on the 15th April, 1910, and the plaintiff claimed therein a declaration that the sale deeds and the deed of gift were null and void and that he should be put in possession of the above-mentioned properties on behalf of the joint family. There was an alternative prayer for partition in case it was held that the deeds were in any way binding on the interests of the first and second defendants.

The case of the contesting defendants, viz., defendants 3 and 4, was that the sales were *bona fide* and that consideration passed for them, and that title was intended to and did actually pass to them.

The first defendant was an old man, and it was alleged that the second defendant was acting as manager of the family.

The learned Subordinate Judge found that the sale deeds were made to defraud the plaintiff, that they were not *bona fide* to discharge antecedent debts, and that they were not valid as

against the plaintiff to the extent of his share, viz., one-quarter. He held that the properties in Schedule A were joint family properties. This finding is not now disputed. He held, further, that the gift of the properties in Schedule C was invalid. This finding also is not now disputed.

While holding that there was consideration and that title was intended to pass under the two deeds of sale, he found there was no necessity for the sales and made a decree dated the 15th April, 1913, that the defendants 3 and 4 should put the plaintiff in possession of his share of the properties on his paying into Court Rs. 2,945–11–6 (*i.e.* one-quarter of Rs. 11,782–14–0), to be paid to the third and fourth defendants in the way they might arrange between themselves. It was further ordered that the fifth defendant should put the plaintiff in possession of the properties comprised in Schedule C.

The above-mentioned sum of Rs. 11,782–14–0 is explained by the fact that the learned Subordinate Judge found that debts to the extent of Rs. 11,782–14–0 had been discharged by the fourth defendant.

The plaintiff and the defendants 3 and 4 appealed against this decree to the learned District Judge. The plaintiff alleged that the alienations should have been set aside *in toto* as void, and the third and fourth defendants urged that the alienations were made for justifiable necessity and should have been upheld, and the plaintiff's suit should have been dismissed.

The learned District Judge held that Exhibits I and II, which are the alleged sale deeds of the 22nd January, 1910, were not *bona fide* sales, but were resorted to to screen the properties in case the plaintiff should bring a suit. In a later part of his judgment he held that in pursuance of a scheme to defraud the plaintiff or his family the alienations were made, and the third and fourth defendants actively participated in the fraud. He held, further, that the transactions were void even if consideration passed.

He made a decree reversing the decree of the Trial Court, in so far as it was against the plaintiff, and declaring that the plaintiff was entitled to get the sales of A and B schedule lands set aside, and that the plaintiff should recover possession of the said A and B schedule lands on behalf of the family on payment of Rs. 11,782–14–0, the amount of the debts which had been discharged by the fourth defendant. The plaintiff's appeal was allowed and the appeal of defendants 3 and 4 was dismissed.

Their Lordships understand that the decree of the learned Subordinate Judge, as regards the properties comprised in Schedule C was not interfered with.

The defendants 3 and 4 appealed to the High Court of Madras and the plaintiff filed cross-objections. The learned Judges of

the High Court who heard the appeal remanded the case to the lower Appellate Court on the grounds that the learned District Judge had not recorded a formal decision on the question whether the alleged sale deeds effected any real alienations, and that the learned District Judge had apparently decided the appeal on the ground that in any event a finding that the sales were merely fraudulent was a sufficient basis for the grant of the relief asked for. They required the learned District Judge to submit findings on the following issues :—

(1) Whether the alienation of A and B scheduled properties is not supported by consideration ?

(2) Did either or both of the documents, Exhibits I and II, effect a real transfer of the property which they purported to convey ?

Exhibit I is the deed of 22nd January, 1910, in favour of Raghava (third defendant), and Exhibit II is the deed of 22nd January, 1910, in favour of Venkataperumal (the fourth defendant).

The learned District Judge on remand found that the real object in resorting to the sales was to screen the properties from the plaintiff, and that no consideration really passed; that the parties did not intend that the transactions should be genuine, and that the promissory notes only served to give an appearance of truth to the transactions.

On the two above-mentioned issues he found that Exhibits I and II were not supported by consideration and that those documents did not effect a real transfer of the properties which they purported to transfer.

On the further hearing of the appeal and upon the above-mentioned findings of the learned District Judge, the learned Judges of the High Court were agreed that the lower Court's findings must be accepted, and said that they would deal with the decree on the footing that as against the plaintiff at least the alienations of A and B schedule properties were not for consideration and that Exhibits I and II effected no real transfers.

Unfortunately, the learned Judges could not agree as to the course which should be adopted. They, however, came to the conclusion that the opinion of the senior Judge should prevail, and accordingly they directed that the learned District Judge should be called upon to submit a further finding as proposed in the judgment of the senior Judge. The case, therefore, was again remanded to the learned District Judge for a finding on the issue whether as between the first and second defendants and the third and fourth defendants Exhibits I and II effected a conveyance wholly or partially valid of the former's shares to the latter.

The learned District Judge submitted his finding as follows :—

" For these reasons and for those set forth in my previous finding, I find that, as between the first and second defendants and the third and fourth defendants, Exhibits I and II did not effect a conveyance of the former's share to the latter."

The appeal then came once more before the learned Judges of the High Court.

The senior Judge came to the conclusion that the appeal of the defendants 3 and 4 should be dismissed and that the plaintiff's memorandum of objections should be allowed.

The other learned Judge agreed that the final order should be as proposed by the senior Judge, but stated that he still adhered to the opinion which he expressed in his previous judgment and would have passed an order in the terms therein mentioned. The decree of the High Court dated the 15th February, 1918, therefore was to the effect that the decrees of the lower appellate Court and of the Court of first instance should be set aside and a declaration was made that the sale deeds of the 22nd January, 1910, and the deed of gift dated the 9th February, 1910, were null and void and not binding on the plaintiff's family, and the Court further decreed that the defendants 3 and 4 should put the plaintiff in possession of the plaint A, B and C schedule properties, and that the Subordinate Judge should hold an enquiry regarding future mesne profits until date of delivery or three years from that date, whichever should be nearer, and pass a decree for them under O. XX, Rule 12. The decree contained a further direction for the payment by the defendants 3 and 4 of the plaintiff's costs.

This, however, was not the end of the proceedings in the High Court, for, as the learned Judges had differed, the defendants 3 and 4 appealed under the provisions of the Letters Patent from the decision of the learned senior Judge of the Division Bench. This appeal was heard by the learned Chief Justice and two other Judges. of the High Court. The three learned Judges accepted the findings of the learned District Judge, which they stated were also accepted by the learned Judges of the Division Bench, viz., that the sales were purely sham transactions intended to defeat the plaintiff.

They then stated that the only other question for consideration was whether the learned District Judge was right in making the relief which he had given to the plaintiff dependent upon the payment of the sum paid by defendants 3 and 4 for the discharge of the joint family debts. It should be noted that this order of the learned District Judge was not quoted correctly. The relief given by the learned District Judge to the plaintiff was dependent upon the payment of the debts which had been discharged by the fourth defendant; there was no reference to any sum paid for the discharge of debts by the third defendant in the decree of the learned District Judge.

The learned Judges came to the conclusion that there was no reason for interfering with that part of the decree of the learned District Judge. They therefore decided to modify the decree made by the learned senior Judge of the Division Bench of the High Court by making the decree for possession dependent upon the payment by the plaintiff in the manner provided in the decree of the District Judge, and directing that the amount should bear interest at 6 per

cent. from the date of the decree of the Subordinate Judge. The decree, as drawn up, directed that the defendants 3 and 4 should put the plaintiff in possession of the plaint A, B and C schedule properties on payment by the plaintiff of Rs. 11,782–14–0, and that the said amount should carry interest at 6 per cent. per annum from the 15th April, 1913, until the date of payment.

It is to be noted that the decree, as drawn up, went further than the judgment of the learned Judges who heard the Letters Patent appeal. The decree of the learned District Judge provided that the plaintiff should recover possession of the said A and B schedule lands on payment of the sum of Rs. 11,782–14–0.

The recovery of the Schedule C lands by the plaintiff was not dependent upon the payment of the said sum.

But the decree made by the learned Judges who heard the Letters Patent appeal made the recovery of the Schedule C lands dependent upon the above-mentioned payment, as well as the Schedule A and B lands.

Since the decree of the learned Subordinate Judge, which directed that the fifth defendant should put the plaintiff in possession of the Schedule C lands, there had been apparently no question as to this part of the case.

The decree in the Letters Patent appeal directed the defendants 3 and 4 to put the plaintiff in possession of the Schedule C lands, although, as far as their Lordships know, defendants 3 and 4 had nothing to do with the Schedule C lands.

It is therefore apparent that the decree appealed from cannot stand in its present form.

There is, however, a serious question whether there is any reason why the decree of the Division Bench of the High Court, dated the 15th February, 1918, should be interfered with. It was argued on behalf of the defendants 3 and 4 before the Board that the learned Judges of the Division Bench of the High Court were wrong in remanding the case for a finding upon the two issues, which have already been referred to. Their Lordships are not prepared to hold that the learned Judges were wrong in remanding the case for a clear and definite finding upon the issues whether the alienation of A and B scheduled properties was not supported by consideration, and whether either or both of the documents, Exhibits I and II, effected a real transfer of the property which they purported to transfer.

Their Lordships agree with the learned Judges that definite findings on these issues were material and necessary.

If, then, the remand was not wrong, the findings of fact made by the learned District Judge upon these two issues were binding upon the High Court unless it could be said that there was no evidence to support them. Their Lordships are clearly of opinion that such an objection to the findings cannot be upheld. The findings of the learned District Judge were adopted by the learned Judges of the Division Bench which heard the second appeal and by the learned Judges who heard the Letters Patent appeal, and

their Lordships see no reason for differing from the conclusion arrived at by all the High Court Judges in this respect.

There remains the question whether, in view of these findings, there was any ground for altering the decree of the Division Bench dated the 15th February, 1918.

The learned Judges who heard the Letters Patent appeal apparently concluded that it would not be equitable to allow the plaintiff to recover possession of the A and B Schedule property unless he paid the amount of the debts discharged by the fourth defendant. In view, however, of the above-mentioned findings, which must be accepted, it cannot be held that the fourth defendant did discharge family debts as alleged.

The finding to that effect, which may be said to arise from the learned District Judge's decree of the 26th February, 1915, must be considered to have been eradicated, when the learned District Judge, on remand and on further consideration of the evidence, came to the conclusion that there was no consideration for either of the alleged sale deeds, Exhibits I and II, and that these deeds did not effect a real transfer of the properties.

Subject to a further question which was raised by the learned counsel on behalf of the third and fourth defendants, their Lordships are of opinion that there was no ground for interfering with the decree of the Division Bench of the High Court dated the 15th February, 1918.

The other point to which reference has been made is as follows :—It was argued on behalf of defendants 3 and 4 that, as between defendant No. 2 (viz., Venkatarama, the father of the plaintiff) and the defendants 3 and 4, there was no reason for holding that the transfer was not complete, and that a decree should be made declaring that the defendants 3 and 4 were entitled to the share of the defendant No. 2 in the above-mentioned properties.

Their Lordships are not satisfied that this point was raised before the learned Judges who heard the Letters Patent appeal, and in view of the findings of the learned District Judge, that no real transfer was intended or effected between the above-mentioned parties, they are not prepared to enter upon the question further.

For the reasons herein contained their Lordships will humbly advise His Majesty that the plaintiff's appeal should be allowed and that the defendants 3 and 4 should pay to him his costs of the appeal before this Board ; that the decree of the High Court in the Letters Patent Appeal No. 23 of 1918, dated the 19th April, 1920, be set aside with costs, and that the decree of the High Court in second appeal No. 711 of 1915, dated the 15th February, 1918, should be restored, and that the cross-appeal of the defendants 3 and 4 should be dismissed with costs.

In the Privy Council.

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DELIVERED BY SIR LANCELOT SANDERSON.

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