# APPELLATE CIVIL.

*Before Mr. Justice Best and Mr. Justice Subramania Ayyar.*

1893.
April 26, 27.
1895.
March 18.

RAMANUJA AYYANGAR AND OTHERS (PLAINTIFF'S REPRESENTATIVES), APPELLANTS,

*v.*

NARAYANA AYYANGAR AND OTHERS (DEFENDANTS NOS. 1 TO 7), RESPONDENTS.*

*Limitation Act—Act XV of 1877, s. 12—Delay in obtaining copies for the purpose of appeal*—Res judicata—*Champerty—Speculative purchase—Public policy—Contract Act—Act IX of 1872, s. 23.*

In a suit for land worth Rs. 2,300 the plaintiff claimed under a conveyance executed to him by defendant No. 1 shortly before suit in consideration of Rs. 250. The property had previously belonged to the father, since deceased, of the first defendant's wife and her sister defendant No. 2. Shortly after the father's death a suit for maintenance was brought by his sister-in-law against his widow and two daughters, in which the then defendants alleged that the property now in question had been given by him to the wife of the plaintiff's vendor, and the Court recorded a finding that the gift was valid. Defendant No. 2 now raised a plea that the gift to her sister had not been accompanied by possession and was invalid, and she asserted title in herself under the will of her mother, under which title she had been in possession for ten years.

The Court of first instance passed a decree for the plaintiff, the judgment and decree bearing date the 29th of September. Defendant No. 2, being desirous of appealing *in formâ pauperis* applied for copies on the following day. Stamp papers were called for on the 28th of October, but were not produced by the 31st, when the application was struck off under the copyist rules. On the 6th of November a petition was put in explaining the circumstances which prevented the stamps being produced within the period of three days, and praying for restoration of the previous application:

*Held*, (1) that the application of the 6th of November must be considered a continuation of the former one for the purpose of computing the time allowed by the Limitation Act within which an appeal should be preferred to the District Court;

(2) that the second defendant was not precluded by the proceedings in the former suit from raising the plea above referred to;

(3) that the plaintiff's purchase, which was found by the District Judge not to be a champertous transaction, was not void as being contrary to public policy.

SECOND APPEAL against the decree of C. H. Mounsey, Acting District Judge of Salem, in appeal suit No. 95 of 1891, reversing the decree of P. A. Lakshmana Chetti, District Munsif of Tirupatore, in original suit No. 401 of 1889.

* Second Appeal No. 1891 of 1891.

Suit to recover possession of certain land. It was alleged in the plaint that the property had previously belonged to Srinivasaraghavachari since deceased; that he had given it to his daughter, the first defendant's wife, who had remained in possession until her death in 1879; that thereupon her son had entered into possession and retained it until his death in 1880, and that thereupon the title to the property devolved on defendant No. 1, who sold it to the plaintiff on the 25th March 1889 for Rs. 250. Defendant No. 2 put in a written statement to the effect that she and the first defendant's wife were sisters; that the alleged gift to the former was unaccompanied by possession and invalid; that on the death of Srinivasaraghavachari the property passed to his widow, and that she devised it by will to defendant No. 2 who, since then, had been in possession by herself or her tenants.

It was proved that, in original suit No. 67 of 1894, a sister-in-law of Srinivasaraghavachari sued his widow and two daughters for maintenance, seeking to have the amount awarded to her created a charge on the family property. The defence was that the widow had inherited nothing from her husband, that a part of his estate had been sold to the present defendant No. 2, and the rest, including that now in question, had been given to the other sister, namely, the wife of the present defendant No. 1. In that suit it was held that the gift in question was valid, but the decree made no reference to this matter. The District Munsif held that in view of that finding in the previous suit, it was not open to the present defendant No. 2 to claim title through her mother, and disposing of the remaining issues in favour of the plaintiff, he passed a decree as prayed, the judgment and decree of the District Munsif bearing date 29th of September 1890.

On the 29th of November defendant No. 2 preferred an appeal *in formâ pauperis* to the District Court. It appeared that copies of the District Munsif's decree and judgment were applied for on the 30th of September. The decree was only ready on the 28th of October on which date stamps were called for. On the 31st of October the application was struck off under the copyist rules for the reason that no stamps had been produced. The stamps were produced on the following day; the application for copies was renewed on the 6th of November, stamp papers were called for on the 8th, the copy was ready on the 18th, and delivered on the 19th November, but the District Munsif's Court failed to attach

RAMANUJA AYYANGAR v. NARAYANA AYYANGAR.

the value slip to the copy of the judgment until the 26th of November.

The District Judge admitted the appeal and reversed the decree appealed against, holding that the case was unaffected by the previous suit and that the plaintiff's purchase was not enforceable. He said that regard being had to the value of the property which was about Rs. 2,300, and the other circumstances in the case he was not able to consider that the plaintiff had entered on the litigation *bonâ fide*, and that the case was accordingly governed by *Goculdas Jagmohandas* v. *Lakhmidas Khimji*(1).

This second appeal was preferred by the representatives of plaintiff since deceased.

*Pattabhirama Ayyar* for appellant.

*Venkatarama Sarma* for respondent No. 2.

JUDGMENT.—It is first urged that the District Judge admitted the appeal after it had become time-barred.

The judgment of the Court of First Instance is dated 29th September, and this also is the date of the decree. The appeal was filed on the 29th November. The time allowed for an appeal by article 170 of schedule II of the Limitation Act is thirty days from the date of the decree.

The question is whether any, and what deduction of time is to be made under section 12 of the Limitation Act. It is not material to determine the precise date on which the decree was actually signed, since the date on which the judgment was pronounced must be taken as also the date of the decree under section 205 of the Code of Civil Procedure.

The application for copies of judgment and decree was made on the 30th September, *i.e.*, the day following that on which the judgment was delivered. It was not till 28th October that stamp papers were called for, and, on the same not being produced during the next three days, the application was struck off on the 31st *idem* under the Copyists' Rules. On the 6th November, petition was put in explaining the circumstances which prevented the stamps being produced within the three days, and praying for a restoration of the previous application. On this application the District Munsif passed an order directing that copies should be

(1) I.L.R., 3 Bom., 402.

granted, but that it should be left to the discretion of the District Judge to decide whether the second application should be treated as a continuation of the previous one.

Though we are not prepared to accept the opinion of the Judge that the date on which the decree was actually signed is in itself material, we agree in the conclusion at which he has arrived, namely, that the appeal is within time, as we are of opinion, that the application of 6th November must be considered a continuation of the former one; and this being done, the appeal is within 30 days after deducting the time allowed under section 12 of the Limitation Act.

It is next contended that the Judge is wrong in holding the defendants' plea to be not *res judicata*. The first defendant's wife and second defendant were co-defendants in the former suit, and as between them there was no active controversy either as to the *factum* or as to the validity of the deed of gift, but the gift was set up by both of them jointly with the object of defeating the suit of the then plaintiff. The Judge is therefore right in holding the defendants' plea to be not *res judicata*.

It is lastly contended that the Judge is not warranted in dismissing the suit on the ground that the sale to plaintiff was champertous. Though the second issue raises the question of the *bona fides* and validity of the sale, it is not sufficiently specific to direct the attention of the parties to the question whether it is champertous. The Judge, no doubt, points out circumstances showing the transaction to be one of a gambling nature, but we think that a specific issue is necessary to give plaintiff a fair opportunity of showing that the transaction was otherwise.

We shall, therefore, ask the Judge to try the following issue:—

'Whether the plaint sale is invalid as being champertous.'

Either party can adduce fresh evidence, and the finding is to be submitted within one month after the re-opening of the Court. Seven days after the finding is posted up in this Court will be allowed for filing objections.

In compliance with the above order, the then District Judge submitted a finding which concluded as follows:—

"I should say that there is no proof that the transaction was of a "champertous nature—in the technical sense of the word. There

RAMANUJA AYYANGAR v. NARAYANA AYYANGAR.

"is no proof that there was any agreement as to division of spoil. "What we have is a sale (consideration for which probably passed) of "property for only about one-ninth or one-tenth of its market value "to an out-sider, who would have to try his luck in a very doubtful "litigation thereon. The purchase was, therefore, of a very specu- "lative kind though not champertous. On the further question "whether such a transaction is opposed to public policy, I have not "been asked for an opinion, and I therefore refrain from expressing "any opinion."

This appeal again coming for final hearing, the Court delivered judgment as follows:—

JUDGMENT.—The Judge's finding is that the purchase by plaintiff from first defendant was a speculative transaction though not champertous. It has been held by the Bombay High Court in *Gopal Ramchandra* v. *Gangaram Anandishet*(1) that a similar transaction was not bad on the ground of being against public policy. Following that decision, we set aside the decree of the Court below and remand the appeal for disposal according to law.

The costs in this Court will abide and follow the eve.

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## ORIGINAL CIVIL.

*Before Mr. Justice Subramania Ayyar.*

1895. August 14.

RANGAMMAL (PLAINTIFF)

*v.*

VENKATACHARI (DEFENDANT).*

*Fraudulent conveyance—Collusive decree—Fraud on creditors—Fraudulent purpose carried out—Suit by legal representative of the fraudulent transferor and judgment-debtor to set aside conveyance and restrain execution of decree.*

A, with the intention of defeating and defrauding his creditors, made and delivered a promissory note to B without consideration, and collusively allowed a decree to be obtained against him on the promissory note, and conveyed to B a house in part satisfaction of the decree: and it appeared that certain of A's creditors were consequently induced to remit parts of their claims. A having died, his widow and legal representative under Hindu law, now sued B to have the

(1) I.L.R., 14 Bom., 72.

* Civil Suit No. 69 of 1894.