

APPELLATE CIVIL.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, and Mr.
Justice Shephard.

1897.
April 6.

RANGA AYYAR (PLAINTIFF No. 1), APPELLANT,

v.

SRINIVASA AYYANGAR (DEFENDANT), RESPONDENT.*

*Vendor and purchaser—Want of consideration for deed of sale—Evidence that
a deed is not intended to have the ordinary operation.*

The plaintiffs sued for certain land which they claimed in succession to Rathai Ammal deceased. The defendant who was in possession had executed a sale-deed, comprising the property now in question, in favour of the deceased. But it was pleaded by him and found by the Court of first appeal that the sale-deed was *benami*, and no consideration had passed, and a decree was passed dismissing the suit:

Held, on second appeal, that the decree should be reversed.

Per curiam: When a conveyance has been duly executed and registered by a competent person, it requires strong and clear evidence to justify a Court in holding that the parties did not intend that any legal effect should be given to it. It needs to be proved that both parties had it in their minds that the deed should be a mere sham, and in order to establish this proof, it needs to be shown for what purpose other than the ostensible one the deed was executed.

SECOND APPEAL against the decree of D. Broadfoot, Acting District Judge of Trichinopoly, in Appeal Suit No. 9 of 1895, reversing the decree of A. Ramalingam Pillai, District Munsif of Srirangam, in Original Suit No. 240 of 1893.

Plaintiffs Nos. 1 and 2 were the brothers of one Krishnayyan deceased, and plaintiffs Nos. 3 and 4 were the sons of another brother. Krishnayyan died fifteen years before the suit, leaving a widow Rathai Ammal, the daughter of the defendant. In February 1888, the defendant executed a sale-deed in respect of the property now in question in favour of Rathai Ammal and her mother Ammani Ammal. The mother predeceased Rathai Ammal who died two years before the suit. The plaintiffs claimed to be entitled to the property under the Law of Succession. The defendant pleaded that the sale-deed was a nominal one and conveyed no rights on the vendees.

* Second Appeal No. 438 of 1896.

Issues 1 to 3 were as follows:—

Whether the sale by defendant is true (or colorable) ?

Whether Rathai Ammal and Ammani Ammal enjoyed ?

Whether plaintiffs are their heirs and entitled to the property ?

RANGA
 AYYAR
 v.
 SRINIVASA
 AYYANGAR.

The District Munsif said, "I think it probable that the sale-deed was not a document thoroughly devoid of consideration, and I find that the vendees derived ownership to the property conveyed to them thereby," and in the result passed a decree in favour of plaintiff.

The District Judge on appeal held that the sale-deed was *benami*, and that the property never left defendant nor passed to Ammani Ammal or Rathai Ammal and he reversed the decree and dismissed the suit.

Plaintiff No. 1 preferred the second appeal.

Sundara Ayyar for appellant.

S. Subramania Ayyar for respondent No. 1.

R. Subramania Ayyar for respondent No. 2.

Pattabhirama Ayyar for respondents Nos. 3 and 4.

JUDGMENT.—The District Judge's finding that the transaction was *benami* and his reason for it do not commend themselves to us.

Presumably he means to find that Srinivasa Ayyangar, when executing the sale-deed (exhibit I), never intended it to have any operation and he relies on the fact that Srinivasa Ayyangar remained in possession, did not have the patta transferred and retained the instrument of sale. He also refers to the fact that no valuable consideration passed.

We are of opinion that these circumstances afford no evidence of the supposed intention of Srinivasa Ayyangar, when considered in connection with the relationship of the parties and the previous circumstances. On the contrary, those circumstances are all consistent with the intention on the donor's part, which is otherwise clearly established, to benefit his wife and daughter and to save the property from falling into the hands of his next heir who was his enemy. But for the fact that his wife and daughter predeceased him, he would never have disputed the validity of the deed.

We must observe that when a conveyance has been duly executed and registered by a competent person, it requires strong and clear evidence to justify a Court in holding that the parties did not

RANGA
 AYYAR
 v.
 SRINIVASA
 AYYANGAR.

intend that any legal effect should be given to it. It needs to be proved that both parties had it in their minds that the deed should be a mere sham, and in order to establish this proof it needs to be shown for what purpose other than the ostensible one the deed was executed. In our opinion, there was in the present case no such proof and, therefore, the Lower Appellate Court ought not to have reversed the judgment of the District Munsif.

The Lower Appellate Court not having decided the third issue, which was also raised in the third ground of appeal, namely, as to the right of the plaintiffs to represent the two donees, we must call for a finding on that question.

The finding is to be submitted within one month from the date of the re-opening of the Court after the recess. Seven days will be allowed for filing objections after the finding has been posted up in this Court.

APPELLATE CIVIL.

Before Mr. Justice Shephard and Mr. Justice Boddam.

1897.
 September
 21.
 November 3,
 23.

MUTHAPPUDAYAN AND ANOTHER (DEFENDANTS NOS. 1 AND 2),
 APPELLANTS,

v.

AMMANI AMMAL (PLAINTIFF), RESPONDENT.*

Hindu Law—Law of Succession—Stridhanam property—Right of daughter to succeed.

In a suit for land it appeared that it had been given to one Sollayi, deceased, after her marriage by her father. The donee died leaving her brother, defendant No. 1, her son (since deceased) the husband of defendant No. 2, and the plaintiff her daughter. Defendant No. 1 was in joint possession on behalf of defendant No. 2:

Held, that the plaintiff was entitled to the land.

SECOND APPEAL against the decree of K. Ramachandra Ayyar, Subordinate Judge of Salem, in Appeal Suit No. 97 of 1896, affirming the decree of V. K. Desikachariar, District Munsif of Namakkal, in Original Suit No. 241 of 1895.

The plaintiff sued to recover certain land in succession to her deceased's mother Sellayi. The land had been given to Sellayi

* Second Appeal No. 488 of 1897.