

## PRIVY COUNCIL.\*

SURA LAKSHMIAH CHETTY AND OTHERS (DEFENDANTS),  
APPELLANTS,

1925,  
May 22.

2.

KOTHANDARAMA PILLAI (PLAINTIFF), RESPONDENTS.

[ON APPEAL FROM THE HIGH COURT OF JUDICATURE AT  
MADRAS.]

*Benami transaction—Purchase in name of wife—Alleged antenuptial agreement—Alleged oral agreement—Absence of corroborating evidence in writing.*

When it is alleged that a purchase of property in India by an Indian, out of his own money but in the name of his wife, was made in pursuance of an antenuptial agreement, and that consequently it is not to be regarded as a benami transaction by which the beneficial interest vested in the husband, the alleged antenuptial agreement, if oral, must be proved by the clearest and most satisfactory evidence of credible witnesses; it would be unwise to act upon oral evidence unless there was contemporaneous written evidence to corroborate it.

APPEAL (No. 8 of 1924) from a decree (August 15, 1921) of the High Court in its appellate jurisdiction reversing a decree (August 31, 1920) of the same Court in its original civil jurisdiction.

The appeal related to the ownership of two houses in Madras which in 1909 had been purchased by one Chockalingam, the father of the respondent, in the name of his wife Lakshmi Ammal. Chockalingam had been declared an insolvent and his property vested in the Official Assignee.

The suit was brought on behalf of the respondent, a minor, against the Official Assignee and creditors of Chockalingam, it being claimed by the plaintiff that the houses were the stridhana property of Lakshmi Ammal

\* *Present* :—Lord SUMNER, Lord BLANESBURGH, Sir JOHN EDGE and Mr. AMER ALI.

LAKSHMIAM  
CHETTY  
v.  
KOTHANDA-  
RAMA  
PILLAI.

and that upon her death they devolved upon the respondent.

It was contended that, at the time of his marriage in 1900, he orally agreed to settle some house property upon his wife, and that the houses in suit had been bought in pursuance of that agreement.

The trial Judge (PHILLIPS, J.) found against the alleged oral agreement, and held that the purchase was a benami transaction. He accordingly dismissed the suit.

Upon appeal the decree was set aside and a decree made declaring that the houses had vested in the Plaintiff. The learned Judges (SCHWABE, C.J., and WALLACE, J.) found that part of the purchase money belonged to an infant brother of Lakshmi, and placed upon the defendants the onus of proving that the deed of sale of 1909 was not—what it purported to be—an absolute sale to Lakshmi Ammal.

*DeGruyther, K.C., and E. B. Raikes* for the appellants.—The evidence showed that the houses were bought by Chockalingam out of his own money, or at any rate, that no part of it was his wife's. The onus was upon the plaintiff to prove that the transaction was not a benami one. The evidence did not establish the alleged oral agreement. [Reference was made to *Dhurm Das Pandey v. Mussumat Shama Soontri Dibial*(1), *Gopeekrist Gosain v. Gungapersaud Gosain*(2), *Moulvie Sayyud Uzhur Ali v. Mussumat Bebee Ulfat Fatima*(3), *Ram Narain v. Muhammad Hadi*(4), *Bilas Kunwar v. Desraj Ranjit Singh*(5), *Kerwick v. Kerwick*(6), and *Mayne's Hindu Law*, paragraph 441.]

(1) (1843) 3 M.I.A., 229.

(2) (1854) 6 M.I.A., 53.

(3) (1869) 13 M.I.A., 232.

(4) (1899) I.L.R., 26 Calc., 227 (P.C.); 26 I.A., 38.

(5) (1915) I.L.R., 37 All., 557 (P.C.); 42 I.A., 202.

(6) (1921) I.L.R., 48 Calc., 260 (P.C.); 47 I.A., 272.

*Narasimham* for the respondent contended upon the evidence that the alleged antenuptial agreement was proved, and that any onus of proof upon the plaintiff was satisfied.

LAKSHMIAN  
CHETTY  
v.  
KOTHANDA-  
RAMA  
PILLAI.

The JUDGMENT of their Lordships was delivered by Sir JOHN EDGE.—This is an appeal from a decree, dated August 15, 1922, of the High Court of Madras, which reversed a decree, dated August 31, 1921, of the same Court made in its ordinary original civil jurisdiction, which had dismissed the suit.

Sir JOHN  
EDGE.

The suit in which this appeal has arisen was brought in the High Court of Madras on November 19, 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.

The plaintiff is the son of V. S. Chockalingam 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 September 30, 1918, the plaintiff's father Chockalingam 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. Nos. 4 and 5

LAKSHMIAN  
CHETTY  
v.KOTHANDA-  
RAMA  
PILLAI.—  
SIR JOHN  
EDGE.

Nainiappa Naick Street will, in this judgment, be referred to as the property in question.

The land and buildings then thereon were purchased by Chockalingam on May 12, 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 antenuptial 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 Gosain v Gungapersaud Gosain*(1), *Moulvie Sayyud Ushar Ali v. Mussamat Bebee Utaf Fatima*(2) and *Bilas Kumwar v. Desraj Ranjit Singh*(3). If the plaintiff failed to prove that antenuptial 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.

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.

The facts, so far as they can be ascertained by their Lordships from the record, are as follows:-- Chockalingam

(1) (1854) 6 M.I.A., 53.

(2) (1869) 13 M.I.A., 232.

(3) (1915) I.L.R., 37 All., 567 (P.C.) ; L.R., 42 I.A., 202.

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 antenuptial 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

LAKSHMIAN  
CHETTY  
v.  
KOTHANDA-  
PAMA  
PILLAY.  
—  
SIR JOHN  
EDGE.

LAKSHMIAN  
CHETTY  
v.  
KOTHANDA-  
RAMA  
PILLAI.  
—  
Sir JOHN  
EDGE.

purchased it for the price of Rs. 10,315-8 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.

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 May 12, 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.

PHILLIPS, J., who tried the suit, did not believe the evidence that there had been an antenuptial agreement, and he found that the purchase of the property in question on the May 12, 1909, in the name of Lakshmi was a benami transaction and that she was merely benamidar for her husband Chockalingam. PHILLIPS, J., 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.”

It will be remembered that Vinayatheertha had died in 1898 or in 1899, and the property in question was purchased in May 1909. PHILLIPS, J., 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. PHILLIPS, J., by his decree dismissed the suit. From that decree the plaintiff appealed under the Letters Patent.

LAKSHMIAH  
CHETTY  
v.  
KOTHANDA-  
RAMA-  
PILLAI.  
—  
SIR JOHN  
EDGE.

The appeal under the Letters Patent was heard by Sir W. S. SCHWABE, C.J., and WALLACE, J. 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 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 Chockalingam and 5/11 (five-elevenths) to Lakshmi's infant brother Vadivelu, as the heir to his father, formerly a partner of Chockalingam.”

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 May 12, 1909, and could not make a present of his property to his sister, Lakshmi. WALLACE, J., agreed with the judgment of the Chief Justice.

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.

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,

LAKSHMI  
CHETTY  
v.  
KOTHANDA-  
RAMA  
PILLAI,  
—  
Sir JOHN  
EDGE.

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.

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 consideration to the evidence in this suit their Lordships agree with PHILLIPS, J., 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.

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 *Ram Narain v. Muhammad Hadi*(1) and the cases already cited. The property in question

(1) (1899) I.L.R., 26 Calc., 227 (P.C.) ; 26 I.A., 38.



was purchased on May 12, 1909. On July 25, 1909, Chockalingam and Lakshmi jointly gave what was apparently treated as an equitable mortgage to S. Krishna-swami Ayyangar of the property which had been purchased on May 12, 1909, in her name, which they stated was "in our possession and enjoyment." On March 30, 1910, Chockalingam and Lakshmi jointly granted a lease of the property in question to Sirakalai Pillai. On December 4, 1912, Lakshmi died. On March 18, 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 February 21, 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 May 12, 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 anyone, except his great-grandmother, 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.

Their Lordships do not decide that an antenuptial 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 antenuptial 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.

LAKSHMIAN  
CHETTY  
v.  
KOTHANDA.  
RAMA  
PILLAI.  
—  
SIR JOHN  
EDGE.

LAKESEMIAN  
CHETTY  
v.  
KOTHANDA-  
RAMA  
PILLAI.  
—  
SIR JOHN  
EDGE.

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.

Solicitor for appellants : *John Josselyn.*

Solicitor for respondent : *H. S. L. Polak.*

A.M.T.

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PRIVY COUNCIL.\*

1925,  
June 11.

KONDAPALLI VIJAYARATNAM AND ANOTHER (PLAINTIFFS),  
APPELLANTS,

v.

MANDAPAKA SUDARSANA RAO AND OTHERS (DEFENDANTS).  
RESPONDENTS.

[ON APPEAL FROM THE HIGH COURT OF JUDICATURE AT  
MADRAS.]

*Registration—Authority to adopt—Authority conferred by invalid will—Registration as will—Absence of registration as authority—Indian Registration Act (III of 1877), ss. 17, 40, 41.*

A Hindu, who had not attained his majority so as to be competent to make a will, executed a document purporting to dispose of his property; it also conferred authority to adopt, which he was of an age to do validly. The document was registered as a will, but it was not presented for registration by any person who was entitled under section 40 of the Indian Registration Act, 1877, to present an authority to adopt. Section 17 of that Act requires an authority to adopt, not conferred by a will, to be registered.

*Held*, that the document having no legal effect as a will, the authority to adopt could not be treated as one conferred by a will, and that it was ineffectual since it was not duly registered as an authority to adopt.

APPEAL (No. 62 of 1923) from a decree of the High Court (April 16, 1920) affirming a decree of the District

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\* Present : — Lord SUMNER, SIR JOHN EDGE and Lord SALVESEN.