

Privy Council Appeal No. 60 of 1918.

Rajammal - - - - - *Appellant*

v.

Srirangathammal and others - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 4TH DECEMBER, 1919.

Present at the Hearing :

VISCOUNT FINLAY.

LORD PARMOOR.

SIR JOHN EDGE.

[*Delivered by* SIR JOHN EDGE.]

This is an appeal by the plaintiff from a decree dated the 22nd July, 1912, of the High Court at Madras, which affirmed a decree, dated the 26th March, 1906, of the Subordinate Judge of Negapatam, which dismissed her suit.

On the 4th August, 1904, the plaintiff brought her suit for a declaration of her title as trustee to certain immoveable property under the terms of a deed dated the 13th September, 1893; for possession as trustee of property mentioned in the deed, and for other relief. The deed was made by the plaintiffs' father, Bava Krishnaswami Mudaliar, who at the time when he made the deed was contemplating proceeding on a pilgrimage to Benares and becoming a member of a religious brotherhood. He was a Sudra by caste. He is now dead. The principal defendant, who is a respondent here, is his widow.

The deed, omitting the schedules of property, was as follows :—

“ Trust deed executed on the 13th September, 1893, in favour of Vaithilinga Mudaliar Avergal, residing at Thirukottaram in Nannilam Taluq, by Bava Krishnasami Mudaliar, son of Kalyanasundara Mudaliar Avergal, residing at Tiruvalur. Since I have decided on going now on a

pilgrimage to Benares and other places, and I am in feeble health and I have no male issue to properly manage my family and the properties and my wife is not capable of administering and enjoying the properties, and you have at my request agreed to act as trustee for the purpose administering all my moveable and immoveable properties you shall duly administer for me all my moveable and immoveable properties, and use the incomes thereof in the manner specified herein below. You shall yourself call in my family outstandings and the incomes, for the lands and shall conduct proceedings in Civil, Revenue and Magisterial Courts, etc., in connection with litigations relating to me and my properties. After meeting the Government kist and village expenses from the incomes obtained from the villages of Olani and Naranamangalam, you shall annually give from the balance, 100 kalams of paddy and Rs. 300 in cash for my expenses, and 100 kalams of paddy and Rs. 100 in cash for my wife's expenses, and you shall establish a fund at the rate of Rs. 100 per annum and, according to the circumstances shall utilise it for the purpose of the village or charity. From the balance Kanjithotti (feeding house) for the poor shall be opened on a common site during the Tiruvalur Panguni festival at a cost of Rs. 100. Further, about Rs. 25 shall be spent for the Abishekam of Sri Thiagarajaswami during the time of Utharayana Abishekam. With the income from the lands purchased at Revenue sale in Kulikarai estate and with the interest on the debt due by Murugathal Anni, an Aghama Patasala shall be opened in a Koodam in one of the buildings on the Kamalaliyam western bank; and according to the funds available, arrangements be made for teaching the Aghama Sastram to five Audhisaiva boys. If these funds are insufficient, then the deficit shall be met from the family income. Since Murugathal Anni has personally undertaken with me to conduct this charity with the said funds, she shall, if she likes, conduct this charity herself. If within six months from this day the said Murugathal Anni does not as she personally agreed with me, attempt to conduct the charity by executing necessary documents, then you shall collect the debt due by her, obtain delivery of possession of the properties purchased at Revenue sale, but the possession whereof has not yet been obtained, and you shall, with the income derived therefrom, conduct the said charity as aforesaid. Should any of the persons who are referred to in this deed and are in receipt of money from my family die, the money allotted to them should lapse to the said charity. The balance after meeting the said expenses shall be set apart as family fund as aforesaid. After meeting the Government kist and village expenses, etc., from the income derived from Kalvettu village, the maintenance allowance of 40 kalams of paddy and Rs. 35 in cash shall be paid to Sundarathanni from the balance, and the balance shall be paid to my first daughter till her death. Should the village of Kalvettu fail to yield produce owing to the damage caused by flood, etc., then my aforesaid daughter should be paid 30 kalams of paddy and Rs. 30 in cash per annum from my other family funds. But as long as Meenakshi Anni who protects the said girl is alive, this allowance shall be paid to her in the aforesaid manner. In the matter of getting my second daughter married, the jewels in the possession of my wife shall be used, and the marriage shall be celebrated at a cost of Rs. 1,000. You shall yourself conduct the Mandapathadi charity and submit accounts there, for every year to my junior paternal uncle, Bava Sakappa Mudaliar Avergal. The income got from Keelakadai shall be duly utilised for Chandrasekaraswami Mandakapadi, and you yourself shall conduct it. The building to the east of Mandakapadi shall be set apart for the pilgrims. You, and after you my second daughter and her male issue shall act up to the terms of this trust deed. According to the circumstances, and having regard to the benefit of the family debts shall be contracted if necessary, and the village administered. A correct account of the income and expenses relating to this trust deed shall be maintained. Paripurnam, who has been my

concubine of late shall be paid 24 kalams of paddy and Rs. 30 in cash per year so long as she conducts herself properly. Should other arrangements be made by me only in respect of the money set apart for my expenses, disbursements should be made according to them. After the marriage the amount that shall be given to the first daughter shall be given to the second daughter also. To this effect I, Bava Krishnasami Mudaliar, executed the trust deed to Vaithilinga Mudaliar Avergal."

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"The aforesaid Thandavamurthi Pillayarkovil and the mantapam attached to it shall be constructed at a cost of Rs. 100 from the family fund. The mantapam before it shall be repaired or tiled as it is at present and rented out separately. The money already spent shall be recouped from the rent, and the balance rent shall be utilised for the temple. The new building Mantapathadi shall be repaired with the rental income obtained from the shops therein and from the backyard to the back and east of it. This list has been prepared from memory. Should anything be omitted herein in connection with the movable and immovable properties, you shall get possession of them yourself, make the collection and conduct proceedings in connection with them.

"(Signed) Bava Krishnasami Mudaliar."

Bava Krishnaswami Mudaliar after executing the deed of the 13th September, 1893, went on a pilgrimage to Benares and during his absence Vaithilinga Mudaliar Avergal, who is mentioned in the deed entered upon his duties under the deed, and duly rendered accounts under the deed; he died before this suit. On the 30th May, 1895, and after his return from Benares, Bava Krishnaswami Mudaliar obtained from Vaithilinga Mudaliar the following release :—

"Release deed in respect of trust deed executed on the 30th May, 1895, in favour of Bava Krishnasami Mudaliar Avergal, son of Kalyanasundara Mudaliar, Thondamandalam caste, Saivite, Mirasdar, residing in Tiruvalur, Negapatam Taluq, by Vaithilinga Mudaliar, son of Aiarappa Mudaliar, Thondamandala caste Saivite, Mirasdar, residing at Thirukottaram in Nannilam Taluq. In view of your having to go on a pilgrimage and of your illness, you executed to me a trust deed on the 13th September, 1893. Then you performed and returned from your pilgrimage and your health improved, and in April, 1894, you took possession of all your properties and since then have been enjoying them. So, the said trust deed has been cancelled. I executed this release deed in token of my having relinquished all my rights under the said trust deed. The said trust deed has been registered at Tiruvalur Sub-Registrar's Office as No. 1998 of 1893, on pages 332 to 337 of Vol. No. 245 of Book No. 1.

"(Signed) T. A. Vaithilinga Mudaliar."

Their Lordships refer to the facts mentioned in the preceding paragraph as they were commented upon in the arguments before them, but in their Lordships' opinion the fate of this appeal must depend upon the construction of the deed of the 13th September, 1893, and upon that alone.

The Subordinate Judge came to the conclusion that the deed of the 13th September, 1893, did not create a valid trust and by his decree dismissed the suit. From that decree the plaintiff appealed to the High Court. The learned Judges of the High Court in their judgment said :—

"We are of opinion that the Subordinate Judge was right in dismissing the suit. The document Exhibit A is not very clear; but, in spite of the

fact that it is described as a trust deed and was registered as such, and, in spite of the fact that Vaithilingam is in it styled a trustee, we think that it does not indicate that Krishna Mudali intended to transfer the property to Vaithilingam upon trust. There are no words indicating an intention to transfer; and, on the other hand, it seems clear that Krishna Mudali wanted to appoint a manager of his property during his absence, and perhaps to provide for the disposal of his property in the event of his not returning alive. On a consideration of the whole document, we are not prepared to hold that a trust was thereby created."

They by their decree dismissed the appeal. From that decree this appeal has been brought.

It has been contended on behalf of the appellant before this Board that the deed of the 13th September, 1893, shows that Bava Krishnaswami Mudaliar intended by it to create a trust which should continue during his lifetime and after his death, and did by the deed create a trust. If the question merely depended upon what Bava Krishnaswami Mudaliar intended to effect by the deed, their Lordships are of opinion that his object merely was to provide for the management of his property by an agent during his absence or in the event of his own death. In their Lordships' opinion the deed did not vest the legal interest in the property in anyone. The law on this subject in England is equally applicable to India, and their Lordships conceive that it is well expressed in the following passage from Lewin's "Law of Trusts" (12th Edition at page 73).

"If it be proposed to make a stranger the trustee, and the subject of the trust is a *legal interest*, and one *capable of legal transmutation*, as land or chattels which pass by conveyance, assignment, or delivery, or stock which passes by transfer, in this case the trust is not perfectly created unless the legal interest be actually vested in the trustee. It is not enough that the settlor executed a deed affecting to pass it, and that he believed nothing to be wanting to give effect to the transaction; the intention of divesting himself of the legal property must in fact have been executed, or the Court will not recognise the trust."

Their Lordships will humbly advise His Majesty that this appeal should be dismissed with costs.



In the Privy Council.

RAJAMMAL

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SIRANGATHAMMAL AND OTHERS.

DELIVERED BY SIR JOHN EDGE.

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