

C. S. Nataraja Pillai (now deceased) and another - - *Appellants*

v.

C. S. Subbaraya Chettiar - - - - - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 17TH JUNE, 1948.

Present at the Hearing :

LORD NORMAND

LORD OAKSEY

SIR JOHN BEAUMONT

[*Delivered by* LORD NORMAND]

The present appeal arises out of a suit brought by the respondent, as plaintiff, against the appellants, as defendants.

The subject matter of the suit was a property which had belonged to a certain Vasavambal Ammal.

There had been a previous suit (No. 53 of 1924) between the same parties and in his pleading in the present suit the plaintiff (the respondent) stated " that the property was in the possession of his adoptive mother ", that is Vasavambal Ammal whose adopted son he claimed to be, " on his behalf till her death and subsequently, taking advantage of her death and the plaintiff's young age, the defendants " (the appellants), " seem to have intermeddled with the property and claim to have taken possession of the property after the tenants (of Vasavambal) vacated the premises ". He went on to state that shortly after the institution of suit No. 53 of 1924, on an application made by the plaintiffs in that suit a receiver was appointed by the court " to take charge of and collect the rents in respect of the suit property and he " (the receiver) " continues to be in possession and management thereof. After the disposal of the said suit, however, the defendants " (the appellants) " claiming to have been in possession of the properties just prior to the appointment of the receiver, filed an application to this Honourable Court for the handing over of the property, together with the rents accrued during the pendency of the litigation, from the receiver, and the Master of this Honourable Court has, by his order dated the 25th October, 1928, directed possession and the amount to be handed over to them, granting time to file a suit for the adjudication of the rights of the parties ".

The remedies asked for in the plaint included a declaration that the plaintiff (the respondent) as the adopted son of Vasavambal is entitled to the property, a direction that possession be delivered to him, and a direction that the accrued rents, be paid over to him together with such mesne profits as might become payable.

In their Written Statement, the appellants said in answer: " The allegations made in paragraph 20 of the plaint are incorrect and false. After the death of Vasavambal these defendants gave notice to the lessee, Messrs. Glen & Co., that they were rightful owners of the property and,

on the lessees vacating, they entered into peaceful possession of the premises. After the dismissal of suit No. 53 of 1924 these defendants applied to the Court for restoration of possession and for payment of the accumulated rents and His Honour, the Master, ordered the same. But the plaintiff, envious of the defendants' success, has interjected this vexatious suit with a view to prevent or delay their quietly enjoying the property that they have legitimately acquired".

Accordingly there is no room for dispute about the state of possession at the time of the institution of the present suit. The receiver, on behalf of the court, was in actual possession of the property and both parties were anxious to establish a right to have the receiver ordered to transfer the possession to themselves. The title to possession and ownership put forward by the respondent was his adoption by the previous owner. The title put forward by the appellants was alternatively a gift *inter vivos* or by will. The action proceeded in the High Court of Judicature of Madras, acting in its ordinary original civil jurisdiction, and a decree was pronounced declaring that the plaintiff (respondent) was entitled to the suit property as the adopted son of Vasavambal, and ordering the receiver to deliver to him possession of the property together with the amounts collected by the receiver from it, less his remuneration.

On appeal, that order was affirmed by the High Court of Judicature of Madras, acting in its appellate jurisdiction.

In the proceedings in both those courts the claim of the appellants continued to be a claim to recover possession and to be rested upon a title consisting either of a gift *inter vivos* or a gift by will. It is now unnecessary to enter into the reasons for which these Courts found against the appellants and in favour of the respondent.

When the case was opened before this Board it was soon apparent that it was impossible to maintain that the appellants had a right by title, either by gift *inter vivos* or under a will. However, their counsel with bold ingenuity invited the Board to reverse the decision of the courts in India on the ground that the appellants were in possession and that the respondent had failed to make out any title to the property and could therefore claim no right to eject them.

It appears, therefore, that the appellants have been compelled to depart altogether from the only grounds upon which they maintained their defence in the courts in India and that they now attempt to found their appeal against the decision of those courts upon a ground which was neither maintained nor maintainable upon the pleadings in those courts. No doubt it is true that it was for the respondent to make out to the satisfaction of the court that he had a title which would warrant an order for delivery of possession to him. That he succeeded in doing. The appellants cannot oppose to that order a claim based upon possession, which is contradicted by their own pleadings, and their appeal cannot be maintained.

Their Lordships will therefore humbly advise His Majesty that the appeal should be dismissed.



In the Privy Council

C. S. NATARAJA PILLAI (NOW
DECEASED) AND ANOTHER

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C. S. SUBBARAYA CHETTIAR

[DELIVERED BY LORD NORMAND]