

(1898) 11 MAD CK 0001**Madras High Court****Case No: None**

Kone Goundan

APPELLANT

Vs

Bola Naicken

RESPONDENT

Date of Decision: Nov. 15, 1898**Citation:** (1902) 12 MLJ 387

Judgement

1. It is perfectly clear from Exhibit II that the grandfather of the plaintiff gave the land in dispute to his second wife, the late Kandiakkal. There is, however, nothing in that document to show that the transfer was made subsequent to the date on which the Transfer of Property Act came into force. The defendant pleaded that the gift was made about 25 years ago, and in such circumstances it lay on the plaintiff who impeaches the gift to show that it was made after the Transfer of Property Act came into force. As there is no evidence on this point on behalf of the plaintiff, we think the lower courts were in error in proceeding on the view that the transfer was invalid, as it was not made under a registered instrument as required by the Transfer of Property Act. As the plaintiff was not in existence, at the time of the transfer and as his father assented to the transfer, it is not necessary for the defendant to rely on prescription. If any question of prescription arose here, we could not say that we were prepared to accept the contention that possession held for over the statutory period under an alleged title, which is found to be invalid or unfounded, would not avail the party holding the possession.

2. The view suggested in the passage in the case of Raja Haimun Chull Singh v. Koomer Gunsheam Sing 5 W.R.P.C. 69 to which our attention

has been called, has apparently been departed from by the Judicial Committee itself in several subsequent decisions. It is also not reconcilable with

numerous decisions of this and other High Courts. As to the case of *Labrador Co. v. The Queen* (1823) A.C. 104 it will be seen if the facts

thereof be not overlooked that there is no real conflict between our own view and the ruling in that case given with reference to the provision of the

French, law a person cannot acquire by prescription against his own title in this way that a person cannot himself change the cause and nature of his

possession (*Cachard's Civil Code*, 508). As, however, no question of prescription arises in this case, it is not necessary to say more on the point.

It was next urged, on behalf of the plaintiff, that, assuming the gift is not invalid under the Transfer of Property Act, the donee took only a life estate

and, therefore, the alienation in favour of the defendant is not binding on the plaintiff. But the estate, which the grantee took on the hypothesis

suggested for the plaintiff, must be taken to be not an estate for life, but the limited estate of a female known to the Hindu Law, and the person

entitled to the property on Kandiakkal's death is not the plaintiff but his father. We are unable to agree in the contention that this right to succeed

to the property on Kandiakkal's death was intended to be transferred or was transferred to the plaintiff under the partition deed, Exhibit A, which

was executed in Kandiakkal's life-time, and which ignores her right and deals with the property as part of the family estate in the possession of the

family. The plaintiff's suit was, therefore, not maintainable. The second appeal fails and we dismiss it with costs.