Velappa Gounden Vs Palani Gounden and Another

Court: Madras High Court

Date of Decision: March 17, 1915

Acts Referred: Evidence Act, 1872 â€" Section 94

Citation: AIR 1915 Mad 1079 : 29 Ind. Cas. 201

Hon'ble Judges: Spencer, J; Coutts-Trotter, J

Bench: Division Bench

Judgement

Spencer, J.
Five survey fields, Nos. 367, 368, 369, 371 and 421, measured acres 10, cents 11 according to the old survey. The 1st

defendant sold on 18th November 1909 a moiety, viz, acres 5, cents 5 1/2 to the 2nd defendant.

2. To make up this extent he included the whole of survey Nos. 368, 36S and 371 which amounted to acres 4 and cents 46 and added thereto

591/2 cents out of survey No. 367, the total area of which was acres 4 cents 18.

3. Of the five above-mentioned fields which descended to the 1st defendant and another from a common ancestor, no portion of survey No 421

was included in the 1st defendants sale-deed to the 2nd defendant.

4. It was subsequently ascertained at the re-survey that the extent of land in survey No. 367 in the 1st defendant"s possession was acre 1 cents

29. Deducting the 59 1/2 cents which he had sold to the 2nd defendant there remained thus 69 1/2 cents. He sold those 69 1/2 cents to the

plaintiff on the 29th December 1910 and the plaintiff brought this suit to recover this portion.

5. He succeeded in the first Court, but failed m the Appellate Court when the second defendant appealed.

6. The Subordinate Judge misdirected himself when m his judgment he set out to consider whether the parties intended that the whole extent which

came into the 2nd defendant"s possession should be conveyed by the earlier sale-deed. The District Munsif stated the point for consideration

correctly when he observed that the main point for determination was the extent of land actually sold to the 2nd defendant by the 1st defendant

according to Exhibit. When the language wed is plain and applies accurately to-existing facts, evidence is not admissible for the purpose of showing

that it was not meant to apply to those facts (section 94 of the Evidence Act). Now Exhibit I declares that the extent sold to the 2nd defendant out

of survey field No. 367 is 59 1/2 cents and nothing more (""only these items of land I have sold"" together with easement rights of irrigation.)

7. It further mentions that this extent was in the 1st defendant''s enjoyment (""those in my enjoyment are"" and then the details follow) and that it was

on the northern side of the field.

8. Boundaries are not given. In the absence of boundaries, should the description of the plot afforded by its exact extent and the assessment

payable 011 that extent prevail? Or, are we to ignore all that and draw the inference that because the vendor declares that the plots which he is

selling are in his possession, there was really a sale of all the extent which he happened to possess at that date within the limits of the field?

9. To adopt the latter course would be, in my opinion, to disregard the meaning of plain language and to has our decision upon mere surmise,

preferring vagueness of description to certainty. If A says to B, ""I sell you one acre out of White acre and the portion of Blackacre which is in my

possession"", it becomes necessary to inquire how much of Blackacre was in A''s possession at the date of sale, but it dees not signify whether A

possesses one acre or two acres of Whiteacre, as mention is made of a definite area. Of two kinds of descriptions, preference must be given to the

more definite.

10. I consider that the appeal should be allowed and that reversing the lower Appellate Court''s judgment, the decree of the District Munsif should

be restored with costs throughout, with the modification that the 2nd defendant shall be allowed to select his 59j cents out of the whole acre 1,

cents 29 and the balance should be placed in the plaintiff''s possession.

11. Coutts-Trotter, J.--This was an action brought by the plaintiff to establish his title to certain land sold to him by a deed of 29th December 1910

by Ramasami Gounden, the first defendant. The deed purported to convey to him 69 1/2 cents of land, forming a portion of Government Survey

No. 367 in the village of Savandappur; it was duly executed and registered, and no question arises under it; When he sought to take possession,

however, the plaintiff found himself confronted by a claim to the land put] forward by the 2nd defendant, Palani Gounden, who based his title upon

a previous sale-deed executed in his favour on the 18th November 1909 also by the 1st defendant, which was alleged to have conveyed the self-

same piece of land to the 2nd defendant. The plaintiff thereupon brought his action against both the defendants to try the issue of title as between

himself and the second defendant, and the sole issue both in the action and the appeals is as to whether that sale-deed of 18th November 1909, on

true construction, did in fact convey this parcel of land to the second defendant. The trial Judge decided that it did not; the Subordinate Judge took

the opposite view, and this Court has to decide, on the plaintiff''s appeal, which construction was the right one.

12. The rule of construction which the Court must obey in determining this question is well understock and long established and is best expressed

in the well-known opinion of Tindal, C.J., in Shore v. Wilson 9 Clause & F. 355 : 11 Sim. 592 : 7 Jur. 781 : 8 E.R. 450 : 57 R.R. 2. Though the

object of the Court must always ultimately be to ascertain the intention of the parties, yet the intention must be gathered from the words they have

used where those words are definite and unambiguous; and the Court must not travel outside the words used to found or confirm speculations as

to their having in fact intended something other than what they have said.

13. Turning to the words of the present document, it is obvious that what was conveyed was a portion of Survey No. 367 and the only question is,

what portion. The operative words begin with an enumeration of some property belonging to the first defendant and another person jointly, and

among it is field No. 367 with an acreage of 488 acres. The document then goes on, out of these, those in my enjoyment are"" certain-other

properties, and ""the northern side in field No. 367 acre 0--59 1/2 ... only these items of land have I sold"". I do not feel on very sure ground in

attempting to construe words which are a translation of the original language, but I do not feel it possible to hold that thert is any clear definition of

the portion of Survey No. 367 other than that it consists of 59 1/2 cents. As my learned brother is acquainted with the original Tamil and has come

to the same conclusion, I am encouraged to think that my judgment is not vitiated by ignorance of the language used by the parties. And it is a

comfort to reflect that this construction, while leaving the 2nd defendant with the same acreage that he paid for, prevents a gross injustice to the

plaintiff.

14. I agree that the appeal should be allowed with costs.