

(1920) 12 BOM CK 0018**Bombay High Court****Case No:** None

Malraju Lakshmi Venkayyamma
Row Bahadur Zamindarini Garu

APPELLANT**Vs**

Venkatadri Appa Row Bahadur
Zamindar Garu

RESPONDENT**Date of Decision:** Dec. 7, 1920**Citation:** (1921) 23 BOMLR 713**Hon'ble Judges:** Viscount Cave, J; Sumner, J; Lawrence Jenkins, J; John Edge, J**Bench:** Full Bench**Final Decision:** Dismissed

Judgement

Lawrence Jenkins, J.

This is an appeal from a judgment and decree, dated the 7th September 1914, of the High Court at Madras, by which the previous decree of the Subordinate Judge of Kistna at Ellore, of the 29th September, 1909, was affirmed with certain variations.

2. The appellant is the plaintiff, Sri Rajah Malraju Lakshmi Venkayyainma Row Bahadur Zamindarini Garu, and she instituted this suit as far back as the 5th December, 1902. By her plaint she prayed that she might be declared entitled to recover " the jewels, vessels, etc., mentioned in the schedule, or their value," and that the defendants should deliver to the plaintiff these jewels, vessels, etc., or pay their value, Rs. 1,65,136-1-3. Relief was also sought as to the income of certain villages with interest.

3. The jewels were in the possession of Rani Papamma Row at her death, The original defendants 1 to 3, now represented by the present respondents, were alleged in the plaint to be the heirs to all properties that belonged to Rani Papamma absolutely as Stridhanam. They also were the reversionary heirs expect-ant on the death of Rani Papamma to the estates of her deceased husband, Naraya Appa Row.

4. The fourth defendant was the Receiver of those estates, Bahadur appointed in Suit No. 44 of 1899.

5. The main question for determination in this appeal is whether the plaintiff has proved her right to the jewels she claims, and in view of the concurrent findings of the Courts, the contest is now limited to the jewels included in the large presents of valuable jewels alleged in the plaint to have been made to her by Rani Papamma from time to time (para. 11).

6. So far as that claim rests on actual gifts made by Rani Papamma it must fail, for it is negatived by concurrent findings of both the lower Courts, and those findings are in the circumstances of this case findings of fact.

7. In the argument this has been recognised, and an endeavour has been made to escape from this difficulty by basing the claim on an assumed contract by Rani Papamma to give the plaintiff the jewels. To appreciate the origin of this change of front a brief explanation is necessary.

8. It is beyond controversy that Rani Papamma was very attached to the plaintiff. She was her great-aunt, she had brought her up from infancy, she had borne the expenses of her marriage she had throughout treated her as her own daughter.

9. The plaintiff was married to a man of some means and position, but Rani Papamma was anxious that, notwithstanding the marriage, the plaintiff and her husband should continue to reside with her; and it is the plaintiff's case that, as an inducement to this, the Rani agreed that in consideration of their so doing, she "would meet all the private and special expenses of the plaintiff, treat her in every way as her daughter, give her jewels, and make adequate provision for her."

10. The marriage was in 1886, and the plaintiff and her husband, in compliance with her wishes, resided with the Rani till 1893. Though it has always been the plaintiff's case that large presents of jewels had actually been made to her as a result of this arrangement, she and her husband felt that as the jewels still remained in the Rani's possession, some written record was necessary as evidence of their ownership. And so there was negotiation and correspondence which ultimately led to a letter, Exhibit " H " written by Rani Papamma to the plaintiff in 1893.

11. The effect of that exhibit was considered by this Board in a suit brought by the present plaintiff" to establish her claim to a village called Repudi, and it was there held, in view of this exhibit, the conduct of the parties and the other circumstances of the case disclosed in the evidence that there was a contract to the village which could be enforced in the plaintiff's favour.

12. It has been argued on this appeal that this decision is conclusive in the plaintiff's favour as to the jewels. But this argument cannot be sustained.

13. No doubt exhibit " H" is a single document, but its treatment of the jewels and Repudi is not the same. It deals with each separately in language not identical in its terms or, necessarily, in its legal consequences. There is, too, a diversity of circumstances. The effect, however, of these dissimilarities need not be discussed, for apart from this there has been a difference between the conduct of the earlier suit and the present which is fatal to the plaintiffs present proposal to abandon gift and rely on contract as the foundation of her claim to the jewels. In the f earlier suit the plaintiff's claim to Repudi was rested on contract at the earliest stage of the litigation; contract was alleged in the plaint and was a matter of dispute, discussion and decision in both the Indian Courts.

14. In the present suit it is not until this appeal that contract has been suggested as a possible cause of action. There is no trace of it in the pleadings, the issues, the evidence, or the judgments, for in India the issue was gift, not contract. Ownership of the jewels was the case made in the plaint: the cause of action was alleged to have arisen when the Receiver took possession of them; and the decree sought was delivery of the jewels or payment of their value conformably to Section 208 of the Code of Civil Procedure, which deals with a suit for delivery of specific moveables on the ground of property.

15. The argument now advanced is contradictory of the case thus made, and involves a line of attack that the defendants had no opportunity to meet while the litigation was in the lower Courts, where appropriate evidence could have been adduced. In effect it invites their Lordships to do that which was censured in Eshenohunder Singh v. (Shamachurn Bhutto (1866) 11 M.I.A. 7. where Lord Westbury, delivering the judgment of the Board, said :♦

It is impossible to conclude parties by inferences of fact which are not only not consistent with the allegations that are to be found in the plaint, which constitute the case the defendant has to meat, bat) which are in reality contradictory of the case made by the plaintiff. It will introduce the greatest amount of uncertainty into judicial proceedings if the final determination of causes is to be founded upon inferences at variance with the case that the plaintiff has pleaded, and, by joining issue in the cause, has undertaken to prove.

16. This is essentially a case where this ruling should be strictly applied in view of the long duration of the suit and the lack of finality in any decree that would at this stage be possible. This change of front therefore cannot be permitted, and the plaintiff's contention must fail.

17. The only other objection taken to the decree was as to the rate and period of interest directed by the High Court. This admits of a short and conclusive answer. There was nothing contrary to law in this direction, and what was ordered was within the scope of the Court's discretion. With this exercise of discretion their Lordships decline to interfere.

18. The result, then, is that this appeal wholly fails, and their Lordships will accordingly humbly advise His Majesty that it should be dismissed with costs to the first three respondents.