

Pethu Reddiar and others - - - - - *Appellant*

*v.*

Rajambu Ammal - - - - - *Respondent*

FROM

**THE HIGH COURT OF JUDICATURE AT MADRAS**

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF  
THE PRIVY COUNCIL, DELIVERED THE 2ND MARCH, 1948.

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*Present at the Hearing :*

LORD NORMAND

LORD MACDERMOTT

SIR JOHN BEAUMONT

[*Delivered by* LORD MACDERMOTT]

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The litigation from which this appeal arises was commenced on the 20th April, 1932, by one Somasundara Reddiar against some 18 defendants for the purpose of setting aside a power of attorney and 14 sale deeds all of which had been executed by Somasundara, the plaintiff, in favour of one or other of the defendants. The power of attorney was dated the 21st September, 1931. The sale deeds were executed on various dates ranging from the 16th November, 1931, to the 5th March, 1932. Somasundara sued as a person of unsound mind and a pauper, by his wife and next friend Rajambu Ammal, the present respondent, whom he had married in 1927 when he was about 17 years old. The relief sought was that all the documents mentioned should be set aside and possession given of the properties the subject of the sale deeds. In their substance the grounds of this claim were (1) that Somasundara was not of sound mind within the meaning of section 12 of the Indian Contract Act, 1872, at the dates of the transactions in question, and (2) that those transactions had all been induced by undue influence, as defined in section 16 of the said Act, on the part of the defendants or some of them.

The suit thus started ran an involved and tedious course the details of which need not now be recounted at length. The following summary of the proceedings leading to the appeal to the Board will suffice for present purposes. In 1936 Somasundara died and his widow, the respondent, was substituted as plaintiff as her husband's legal representative. On the 25th February, 1941, the Subordinate Judge of Trichinopoly dismissed the suit save in respect of three of the said sale deeds which he set aside, apparently on the ground of lack of consideration. He held that the pleas of unsoundness of mind and undue influence had not been established. In reaching this conclusion he disregarded the testimony of two doctors produced as witnesses in support of the claim (and who had not been examined before him) as being "perfectly worthless and completely biased". The defendants whose sale deeds had been set aside did not appeal from this decision. But the plaintiff did and her appeal was allowed by the High Court of Judicature at Madras on the 28th April, 1944. The Court (Krishnaswami Ayyangar and Somayya JJ.) held that Somasundara had not the requisite capacity to contract as laid down in section 12 of the Contract Act and that his "helpless state and weak mind were taken advantage of by unscrupulous persons". It decreed accordingly that the power of attorney and the 11 sale deeds which had been upheld by the

Subordinate Judge be set aside, that the plaintiff be put into possession and that the question of mesne profits be determined under Order XX, Rule 12, of the Civil Procedure Code. On the 15th December, 1944, the High Court granted leave to three of the defendants, the present appellants, to appeal to His Majesty in Council. The position, as the matter now comes before their Lordships, therefore, is that all the 15 transactions impugned in this suit have been set aside and of these only four—the sale deeds in which the appellants were concerned as transferees—are the subject of the present appeal. Particulars of these four are as follows:—

<i>Transferee</i>	<i>Date</i>	<i>Consideration as stated</i>	<i>Exhibit No.</i>
1st Named Appellant ...	16/1/31	Rs. 3,000	XIV
" " " ...	22/1/32	Rs. 100	XIX
2nd " " ...	18/1/32	Rs. 250	XXIII
3rd " " ...	19/1/32	Rs. 4,000	XX

On the appeal coming on for hearing counsel for the respondent submitted, as a preliminary point, that the High Court had not power to grant leave to appeal having regard to the terms of section 110 of the Code of Civil Procedure. The material part of this section reads thus:

“ In each of the cases mentioned in clauses (a) and (b) of section 109, the amount or value of the subject-matter of the suit in the Court of first instance must be 10,000 rupees or upwards, and the amount or value of the matter in dispute on appeal to His Majesty in Council must be the same sum or upwards, or the decree or final order must involve, directly or indirectly, some claim or question to, or respecting, property of like amount or value.”

It was not disputed that the value of the subject-matter of the suit in the court of first instance was upwards of Rs.10,000 or that the value of all the properties in dispute on appeal to the Board exceeded, in the aggregate, this sum. But it was urged that, for the purposes of section 110, the case of each appellant must be regarded *separately* and that, when this was done, the value of each matter in dispute on appeal to His Majesty in Council was less than Rs.10,000. It was assumed that the property alleged to have been transferred to each of the three appellants was below this figure in value at all material times and, accordingly, the net question for determination was whether or not the values of the properties comprised in the sale deeds, the subject of this appeal, could be aggregated for the purposes of the section. The High Court held in favour of aggregation and certified on that basis, distinguishing the decision in *Vaithilinga Mudaliar v. Somasundaram Chettiar* (I.L.R. 42 Mad. 228) and other cases said to have followed it. In the opinion of their Lordships the High Court was clearly right in the view it took. This was not the case of an appeal involving several appellants each of whom sued or was sued in respect of some distinct or unrelated cause of action, and it is unnecessary to consider the applicability of section 110 to appeals of that kind. Here, the case of the respondent against each appellant and of each appellant against the respondent depended, in its substance, on the view taken of the evidence as a whole and turned on the same issue regarding the capacity of Somasundara. On the facts of this appeal there was, indeed, but one “matter in dispute” unless the mere circumstance of a plurality of appellants decrees otherwise. On the true construction of the section their Lordships were unable to see any ground for such a refinement and they therefore over-ruled the preliminary objection.

Turning to the merits, it is clear that the appeal hinges on a question of fact which must be determined on the evidence. As this has been fully reviewed in the courts in India their Lordships do not find it necessary to enter upon a detailed examination of the documentary and oral evidence adduced by the parties. The lay witnesses called in support of the plaintiff made the case that Somasundara began to lose his reason some two years after his marriage. Among these witnesses were the plaintiff and her mother who, no doubt, had an interest in the suit. But it may be observed, in

this connection, that their views as to Somasundara's sanity had been expressed a considerable time before the earliest of the transactions challenged in these proceedings for, on the 20th August, 1930, the plaintiff had caused a notice to be published in the District Gazette, Trichinopoly, warning all concerned that any money dealings with her husband would not be valid on account of his lunacy. The numerous witnesses called on behalf of the defendants were all lay and except for two (Nos. 23 and 24) who openly supported the plaintiff, they together made the case that Somasundara had always been a person of sound mind. In this conflict of testimony the importance of the two medical witnesses examined for the plaintiff need not be emphasised. Of these, Dr. G. R. Parasuram was Deputy Superintendent of the Government Mental Hospital at Madras. He had examined Somasundara in February, 1931, and again at the end of July and beginning of August, 1932. He found symptoms of dementia praecox and formed the conclusion on both occasions that Somasundara was not sane. On the second examination he observed a deterioration in appearance but found his mental condition much as before. The second medical witness was Dr. S. P. Sarma, the District Medical Officer of Trichinopoly. He had Somasundara under observation from the 15th till the 28th July, 1932, and found him of unsound mind and incapable of managing his affairs. The attitude of the Subordinate Judge to the testimony of these witnesses has already been remarked. The High Court found itself unable to adopt that attitude. It saw no reason to discredit either of the medical witnesses and it is plain that their testimony played an important part in leading the High Court to reverse the decision of the Subordinate Judge.

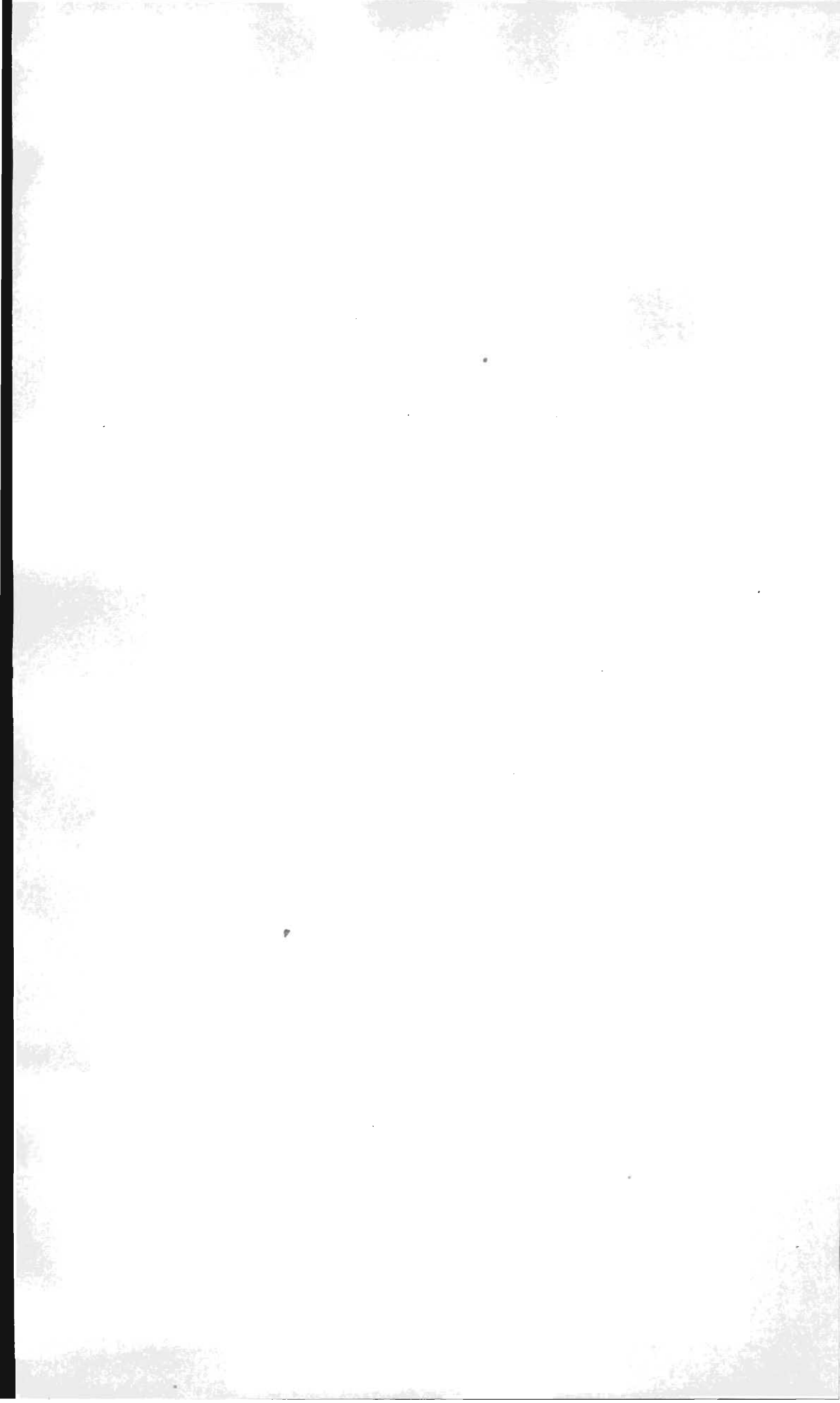
After a careful consideration of the evidence their Lordships are satisfied, beyond any question, that the view taken by the High Court was the right view and should be affirmed. They can see no reason to justify the strictures passed upon the medical testimony by the Subordinate Judge. The evidence of these witnesses seems to have been based on a conscientious examination of the patient. Their competence was not in any way challenged and there is nothing in the case to suggest that either had any interest in the suit or bias in favour of the plaintiff. The strange sequence of transactions which were the subject of the present and another contemporaneous suit and which left Somasundara stripped of his possessions, and thus qualified to sue as a pauper, offers strong corroboration of the medical testimony and of the substance of the story told by the plaintiff. In their Lordships' opinion the whole weight of the evidence supports the finding that Somasundara was of unsound mind throughout the relevant period.

There remains for consideration a subsidiary point raised on behalf of the first-named appellant, Pethu Reddiar. The consideration stated in the sale deed made in his favour and dated the 16th November, 1931 (Exhibit XIV), was Rs.3,000. According to the document this amount was made up of five sums of Rs.294.8.0., Rs.195.14.0., Rs.1,100., Rs.1,150., and Rs.259.10.0., respectively. Of these the first three were due by Somasundara on foot of decrees which this appellant was to discharge by payment, the fourth was said to be due to this appellant as surety for Somasundara on a promissory note, and the fifth was stated in the sale deed to be the amount of cash received by Somasundara. It was admitted that the first item had not been discharged, but this appellant claimed that he was entitled to recoupment in respect of the other sums in the event of his appeal failing and the sale deed being set aside. The High Court was satisfied that the decrees for Rs.195.14.0. and Rs.1,000 had been paid but was not satisfied as to the payment of the other items or that this appellant had paid the decrees out of his own monies.

As the evidence stands their Lordships are of opinion that the decree payments of Rs.195.14.0. and Rs.1,100 should be regarded as paid by this appellant, Pethu Reddiar, out of his own pocket for the benefit of Somasundara, but they share the doubts of the High Court as to the other payments alleged. In the circumstances of the present case their Lord-

ships consider that Pethu Reddiar will, upon complying with the orders affecting him in the suit, be entitled to be recouped the said sums amounting to Rs.1,295.14.0., and no more, and that he should be at liberty to take credit for such amount in the ascertainment of mesne profits provided he has so complied.

Their Lordships will therefore humbly advise His Majesty that the appeal be dismissed and the decree of the High Court affirmed without prejudice to the right of Pethu Reddiar, the first-named appellant, to recoupment of the sum of Rs.1,295.14.0. as aforesaid. The appellants must pay the costs of the appeal.



In the Privy Council

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PETHU REDDIAR AND OTHERS

v.

RAJAMBU AMMAL

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DELIVERED BY LORD MACDERMOTT

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