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33, 1954

In the Privy Council.

No. 37 of 1953.

38075

ON APPEAL FROM THE SUPREME COURT OF CEYLON

33, 1954

BETWEEN

P. MURUGIAH ... ... *Defendant/Appellant*

AND

C. L. JAINUDEEN ... ... *Plaintiff/Respondent*

CASE FOR THE APPELLANT

RECORD

1.—This is an appeal from a Judgment dated 18th September, 1952, of the Supreme Court of Ceylon, which reversed the decision of the District Court of Matale given on 25th January, 1951, dismissing an action brought by the Respondent against the Appellant. p. 20 p. 14

2.—The Appellant (the Defendant in the Action) is the administrator of the estate of one K. M. T. Ponniah, and as such was in possession of the land in dispute in the action which is known as Kirigalpottewatta. Exh. D. 1, p. 41

3.—The Respondent claimed to be entitled to possession of the land by virtue of a title derived from Ponniah's son Sellasamy to whom Ponniah had granted the land by Deed of Gift on 1st November, 1927. Sellasamy in turn mortgaged the land on 24th February, 1944, to one Appuhamy, who obtained a Judgment for his mortgage debt on 25th February, 1949. In execution of this decree a Fiscal sale took place on 23rd September, 1949, and the land was transferred to the Respondent on 21st February, 1950. p. 10, l. 17

4.—In defence to the Respondent's claim the Appellant set up that the Deed of Gift of 1st November, 1927, was made by Ponniah on the occasion of a contemplated marriage by Sellasamy, that Sellasamy accordingly became obliged to bring the said land into hotchpot or collation, that on p. 8

3rd February, 1941, an Order was made in the course of the administration proceedings of Ponniah's estate that the property be brought into collation and formed part of the estate and that this Order was duly registered against
p. 30 the land. It appeared in fact that in the administration proceedings the
p. 31 Petitioner who was the Widow of Ponniah included the land in question
p. 32, l. 19 in the Schedule or Inventory of property belonging to the Deceased and
p. 29 claimed that this was rightly done. The Respondent in his petition denied that the land ought to be included in the Schedule as part of the estate.
p. 40 It was however decided by the District Court of Kandy on the 3rd February, 1941, that the gift was made on the occasion of marriage as alleged and that the land must be brought into collation.

5.—The law relating to hotchpot or collation in Ceylon is contained in Section 35 of the Matrimonial Rights and Inheritance Ordinance (Laws of Ceylon, Chapter 47) which is as follows :—

> "Children or grandchildren by representation becoming
> "with their brothers and sisters heirs to the deceased parents
> "are bound to bring into hotchpot or collation all that they have
> "received from their deceased parents above the others either on
> "the occasion of their marriage or to advance or establish them
> "in life, unless it can be proved that the deceased parent, either
> "expressly or impliedly, released any property so given from
> "collation."

6.—The issues framed for decision by the Court were as follows :—

p. 11 (1) Had the title of Sellasamy passed to the Respondent by virtue of the Mortgage of 24th February, 1944, and the Fiscal's Conveyance of 21st February, 1950 ?

(2) Was the Order made on 3rd February, 1941, in the administration proceedings *res judicata* between the parties ?

(3) If so, was the Defendant as administrator of the estate in lawful possession of the property ?

p. 12 7.—The Judgment of the District Court was given by Wijesekera D.J., on 25th January, 1951. In his opinion from the date of the Order of 3rd February, 1941, Sellasamy would have no right to the property as all the heirs of Ponniah would inherit it according to their rights. Sellasamy and the other heirs of Ponniah would become entitled to an undivided share of the whole estate. The subject matter would have lost its identity and submered in the estate. With regard to a suggestion that the right of the estate is to the value of the property and not to the property itself, the learned Judge referred to the journal entries of the administration proceedings. These showed that the land was included in the Inventory in 1936 and that Sellasamy moved to take the property out of the Inventory. His application was refused and the property remained in the Inventory

accordingly. The question of the estate being entitled only to the value of the property did not arise. He answered the issues accordingly—

(1) No,

(2) Yes,

(3) Yes,

and dismissed the action with costs.

8.—The Respondent appealed to the Supreme Court of Ceylon against the decision of the District Judge and the Supreme Court delivered Judgment p. 17
on 18th September, 1952, allowing the appeal. In his reasons for Judgment, Gunasekara J. said that the statutory enactment of the law relating to collation contained in Section 35 of the Matrimonial Rights and Inheritance Ordinance did not give a new meaning to the expression " bring into " hotchpot or collation " which was a term already known to the common law and did not remove the option of the heir to discharge a liability to collation by bringing the value of the property into account. With regard to the administration proceedings there was no issue as to the title to the property. The decision that the property must be brought into collation did not have the effect either of declaring that Ponniah's estate was entitled to it or of divesting Sellasamy of his title under the Deed of Gift.

Swan J. the other member of the Supreme Court concurred.

9.—The Appellant submits that the Judgment of the Supreme Court cannot be sustained. In the first place, whatever construction is to be placed upon Section 35 of the Matrimonial Rights and Inheritance Ordinance, the Judgment in the administration proceedings established conclusively that Sellasamy was bound to bring the property itself into collation and this Judgment operated as *res judicata* as between the estate of Ponniah on the one hand and Sellasamy and his privies on the other hand. For this purpose a mortgagee is a privy and takes no better title than his mortgagor. Secondly, the Appellant submits that Section 35 (U.S.) superseded and varied the pre-existing Roman-Dutch law on the subject of collation and provides only for the bringing into collation of the property gifted and not of its value. In any event the deeds and instruments upon which the Respondent relies for his title were not duly registered within the meaning of the Registration of Documents Ordinance of Ceylon (Legislative Enactments c. 101) and therefore have no effect or validity in law as against the Decree of 3rd February, 1941, which was duly so registered. p. 40

10.—The Appellant submits that the Judgment of the District Court should be restored for the following amongst other

REASONS

1. BECAUSE the issue in the administration proceedings, relating to the estate of K. M. T. Ponniah deceased, was whether Sellasamy was or was not bound to bring into hotchpot the property in question, and it was decided in those proceedings that he was so bound with the result that the property was, subsequently to 3rd February, 1941, part of the estate of K. M. T. Ponniah deceased.

2. BECAUSE, as a matter of law, Sellasamy was bound to bring into hotchpot the property in question and because in fact he did so.

3. BECAUSE the Respondent could have no greater interest in or title to the property in question than his predecessor in title Sellasamy and because any such interest was subject to the claim of the administratrix of the estate of K. M. T. Ponniah, which claim was duly registered.

4. BECAUSE the Conveyance of the property to the Respondent and the other documents supporting the Respondent's title were not duly registered.

5. BECAUSE the decision of the District Judge was right and ought to be restored.

R. O. WILBERFORCE.

THESE ARE THE ONLY PAPERS AVAILABLE IN THIS APPEAL

Privy Council Office.

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