

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of
Puliyampatti Naranier v. Kuppier and
another, from the High Court of Judicature
at Madras ; delivered the 8th June 1904.*

Present at the Hearing :

LORD MACNAGHTEN.

LORD LINDLEY.

SIR ARTHUR WILSON.

[*Delivered by Sir Arthur Wilson.*]

The suit out of which this Appeal arises was brought in the Court of the District Judge of Coimbatore by the Respondents Kuppier and Ramachandrier, the two sons of one Venkatagiri, deceased, against the Appellant, their father's brother, for the purpose of recovering from him certain immovable properties, with mesne profits. They claimed them as having belonged to their father, and as having descended to them as his heirs. The Appellant's case, in answer, was that the properties were and always had been his own, not Venkatagiri's, the latter being a mere benamidar. At the hearing the Plaintiffs' right to some of the properties was admitted or established, and these are not now in dispute. As to some others the Defendant succeeded, and the finding to this effect was not appealed against or the Appeal was not pressed. Some of the properties claimed stand, however, in a different position. These are the properties numbered as Items 1 to 7 inclusive in Schedule A to the plaint. With respect to them the

District Judge disallowed the claim of the Plaintiffs, but the High Court on Appeal took a different view and modified the Decree of the District Court, by adding the properties in question to those allotted to the Plaintiffs with mesne profits and costs. The present Appeal is against that decision.

Up to a certain point the facts out of which the controversy has arisen are not in dispute. The deceased Venkatagiri, the Appellant, and Venkataramana were three brothers, the Appellant being the youngest of the three, and Venkatagiri the second. They separated and partitioned their ancestral property in 1870. Both the Appellant and Venkatagiri were in Government employment on the Nilgiri hills; Venkatagiri died in 1886, and the Appellant retired from the Service in 1892. The exact ages of the Respondents when their father died is in dispute, but they were certainly both young, and their uncle, the Appellant, was their natural protector whether he was legally their guardian or not.

The most important by far of the properties in dispute are Items 5 and 6, of which Item 5 is a five-eighths share of what is now the Kolipathai Coffee Garden, and Item 6 a like share of a building upon the garden. Deeds of the years 1876 and 1878 are in evidence by which certain persons, who have been spoken of as Badagas, purported to convey these lands to Venkatagiri. It is said that the Badagas who thus purported to convey the lands were already mere benami holders, and that the conveyances passed no new title; and that may very likely be the case; but for whom, if so, they held benami is another question. There is no doubt that down to Venkatagiri's death in 1886 the lands were held in his name, and transactions in connection with them were in the same name. After his

death the puttah was transferred to his sons the Respondents. On the 8th November 1895 the first Respondent alone, but describing himself as the guardian and protector of his younger brother, a minor, executed a deed by which he purported to sell to the Appellant for an agreed price the property now in question, describing it as having been enjoyed by Venkatagiri and after his death belonging to his sons, the Respondents. It is nobody's case that there was a real sale on that occasion, and different views have been put forward as to the motives and objects of the parties to the transaction. The High Court relied upon this document as containing an important admission of the title of Venkatagiri and of his sons, and their Lordships think the learned Judges were right in so using it.

Upon the whole evidence the learned Judges held that the title of the Respondents to Items 5 and 6 was established. The learned Counsel who appeared in support of the Appeal invited their Lordships to dissent from the conclusion of the High Court, and called their attention fully to the evidence which it was said tended to establish a beneficial title in the Appellant in opposition to the apparent title of Venkatagiri and his sons. But their Lordships think, as did the learned Judges, that the evidence is insufficient for the purpose for which it was adduced. What it was really incumbent upon the Appellant to do, in order to displace the apparent title, and what he was peculiarly in a position to do if it could be done, was to show by satisfactory evidence that the funds out of which the garden was purchased and developed were his own funds. And the evidence falls far short of doing anything of the kind. Their Lordships see no sufficient reason for differing from the learned Judges with regard to Items 5 and 6.

With respect to the other items of property in controversy, the case stands substantially on a similar footing, certainly as to none could the claim of the Appellant be put in a light more favourable to him than with regard to Items 5 and 6 already considered.

Their Lordships will humbly advise His Majesty that the Appeal should be dismissed. The Appellant will pay the costs of the Respondents down to the lodging of their case, and the costs of their application for payment thereof.
