Privy Council Appeal No. 144 *of* 1924.

T. V. Kalyanasundaram Pillai - - - - - *Appellant*

v.

Karuppa Mooppanar and others - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 13TH DECEMBER, 1926.

Present at the Hearing:

LORD SINHA.
LORD BLANESBURGH.
LORD SALVESEN.
SIR JOHN WALLIS.

[*Delivered by* LORD SALVESEN.]

These are two consolidated appeals from a judgment and two decrees dated 13th November, 1922, of the High Court of Judicature at Madras. It is unnecessary to restate the prior procedure or judgments which dealt with a number of contentions in law, and questions of fact now either finally disposed of or no longer insisted upon. It is sufficient to say that when leave to appeal was granted by the order of the High Court of 19th April, 1923, it was on the specific ground that it raised the substantial question of law, namely, "whether an adoption of a son by a Hindu made after the execution and delivery of a deed of gift, but before registration thereof, renders a deed void as against the adopted son." This is the only ground of appeal which is set forth in the appellant's case, and the respondents in their case, paragraph 2, take up the same position. Although, therefore, other grounds were indicated in the argument addressed to the Board which might have been equally fatal to the appeal, their Lordships think it right, in all the circumstances, to deal only with that which was the ground of judgment of the High Court, and in respect of which leave to appeal was given.

The relevant facts, which are no longer disputed, lie within short compass. On the 9th September, 1891, a certain Vaithilingam Pillai executed a trust deed by which he appointed trustees to administer a trust for charity in the wide sense, including the maintenance of religious services at certain temples. In order to provide the necessary funds for the maintenance of these services, and for discharging the other duties imposed upon the trustees, he set apart certain immovable properties belonging to him, the income of which was to be devoted to the purposes of the trust. At the date of the deed, Vaithilingam had no son. The deed, however, was executed on the footing that it was his immediate intention to adopt a son for the perpetuation of his lineage, as although he had two wives, one of whom was living with him at the time, he was still childless and despaired of having issue. There is no question now that this constituted a gift of immovable property within the meaning of Section 123 of the Transfer of Property Act, 1882, nor is there any question that the trust deed, on the day of its execution, was duly delivered to the trustees named therein.

On 10th September, 1891, Vaithilingam, by a deed executed on that day, adopted the appellant, then five years old, as his son. On 11th September, he executed a deed of guardianship to the newly adopted son, and on the 12th, a partition deed between himself and the guardian of that son, the effect of which need not, for the purpose of this judgment, be further referred to. On 15th September, three days later, the deed of gift was registered. On this it was contended for the appellant that the deed of gift was not complete until registration, and that, as the grantor had before registration adopted the appellant as his son, the latter's rights in the family property had intervened so as to revoke or invalidate the gift. The leading statutory provisions on which the solution of the question depends are 122 and 123 of the Transfer of Property Act, 1882, and Sections 47 and 49 of the Indian Registration Act III of 1877. Section 122 of the Transfer of Property Act is as follows :—

> " Gift is the transfer of certain existing movable or immovable property made voluntarily and without consideration by one person called the donor to another called the donee and accepted by or on behalf of the donee. Such acceptance must be made during the lifetime of the donor and while he is still capable of giving. If the donee dies before acceptance the gift is void."

Section 123 is in these terms :—

> " For the purpose of making a gift of immovable property the transfer must be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses."

The controversy in the numerous cases in the Courts of India which have dealt with this point has always centred round the words in this section :—

> " The transfer must be effected by a registered instrument,"

and it has been forcibly argued that, until registration, there is no complete gift, and that if the donor dies or revokes or becomes incapable of making the gift before registration, it cannot take effect. On the other hand, attention must be directed to Section 47 of the Indian Registration Act of 1877, which is in these terms :—

> " A registered document shall operate from the time from which it would have commenced to operate if no registration thereof had been required or made, and not from the time of its registration."

The learned Chief Justice in the Court below, after referring to the above sections, said :—

> " The effect of these sections in my judgment is that if a title is complete except for registration, no subsequent alienation or dealing with the property by the vendor or donor as the case may be can defeat the title which on registration becomes an absolute title dating from the date of the execution of the document."

The other two judges concurred in this view, making special reference to the case of *Venkati Rama Reddi* v. *Pillati Rama Reddi and others* (I.L.R. 40 Madras, p. 204), which, being a decision of the Full Bench, was binding upon them. In that case the donor died on the day following the execution of the deed of gift, and the deed was not presented for registration until a period of six months had elapsed from the date of his death; facts which, as it appears to their Lordships, were certainly not less cogent in favour of incompleteness than are those in the present case ; and there the District Judge held that the gift deed, not having been registered by the donor during her lifetime, was void, and that the post-mortem registration was of no effect. This judgment was, however, reversed on appeal by the unanimous decision of the Full Bench. There was no express finding of fact, so far as appears from the report, that the deed of gift had been delivered to and accepted by the donee prior to the death of the donor, although, perhaps, this may be implied from the circumstances. In the present case, fortunately, there is no room for doubt on this point, because the learned judges of the High Court remitted this question of fact to the Subordinate Judge and he reported that the deed had been delivered over, on the day of its execution, to one of the trustees appointed under it on behalf of himself and the other trustee. The decision of the Full Bench in 40 Madras is thus summarized in the head-note :—

> " There is nothing in Section 123 of the Transfer of Property Act which requires the donor to have the deed registered. All that is required is that he should have executed the deed. Once such an instrument is duly executed the Registration Act allows it to be registered even though the donor may not agree to its registration, and upon registration the gift takes effect from the date of execution."

Their Lordships think that this statement of the law needs qualification by reference to Section 122 of the Transfer of Property Act, and is only correct upon the footing that the gift

had been accepted by or on behalf of the donee during the lifetime of the donor. A deed of gift executed in accordance with the terms of Section 123 of immovable property but never communicated to the intended donee, and remaining in the possession of the grantor, undelivered, would, in their Lordships' opinion, not come within the ruling of the Full Bench in the case in question.

The only other case to which it is necessary to refer is a Full Bench decision of the High Court of Bombay in 1924, namely *Atmaran Sakharam Kalkye* v. *Vaman Janardhan Kashelikar* (I.L.R. 49 Bombay, p. 388). The circumstances in that case were very much the same as in the present, and the decision is thus correctly expressed in the head-note :—

> " Where the donor of immovable property has handed over to the donee an instrument of gift duly executed and attested, and the gift has been accepted by the donee, the donor has no power to revoke the gift prior to the registration of the instrument."

This case was very fully argued and the argument on behalf of the appellant in the present appeal could not be better stated than it was in the dissenting judgments of Shah, Acting C.J., and Mulla, J. ; and these arguments were all brought very forcibly under their Lordships' notice, and supplemented by the learned counsel for the appellant. Their Lordships, however, cannot accept them. They are unable to see how the provision of Section 123 of the Transfer of Property Act can be reconciled with Section 47 of the Registration Act, except upon the view that, while registration is a necessary solemnity in order to the enforcement of a gift of immovable property, it does not suspend the gift until registration actually takes place. When the instrument of gift has been handed by the donor to the donee and accepted by him, the former has done everything in his power to complete the donation and to make it effective. Registration does not depend upon his consent, but is the act of an officer appointed by law for the purpose, who, if the deed is executed by or on behalf of the donor and is attested by at least two witnesses, must register it if it is presented by a person having the necessary interest within the prescribed period. Neither death, nor the express revocation by the donor, is a ground for refusing registration, if the other conditions are complied with. Their Lordships accordingly find themselves in complete agreement with the judgment of the Full Bench of the Bombay High Court in the case cited. As this decision, and the similar decision of the Full Bench of the Madras Court, had settled the law for these Presidencies, it is unnecessary to refer to the various conflicting decisions of inferior tribunals which were overruled. Their Lordships apprehend that the judges of the High Court of Madras, in allowing leave to the appellant in the present case to proceed with his appeal, desired to elicit an authoritative opinion as to the soundness of the two latest decisions in the Madras Courts, and their Lordships think it desirable that a point which

has occasioned so much controversy in the past should be settled by a decision, which will apply to the whole of India.

Their Lordships will accordingly humbly advise His Majesty that the judgment and decrees of the High Court should be affirmed, and that this appeal should be dismissed. The appellant must pay the costs.

In the Privy Council.

T. V. KALYANASUNDARAM PILLAI

v.

KARUPPA MOOPPANAR AND OTHERS.

DELIVERED BY LORD SALVESEN.

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