

# Krishnan vs Backiam & Anr on 11 September, 2007

**Author: Markandey Katju**

**Bench: A.K. Mathur, Markandey Katju**

CASE NO.:

Appeal (civil) 3713 of 2001

PETITIONER:

Krishnan

RESPONDENT:

Backiam & Anr

DATE OF JUDGMENT: 11/09/2007

BENCH:

A.K. Mathur & Markandey Katju

JUDGMENT:

**J U D G M E N T** CIVIL APPEAL NO.3713 OF 2001 Markandey Katju, J.

1. This appeal has been filed against the impugned judgment of the Madras High Court dated 31.1.2000 in Second Appeal No.1927 of 1999.

2. We have heard learned counsel for the parties and perused the record.

3. The plaintiff-appellant Krishnan filed a suit for declaration and injunction against the respondent-defendant alleging that the property in dispute had been earlier mortgaged to him on 30.9.1988 and then sold to him by Ramayee (alias Lakshmi) by registered sale deed dated 25.9.1989 which was also rectified by another registered sale deed dated 10.9.1990. It was alleged in the suit that an attempt was being made to dispossess the plaintiff and hence injunction may be granted in his favour.

4. The defendant filed a written statement in the suit in which it was contended that Ramayee had neither executed the registered mortgage deed dated 30.9.1988, nor the registered sale deed dated 25.9.1989, nor the rectification deed dated 10.9.1990. It was alleged in the written statement that on the request of the owner of the land, Ramayee, the defendant is assisting her in cultivating the said property under her instructions and plaintiff has no right over the property. It was alleged by the defendant- respondent that the mortgage deed dated 30.9.1988, sale deed dated 25.9.1989 and the rectification deed dated 10.9.1990 alleged to have been executed by Ramayee, are in fact forged documents.

5. The trial court dismissed the suit, against which the plaintiff-appellant filed a first appeal in the court of subordinate Judge, Sivaganga, which was allowed by the judgment dated 13.4.1999. In this judgment the First Appellate Court held :

"It appears from the evidences of the plaintiff's witnesses that Lakshmi and Ramayee are one and the same persons. Once the plaintiff proves his case through his witnesses, the burden of proof shifts to the defendant. It is for the defendant to prove that Exhibit-A4 sale deed is a forged document or a created one. The law does not require attestation of sale deed as a compulsory one. Section 54 and 59 of Transfer of Properties do not speak about compulsory attestation. When law does not require compulsory attestation of a document, such unattested document may be proved as per the provisions of Indian Evidence Act. Section 68 of Indian Evidence Act has no application for sale deed. Section 68 of the Indian Evidence Act is applicable only to the cases where the documents are required to be attested in law."

6. Thus, although the mortgage deed dated 30.9.1988, the sale deed dated 25.9.1989 and the rectification deed dated 10.9.1990 are alleged to have been executed by Lakshmi, it has been found by the First Appellate Court that Lakshmi and Ramayee are one and the same person. Since admittedly Ramayee was the owner of the property in dispute, the sale deed dated 25.9.1989 alleged to have been executed by Lakshmi, Exhibit-A4, was in fact executed by Ramayee, since Lakshmi and Ramayee are the same person. Hence because of the sale deed, title to the property passed to the plaintiff-appellant.

7. The First Appellate Court also held that the burden of proving that the sale deed Exhibit-A4 was a forged document on the defendant but he did not discharge his burden. It was further held that the sale deed was proved by PW3 as well as by PW1. The First Appellate Court also held that the plaintiff is in possession of the property in dispute and the sale deed dated 25.9.1989 was valid.

8. Against the judgment of the First Appellate Court the defendant- respondent filed a second appeal before the High Court which has been allowed. This appeal by special leave has been filed against the said judgment of the High Court dated 31.1.2000.

9. A perusal of the judgment of the High Court shows that the High Court formulated the following three questions as substantial questions of law :

"1. Whether the Lower Appellate Court has not committed an error of law in placing the burden of proof upon the second appellant about the execution and registration of documents under Exx.A-3 to A-5?

2. Whether the Lower Appellate Court has not committed an error of law in decreeing the suit when the respondent/plaintiff has failed to prove that the documents under Exx.A-3 to A-5 were executed and registered by the second appellant? And

3. Whether the Lower Appellate Court has not committed an error of law in holding that the respondent is in possession and enjoyment of the suit property in the absence of any materials on record?

10. Under the amended Section 100 CPC the High Court has to frame substantial questions of law and can decide the second appeal only on those questions framed. A perusal of the questions framed shows that no question of law was framed as to whether the finding of fact of the First Appellate Court that Lakshmi and Ramayee are one and the same person, is based on no evidence or is perverse.

11. It may be mentioned that the First Appellate Court under Section 96 CPC is the last court of facts. The High Court in second appeal under Section 100 CPC cannot interfere with the findings of fact recorded by the First Appellate Court under Section 96 CPC. No doubt the findings of fact of the First Appellate Court can be challenged in second appeal on the ground that the said findings are based on no evidence or are perverse, but even in that case a question of law has to be formulated and framed by the High Court to that effect. In the present case no question was framed by the High Court as to whether the finding of the First Appellate Court that Ramayee and Lakshmi are one and the same person, is a finding based on no evidence or is perverse. Hence the findings of the First Appellate Court that Ramayee and Lakshmi are one and the same person, could not have been interfered with by the High Court.

12. A perusal of the judgment of the High Court shows that the High Court has practically acted as a First Appellate Court and has re-appreciated the findings of fact of the learned Subordinate Judge which it could not validly do in exercise of its jurisdiction under Section 100 CPC.

13. In the circumstances, we set aside the impugned judgment of the High Court and restore the judgment of the First Appellate Court dated 13.4.1999.

13. The Appeal is allowed. There is no order as to costs.