
(1909) 12 MAD CK 0001
In the Madras High Court

A.D. Narayanah Sah

APPELLANT

Vs

Kadigar Parasurama Sah and Others

RESPONDENT

Date of Decision : 20-12-1909

Acts Referred:

Citation : 5 Ind. Cas. 826

Hon'ble Judges : Arnold White, C.J;Krishnaswamy Iyer, J

Bench : Division Bench

Judgement

1. Two points have been raised on behalf of the appellant. The first question is whether the sale-deed executed by the 1st and 2nd defendants in

the plaintiff's favour is binding¹ upon the other defendants. We are constrained to differ from the learned City Judge as regards this question. The

house which was the subject of the sale was, according to the evidence of the plaintiff's 5th witness, the only property owned by the family in the

year 1892. This witness has not been cross-examined by the Vakil for the defendants. The sale-deed itself is executed by all the adult members of

the family then in existence, that is, the 1st and 2nd defendants. The other members of the family are the sons of the 1st defendant. There is no

suggestion of any motive for the 1st defendant to defeat the interests of the other members of the family by an improper sale. There is the evidence

of the plaintiff's 1st and 4th witnesses to prove that the sale was effected for the maintenance of the family with the proceeds of the sale: and there

is no reason why this evidence should be disbelieved, The defendants have set up false cases with reference to the transaction in question. They

said it was an usufructuary mortgage, and at another time they said it was a benami sale. Both these cases have been found to be false. It seems to

us, there is no reason why we should not believe the defendant's own testimony as regards the transaction in question. For these reasons we are

disposed to hold that the sale is binding upon all the members of the family.

2. The next question that has been argued is with reference to the rent. The learned City Judge following the decision in *Turuf Sahib v. Eusuf Sahib*

30 M.k 322 has disallowed the plaintiff's claim for rent. Assuming that case is rightly decided, it has no application to the present case. There the

lease was required to be in writing registered and, as the instrument was not executed by the lessor, the transaction was held to be invalid as a

lease. As regards the present case, it is a lease, from month to month, of a house which is not required to be registered under the Transfer of

Property Act. There is no question, therefore, of the lessor not executing the writing, Exhibit B or Exhibit C. Taking Exhibits B and G as

instruments executed by the 1st and 2nd defendants only, it is quite sufficient to say, that there was an oral lease by the plaintiff to the defendants

Nos. 1 and 2 which would operate as a valid transfer. But even apart from any such presumption of an oral lease, we are not constrained to hold

that, in the case of a lease which is not by law required to be in writing registered, the mere assent of the lessor to Exhibits B and C is insufficient to

make them valid when accompanied by delivery of possession. In this view, the plaintiff is entitled to a decree for the rent claimed. We must allow

the appeal with costs in this and in the Court below.

3. We regret that there has been no appearance on behalf of the respondents. But having given the matter the best consideration that we could give

to it, we think the conclusion we have arrived at is right.