**(1927) 01 MAD CK 0047**

**In the Madras High Court**

Adinarayana Reddi — APPELLANT

Vs

Subbarayal Reddi and Others — RESPONDENT

**Date of Decision :** 20-01-1927

**Acts Referred:**

**Citation :** AIR 1927 Mad 1116(1)

**Hon'ble Judges :** Jackson, J

**Bench :** Division Bench

## Judgement

Jackson, J.—Appeal against the judgment and decree in A Section 231 of 22, District Court, South Arcot (O. S. 93 of 1921, District Munsif''s Court, Cuddalore).

2. Plaintiff sued to recover possession of property bought from the defendant 1 under two sale deeds and for Rs. 191 for mesne profits and damages for use and occupation from defendants 2 to 8. The District Munsif found that the plaint transactions were sham and dismissed the suit. The District Judge decreed the suit in part. The plaintiff appeals and defendant 3 files a memorandum of objections.

3. Defendant 2 is married to the daughter of defendant 1, defendant 3 was defendant 2''s minor son. In order to discharge two mortgages defendant 2 sold the entire family property to defendant 1 and defendant 1 subsequently sold it to plaintiff.

4. The District Munsif has given good reasons for finding the transactions to be sham, but the learned District Judge has preferred to hold that inasmuch as plaintiff paid off the mortgages, the sale was valid to the extent of a moiety of the items sold; the sale of the other moiety was superfluous and not binding upon defendant 3.

5. I cannot hold that the finding of fact is perverse as urged in defendant 3''s memo of objections, and it only remains to consider whether on this finding the law has been properly applied.

6. If a manager of a Hindu family sells half the family estate for justifiable necessity, the benefit must be distributed over the shares of the various members. At the same time a manager can sell his own share for what he likes.

7. The proper course is to divide the property by metes and bounds and to allot to the other members of the family their shares charged with the amount by which they have benefited by the liquidation of debts. In Vadivelam Pillai Natesan [1914] 37 Mad. 435 the ruling case in this matter, there were, as in the present case, only two members of the joint family, Chinnappa the manager, and his nephew the plaintiff. Chinnappa sold property for Rs. 500 and the sale was held to be valid for Rs. 250. Both in that case and in the present case the vendee''s sale as regards the joint frmily is upheld to the extent of one half of the property for which he had paid. The property was ordered to be divided by metes and bounds and the plaintiff, the nephew, took out his half share, charged with Rs. 125 his half of the Rs. 250 by which the estate benefited.

8. In the present case the property should also be divided; and defendant 3 would be entitled to his half share of the property sold, charged with Rs. 150, the amount by which he has benefited on the discharge of the mortgages. The other half share belonging to defendant 2 must be regarded as sold to defendant 1 and ultimately to plaintiff.

9. The point to keep in view in working out these equities is that as regards the vendor''s own share the Courts hold him to his sale and are not in the least concerned with the merits of his bargain. Therefore the vendee on partition steps into his shoes. Then each share is charged with its portion of relief obtained by the transaction. So the vendor''s share, now the vendee''s, is charged with Rs. 150, half the relief and the remaining member''s share, defendant 3''s, is charged with Rs. 150.

10. The lower Court''s decree will be modified occordingly, and the appeal is allowed with costs.

11. The memorandum of objections is dismissed with costs. Ground six was not pressed.

 