(1903) 08 MAD CK 0009

In the Madras High Court

Chidambara Mudaliar APPELLANT

Vs

Koothaperumal, minor, by his guardian Renganatha Konan RESPONDENT

Date of Decision : 28-08-1903

Acts Referred:

Citation : (1904) ILR (Mad) 326 : (1904) 14 MLJ 181

Judgement

1. It is now established by a uniform course of decisions that a debt incurred by the father which is not shown to be illegal or immoral is even

during the lifetime of the father binding upon the son''s interest in the family property and that any alienation voluntary or involuntary made to

discharge the debt is binding upon the son. In the case of a mortgage debt incurred by the father the debt is the primary obligation and is binding

upon the son if it is not for an illegal or immoral purpose and the mortgage is only a collateral security for the discharge of the debt either by receipt

of the rents and profits by the mortgagee or by causing it to be sold after the debt has become payable. If the debt is binding upon the son the

discharge of the debt either by making a usufructuary mortgage, or by enforcing the security by sale is equally binding upon the son inasmuch as he

has thereby become exonerated from liability to discharge the debt of the father by means of. other, joint family property. If a sale of joint family

property made by the father f6r the purpose of discharging his debt which is not illegal or immoral is binding, it is difficult to see on what principle it

can be held that a mortgage executed by the fatKer as security for the discharge of the debt will not bind the son simply because the debt was not

anterior to the mortgage but was incurred at the same time as the mortgage and the mortgage was executed as security therefor. In the case of

SamiAyyangar v. Ponnammal ILR 21 M. 28 it was no doubt held that the mortgage as such will not bind the son''s share unless it was executed as

security for an antecedent debt, that is, for a debt that existed independently of the mortgage transaction. The authority of this decision has been

considerably shaken by the two later decisions of this Court in Ramasamayyen v. Virasami Aiyar ILR 21 M. 222. and Palni Goundan v. Rangayya

Goundan ILR 22 M 207 in the next volume, viz., which decide that unless the son shows that the mortgage executed by the father on which the

decree was passed against father alone was for an illegal or immoral debt, the mortgage decree as such will bind also the son''s share in the

mortgage property. The same view has been taken by the Calcutta High Court in Lala Suraj. Prasad v. Golabchand ILR 28 C. 517 and by the

Allahabad High Court in Debi Dut v. Jadu Rai ILR 24A. 459 and by the Bombay High Court in Ramachandra v. Fakirappa 2 B.L.R. 450.

2. On principle it is difficult to make any distinction between a mortgage given for an antecedent debt and a mortgage given for a debt then

incurred, for in either case the debt is binding upon the son and the enforcement of the security exonerates the son from the burden of the father''s

debt. Such a distinction does not really afford any protection to the son for his share in the mortgage property can as a general rule be seized and

brought to sale even in the latter case for the recovery of the debt as a personal debt due by the. father (though also secured by a mortgage) unless

such share has been validly alienated in favour of a third party since date of the mortgage but prior to its attachment.

3. We, therefore, allow this appeal and reversing the decree of the lower Appellate Court in so far as it modifies the decree of the District Munsif,

we restore the decree of the District Munsif with costs in this and in the Lower Appellate. Court.

