

(1909) 08 MAD CK 0012
In the Madras High Court

Katankandi Koma alias Koyammotti

APPELLANT

Vs

Thamburam Kandi Siva Sankaran and Katankandi Ors.

RESPONDENT

Date of Decision : 28-08-1909

Acts Referred:

Citation : (1910) 20 MLJ 134

Judgement

1. We cannot accept the evidence as establishing the position for which the plaintiff contends, that Chirattha the purchaser named in Exhibit II had

no interest in the paramba purchased. Exhibit K is most untrustworthy as a statement of title because it was made in a suit in which it was the

object of the present 2nd defendant to defeat the claims of a mortgagee from her mother and to do this she alleged, if indeed she did allege, that

her mother had no interest. The document is not entirely clear. We are not sure that the 2nd defendant did not intend to admit her mother's

interest, and merely to allege that she had no right to alienate without her (the 2nd defendant's) consent.

2. The witness K. Kannan no doubt says that the purchase of the paramba was made at his mother's suggestion for the 1st and 2nd defendants,

but there is no explanation why, if Kanaran intended his wife to have no interest, he made the purchase in her name. It is quite possible that he did

not, when it came to the point, accept the suggestion of Kannan's mother in its entirety.

3. Exhibit II shews clearly the position taken up by the 2nd defendant in 1900. She then alleged that the gift was to the whole family, i.e., to herself,

her mother and all the children of both, including therefore the 1st defendant though he is not mentioned by name.

4. It is very doubtful whether this is really consistent with the allegations in Exhibit K : but if it is, it seems to be much more likely to be what the

petitioner believed to be true- because it does admit some interest in Chiratha, while the object of the proceedings was to prevent the sale of the property as Chiratha's assets.

5. From Exhibit XV it appears that the contest then in which the 2nd defendant joined, was on the question whether the property belonged to

Chiratha alone or to her and her children, and not whether it belonged to her or to her children. If there were really any foundation for the present

claim of the plaintiff, the 2nd defendant would surely have made it in those proceedings.

6. The District Judge has given too little weight to the fact that Exhibit III stands in Chhatha's name. He should have demanded an explanation of

that circumstance from those who alleged that she had no interest, but there is none forthcoming.

7. Now the District Judge says that both sides are agreed that the property was not bought for Chiratha's sole benefit and we must, therefore, take

it that it formed in reality a gift to her and her children. The donees therefore took it with the incidents of Tarwad property Kunhacha Umma v.

Kutti Mammi Hajee ILR (1892) M. 201 that is to say, as we understand it, not merely that the property was impartibly but that the donees, though

not forming a Tarwad with a Kamavan of its own Kortoh Amman Kutti v. Perungottil Appu Nambiar ILR (1906) M. 324 had the same interests in

the paramba that they would have had if they had formed a separate Tarwad, and consequently that every child of the female donees obtained an

interest in it at his or her birth, and the children of the 2nd defendant are owners of the paramba just as much as the 1st and 2nd defendants.

8. This being so the 1st and 2nd defendants had no power to sell to the plaintiff, and the plaintiff cannot sue for specific performance of their agreement to do so.

9. It becomes, in these circumstances, unnecessary to decide whether 3rd defendant had or had not notice of the agreement.

10. The appeal is allowed, and the plaintiff's suit is dismissed with costs in both Courts.