

(1909) 08 MAD CK 0007
In the Madras High Court

Katankandi Kona Alias Koyamotti

APPELLANT

Vs

Thamburan Kandi Sivasankaran and Others

RESPONDENT

Date of Decision : 25-08-1909

Acts Referred:

Citation : 4 Ind. Cas. 90

Hon'ble Judges : Wallis, J; Miller, J

Bench : Division Bench

Judgement

1. We cannot accept the evidence as establishing the position for which the plaintiff contends; the Chirutha, the purchaser named in Exhibit-III, 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 defendants) 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 Kamaran 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 shows 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 inconsistent with the allegations in Exhibit--K, but if it is, it seems to be much more likely to be what the

petitioner believed; it does admit some interest in Chirutha while the object of the proceedings was to prevent the sale of the property as

Chirutha'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

Chirutha 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 Chirutha'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 Chirutha'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 16 M.k 201 that is to say, as we understand it, not merely that the property was impartible but that the donees though not

forming a tarwad with a Karnaman of its own Korath Amman Kutti v. Perungottil Appu Nambiar 29 M.v 223 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. This

being so, the 1st and 2nd defendants had no power to sell to the plaintiff and the plaintiff cannot call for specific performance of their agreement to

do so.

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

10. The appeal is allowed and the plaintiffs' suit dismissed with costs in both

Courts.