

(1912) 10 MAD CK 0014
In the Madras High Court

Koolappa Rowthar alias Syed Muhammad Rowther	APPELLANT
Vs	
M. Appu Asari and Others	RESPONDENT

Date of Decision : 25-10-1912

Acts Referred:

Citation : 17 Ind. Cas. 736

Hon'ble Judges : Sundara Aiyar, J; Sadasiva Aiyar, J

Bench : Division Bench

Judgement

1. Two contentions have been urged in support of this second appeal. It is argued that the property in question is not really trust property belonging to the chattram. Exhibit I clearly shows that the whole property was dedicated to the charity. By the karar, Exhibit E, all the income of the property in 1881 except 10 1/2 paras of paddy was appropriated for the performance of the charity. The parties to the karar agreed to divide the rest among themselves and also agreed that, if there was any increase in the income, the various members should divide it between themselves. At the same time, they entered into an agreement that they would defray the expenses of any repairs that might be required. There is no intention apparent in that document to affect the trust created by Exhibit I. It was an arrangement for the management of the trust property. Whether the provisions for the division of any increase in the income between the members would be upheld as valid in law or not, it is unnecessary to decide for the purposes of this case. The document does not, in terms, say that the excess income to be divided is to be appropriated by the members for their personal use. The other question argued is that, although the sale by Chokalingam's sons to the plaintiff may be invalid, still the plaintiff is entitled to

recover as standing in the shoes of Chokalingam and that the defendant must be held to be estopped from disputing the plaintiff's right to recover,

just as he would be estopped from contesting a suit by Chokalingam himself for the recovery of the property. This contention cannot be upheld. It

is, no doubt, true that a mortgagee would, ordinarily, be estopped from contesting the mortgagor's right to redeem. But this does not give an

alienee who has obtained no valid rights under his alienation to maintain a suit for the property. The plaintiff having no valid title, his suit was rightly

dismissed by the lower Courts. We dismiss the second appeal with costs.