

(1911) 11 MAD CK 0001
In the Madras High Court

Kosuri Rajagopal Raja and Others

APPELLANT

Vs

Dalta Radhayya and Others

RESPONDENT

Date of Decision : 30-11-1911

Acts Referred:

Citation : 13 Ind. Cas. 205

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

Bench : Division Bench

Judgement

1. The plaintiff and defendants Nos. 1 and 2 are sisters of defendants Nos. 3 to 5. By an instrument of partition entered into between defendants

Nos. 3 to 5 it was stipulated that certain land, was to be enjoyed by the mother of the parties for her life and to be taken by her daughters, that is

the plaintiff and defendants Nos. 1 and 2, after her death. The mother is now dead. This suit by the plaintiff is to recover one-third of that property,

defendants Nos. 1 and 2 being entitled to the remaining two-thirds.

2. Defendants Nos. 3 to 5, the brothers, contend that the plaintiff not being a party to the partition instrument has no cause of action for the

recovery of the property. They plead that by a subsequent arrangement soon after the partition they cancelled the allotment to the mother and

sisters. It was suggested during the course of the argument here that the partition deed never became operative, but we do not read the written

statement as raising this question. The issue was whether the arrangement was subsequently cancelled. The lower Appellate Court has given the

plaintiff a decree and defendants Nos. 3 to 5 are the appellants in this Court.

3. We are of opinion that the decision appealed from is right. To the general rule that persons who are not parties to a contract have no right of

action based on it, there are several exceptions. The Privy Council has recently pointed out that the rule must be applied to this country with

considerable exceptions. In that case a Muhammadan wife was held entitled to sue upon a contract entered into between her father and her

husband's father before the marriage. We are of opinion that where at a partition between the members of a joint family provision is made for

female members of it, it must be held that as the contract was entered into for the benefit of those who are provided for by the instrument of

partition, they are entitled to the benefit of it and to sue upon it. This principle has been affirmed by this Court in *Shuppu Ammal v. Subramaniam*

33 M.P 238 : 19 M.L.J. 739 : 4 Ind. Cas. 1083. See also *Arumuga Goundan v. Chinnammal* 10 M.L.T. 214 : 21 M.L.J. 918 : (1911) 2 M.W.N.

524 : 12 Ind. Cas. 185. The decisions of other High Courts have also affirmed the principle. See *Rakhmabai v. Govind Moreshwar* 6 Bom. L.R.

421; *Protab Narain Muherjee v. Sarat Kumari Debi* 5 C.W.N. 386.

4. The exceptions are not confined to cases where one or other of the parties to the contract can be said to have made himself a trustee for

strangers who claim to sue on it. In *Pollock on Contracts* four exceptions are stated. The third class of exceptions according to the learned author

is the case of trusts. Then he mentions another and distinct class. To quote his own words: Closely connected with the cases covered by the

doctrine of trusts but extending beyond them, we have the rule of equity by which special favour is extended to provisions made by parents for

their children. In *Halsbury's Laws of England*, Vol. VII, page 344, Section 711, the case of marriage settlement is treated as included in the case

of trusts. Sir Frederick Pollock's classification commends itself better to us. It may be observed that the general statement in *Halsbury's Laws of*

England that another exception to the rule is recognized in cases where the contract is intended to secure a benefit to a person who is not a party to

it will cover cases which are not comprised in trusts. It is usual amongst Hindus to allot portions to sisters at a partition between brothers. In the

document in this case the provision for the plaintiff and her sisters is stated to be for *Pasum Kunkumam*. We find no difficulty in holding that sisters

are within the equity of a family settlement amongst Hindus. The allotment of the land in this case was made for the benefit of the plaintiff and her

sisters. They are persons for whom it was the moral duty of the parties to the instrument to provide. We are of opinion, therefore, that the plaintiff's right to sue was rightly upheld.

5. We dismiss the second appeal with costs.