(1903) 08 MAD CK 0002

In the Madras High Court

Case No : Second Appeal No. 113 of 1902

Manakat Velamma and Others APPELLANT

Vs

Ibrahim Lebbe and Others RESPONDENT

Date of Decision : 28-08-1903

Acts Referred:

Citation : (1903) 08 MAD CK 0002

Hon'ble Judges : Boddam, J;Bhashyam Ayyangar, J

Bench : Division Bench

Advocate : V. Ryru Nambiar, for the Appellant; N.T. Shamanna, for the Respondent

Final Decision : Dismissed

Judgement

1. In execution of a money decree obtained against Defendants Nos. 2 and 3 who were the Karnavan and the senior Anandravan of the Tarwad

consisting of the Plaintiffs and themselves certain moveable properties belonging to the Tarwad were attached and the Plaintiffs objected. Their

objection was disallowed and the present suit is brought by them for a declaration that the moveable properties of the Tarwad are not liable to be

attached and sold in execution of the decree. The first Defendant, the attaching creditor, has adduced evidence in this suit which has satisfied the

lower Appellate Court that the debt was contracted for the benefit of the Tarwad and accordingly that Court dismissed the Plaintiff''s suit.

2. It is contended in this appeal that though the debt was contracted for the benefit of the Tarwad, yet the property of the Tarwad cannot bo sold

in execution of the decree in a suit to which they were not parties and in which the second and third Defendants were not sued as representing the

Tarwad and in support of this contention reliance is placed upon Ittiachan v. Velappan ILR 8 Mad. 484 and Govinda v. Krishnan ILR 15 Mad.

333. It is rightly conceded that if the Tarwad property now in question has been disposed of in satisfaction of the decree debt voluntarily by the

Manager of the Tarwad (second Defendant) such sale would be binding upon the Plaintiffs. That being so it is difficult to see on what principle it

can be contended that an involuntary sale of the same property for the discharge of the same debt will not equally bind the Plaintiffs when apart

from the decree it is affirmatively established as against the Plaintiffs that the debt was of a binding character. We think that the authority of the

cases cited is considerably shaken by the decision of the Full Bench in Vasudevan v. Sankaran ILR 20 Mad. 129. Incases governed by the

ordinary Hindu Law there is a course of decisions both of this Court and of the Judicial Committee of the Privy Council that in execution of a

decree against a Hindu father or other managing member of a Hindu family the power of disposition (vide Section 266, Code of Civil Procedure)

which he may exercise over joint family property for purposes sanctioned by law would be operative to pass to the purchaser not only his personal

interest in the property sold, but also the interest of the sons or other members of the joint family in the property although they were not parties to

the decree (Nunna Setti v. Chidaraboyina ILR 26 Mad. 214 at PP. 222, 223.). We can see no reason why the principle of these decisions is not

equally applicable to Hindu families governed by the Marumakkatayam Alyasantana or Makkatayam Law in force on the West Coast, simply

because the property of the joint family is impartible in the sense that there can be no compulsory partition among the members of the family.

3. We, therefore, affirm the decree of the lower Appellate Court and dismiss this appeal.

