

(1937) 01 MAD CK 0025
In the Madras High Court

Marwadi Vannaji (deceased) and Others	APPELLANT
Vs	
D.H. Ranga Rao and Others	RESPONDENT

Date of Decision : 08-01-1937

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 32 Rule 7

Citation : AIR 1937 Mad 446 : (1937) 45 LW 722 : (1937) 1 MLJ 384

Hon'ble Judges : Varadachariar, J

Bench : Division Bench

Judgement

Varadachariar, J.—This second appeal arises out of a suit for recovery of possession on foot of Ex. A which purports to be a deed of conditional sale executed on 26th February, 1929, by defendants 1 to 3 and by the first defendant as guardian of his minor son the fourth defendant. Ex. A was executed in discharge of the amount due to the plaintiff on foot of a mortgage which the first defendant had already executed to him. On a suit brought to enforce that mortgage (O.S. No. 1 of 1926) the Court had held that the mortgage was not qua mortgage binding on the shares of the present 3rd and 4th defendants in their ancestral property as it had not been given to secure an antecedent debt. The Court however found that the mortgage was supported by consideration. It also found that the right to apply for a personal decree was not barred by time but the application for a personal decree was directed to be postponed to a later stage, presumably till after the sale of the shares of defendants 1 and 2 as directed by the mortgage decree. Ex. A was executed at a time when some of the properties had been sold in execution of that mortgage decree and an application to set aside that sale under Order 21, Rule 90 was pending. No serious attempt has been made to show

that on the merits the transaction evidenced by Ex. A was improper or prejudicial to the interests of the family or to the interests of the fourth

defendant. It appears that on the execution of Ex. A the decree in O.S. No. 1 of 1926 was treated as discharged. An objection taken in this suit

on the ground that satisfaction has not been formally entered up has rightly been disregarded by the Courts below.

2. Though Ex. A purports to be in terms of a sale and the plaintiff filed the suit as one for possession, the trial Court treated Ex. A as constituting a

mortgage by conditional sale and accordingly gave only a decree for foreclosure. The fourth defendant appealed and claimed that his share should

be excluded on that ground that Ex. A was not binding on his share. The learned District Judge has acceded to that contention because he was of

opinion that the case was really governed by the provisions of or at least the principle underlying Order 32, Rule 7, Civil Procedure Code. I am not

able to agree in this view.

3. I may at the outset observe that the learned District Judge is not correct in stating that the fourth defendant was exonerated by the decree in

O.S. No. 1 of 1926. All that was held was that the mortgage qua mortgage was not binding on the minor but the plea that there was no

consideration for the mortgage had been overruled and there was no suggestion that the debt, if true, was illegal or immoral. It is common

knowledge that in circumstances of that kind, it is usual to pass a decree even against the minor sons of the mortgagor to the extent of a money

decree against their interests in the joint family property. In this case, however for some reason or other, the application for the money decree,

though filed even before the mortgage decree was passed, appears to have been by consent of parties postponed to be dealt with at a later stage.

These facts certainly do not amount to an exoneration of the fourth defendant from liability for the debt. That is why, as I stated already, there is no

serious suggestion that Ex. A is an improper transaction on its own merits.

4. The learned District Judge's view that Ex. A must be held bad as contravening the provisions of Order 32, Rule 7, Civil Procedure Code, is not

supported by the language used by the Privy Council in *Ganesha Row v. Tuljaram Row* (1913) 25 M.L.J. 150 : L.R. 40 IndAp 132 : ILR 36

Mad. 295 (P.C.). The disability imposed by that rule will apply only to a father

who is also the guardian ad litem for his minor son. But in the present case the fourth defendant was represented not by the father but by a Court guardian. This distinction has been pointed out in a recent judgment of this Court in Ramalingam Chetty v. Radhakrishnan Chettiar (1935) 70 M.L.J. 700, where some of the cases cited before me on behalf of the respondents have also been noticed. It may be that, where the Court has reason to think that a person who is not formally on record as guardian ad litem had entered into a transaction on behalf of the minor only with a view to circumvent the provisions of Order 32, Rule 7, the Court will not allow such circumvention or, at any rate, take particular care to scrutinise the transaction. In Gurmallappa v. Mallappa Martandappa ILR (1919) 44 Bom. 574 one of the learned judges rightly laid some stress on the fact that the transaction entered into by the natural guardian was the very one which had been submitted to the Court for sanction by the guardian ad litem but not sanctioned by the Court. It may also be conceded that for the purposes of the very litigation in which the minor is a party to the Court which is seized of that litigation will not record any compromise entered into by a person other than the minor's guardian ad litem. That is the principle underlying the decision in Vijaya Ramayya v. Venkatasubba Rao (1915) 30 M.L.J. 465 : ILR 39 Mad. 853. The decision in Santu and Others Vs. Abhainandam Prasad and Others, is based on the fact that the paternal uncle who purported to enter into a compromise on behalf of a minor did so not by virtue of his authority as natural guardian of the minor but only on behalf of the guardian ad litem who was another nephew of his. I do not think there is any justification for extending the provisions of Order 32, Rule 7, Civil Procedure Code, by analogy or on considerations of policy.

5. The second appeal must therefore be allowed and the decree of the first Court restored with costs here and in the lower appellate Court. In the circumstances time for redemption will be extended by four months.

6. And this case having been set down to be spoken to this day, the Court made the following

ORDER

7. As the second appeal has been allowed the direction in the lower appellate Court's decree that the plaintiff should pay a portion of the Court-

fee payable on the memorandum of appeal to that Court should be omitted and a direction to the effect that the whole court-fee payable to

Government on the memorandum of appeal to the lower appellate Court should be paid by the fourth defendant should be substituted.

8. Leave to appeal is granted.