

(1917) 01 MAD CK 0024
In the Madras High Court

Muthukrishna Naidu, minor, by Mother and Guardian Janaki Ammal APPELLANT

Vs

Kanoji alias Muthukrishnappa Naidu and Others RESPONDENT

Date of Decision : 08-01-1917

Acts Referred:

Citation : AIR 1918 Mad 723 : 39 Ind. Cas. 504

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

Bench : Division Bench

Judgement

1. The lower Appellate Court was right in its view that the Rs. 500 debt due on the moiety of the plaint tributed over the plaintiff's one-fourth share and the grandfather's one-fourth share and there is nothing in the contention that the whole Rs. 500 should be charged on the plaintiff's one-fourth share alone.

2. As regards mesne profits, the plaintiff was rightly awarded the. value of such profits with reasonable interest on the plaintiff's half (one-fourth share of the whole) of the other moiety, as that moiety was not affected by any charge binding on the plaintiff.

3. As regards Rs. 70, being item 4 of the consideration for Exhibit I, it had admittedly not been paid before the decision of the lower Appellate Court which set aside the sale-deed Exhibit I, assuming that the othi debt of Rs. 70 was due to a third person. The 2nd defendant had no right to pay it (as he alleges that he had paid) after his sale-deed had been set aside by the decree of the lower Court. He cannot, in second appeal, claim to be paid half of that amount as a condition precedent to the plaintiff's being given a decree for his half of the plaint house.

4. Coming to the Rs. 377-8-0 paid in cash to the plaintiff's grandfather by the 1st defendant as part of the purchase-money, it may be that the 1st defendant would be entitled to half of that amount as a debt which became due by the grandfather's heirs in the shape of damages, because the consideration for the

sale-deed, Exhibit I, failed to that extent through the sale-deed having been set aside as regards a moiety of the lands sold under Exhibit I. But the cause of action for recovering half of that amount arises only after the date of the decree in the suit and a counter-claim to recover that amount cannot strictly be raised or considered in this suit. [See observations at page 218 Page of (1916) 2 M.W.N.-Ed in Raman Pandithan v. Sathakudumban 36 Ind. Cas. 387 ; 20 M.L.T. 320 ; 4 L.W. 366 ; (1916) 2 M.W.N. 217 We do not think that it is desirable or convenient to allow such a counter-claim in this suit, as the contention that whether the Rs. 377-8-0 was obtained for an illegal or immoral purpose properly under othi should may also be raised and a protracted trial may be required.

5. Further, it is not at all clear that half of the Rs. 377-8-0 could really be recovered from the grandfather's heirs as damages. The lower Courts have found that of the Rs. 2,000, purchase-money, 1st defendant is proved to have paid only Rs. 500 of the amount and besides Rs. 377-8-0 cash (see paragraph 14 of the District Munsif's judgment). The 1st defendant is now allowed to retain the grandfather's half of the entire property for Rs. 250 of the othi amount and the whole of Rs. 377-8-0 cash, total Rs. 627-8-0. Admittedly the grandfather's half is worth at least Rs. 1,000 and hence it is not at all clear that even against the grandfather and his heirs, the 1st defendant could establish any claim for damages. It is unnecessary for us in this view to express a final opinion on the question whether purchase-money received by the father or grandfather as alienor without necessity can be recovered at all from the sons or grandsons after the death of the alienor and whether Raman Pandithan v. Sathakudumban 31 M.L.J. 502 ; (1916) 2 M.W.N. 217 was rightly decided. It was assumed in that case further that the purchase-money actually paid to the father (alienor) was the full value of the property and the learned Judges refused to allow the sons to raise for the first time in second appeal the contention that the value of the father's share was greater than the proportionate share of the purchase-money paid for the alienor and that the damages claimed were, therefore, excessive. The second appeal is, therefore, dismissed with costs.