

(1912) 04 MAD CK 0085
In the Madras High Court

M.V. Chappan

APPELLANT

Vs

P. Raru and Others

RESPONDENT

Date of Decision : 26-04-1912

Acts Referred:

Citation : (1914) ILR (Mad) 420

Hon'ble Judges : Snakaran Nair, J; Charles Arnold White, J

Bench : Division Bench

Judgement

1. The plaintiff, the trustee of a devasom, sues to redeem a mortgage of Rs. 50 created by the plaintiff's karnavan on the 21st January 1891. It is admitted that on the 21st February 1905, the same karnavan mortgaged the lands included in the mortgage instrument aforesaid with certain other lands for Rs. 1,650. On the same day he also mortgaged the equity of redemption for Rs. 1,500. It is conceded this mortgage for Rs. 1,650 was a consolidation of three previous mortgages, due for Rs. 900, dated 25th March, 1890 and the other for Rs. 700 on the 13th February 1890 and the mortgage for Rs. 50 which the plaintiff seeks to redeem. The mortgage for Rs. 900 has been already declared to be binding on the property.

2. The District Judge held that the mortgage of Rs. 50 is now no longer in force as it is merged in the mortgage for Rs. 1,650 and that the plaintiff is bound to sue to set aside the mortgages of the 21st February 1905; and as a suit to redeem on those mortgages or set them aside will not lie in the Munsif's Court he dismissed the suit.

3. The question in dispute is concluded by authority. The proper valuation of a suit to redeem a mortgage is the amount of the mortgage or mortgages admitted by the plaintiff to be binding on him not the mortgages set up by the defendant. Otherwise if the plaintiff files this suit in a Court of higher jurisdiction and succeeds in proving that the mortgages binding on him are less than Rs. 2,500, his plaint may be returned to him to be filed in the Munsif's Court. In a suit of this nature the question of jurisdiction has to be decided upon the averments in

the plaint not with reference to the pleas of the defendant, see Chandu v. Kombi ILR (1886) Mad. 208 which is directly in point.

4. It was then argued that the plaintiff is bound to set aside the subsequent mortgages created by his karnavan and the present suit treated as one to set them aside is not maintainable as three years from the date of the mortgages had expired before its institution and as the amount of the mortgage exceeds the jurisdiction of the Munsifs Court.

5. It may be doubted whether the plaintiff is in the position of a junior member of a tarwad seeking to set aside an alienation by his karuavan. He is a trustee impeaching the conduct of his predecessor in office.

6. But treating the case as that of a member of a tarwad seeking to recover possession of properties mortgaged by his karnavan, we do not think it is necessary for him to set aside the mortgage granted by the karnavan. The same contention was put forward and disallowed in Chandu v. Kombi ILR (1886) Mad. 208, by Kernan and Muthusami Ayyar, JJ., Shephard and Weir, JJ., in Unni v. Kunchi Amma 14 Mad. 26 following the judgment in an earlier case Raman v. Valia Amah Second Appeal No. 270 of 1880 by Turner, C.J. and Kernan, J., See the judgment extracted in Unni v. Kunchi Amma ILR (1891) Mad. 26

7. The property of the tarwad is vested in the members of the tarwad. The karnavan can alienate the property only when the interests of the tarwad require such alienation. When he makes therefore an alienation which is not binding on the other members, it is unnecessary for the other members to set it aside.

8. They may sue to recover possession on their title and they would be entitled to recover such possession if the defendant does not prove the validity and binding effect of the alienation on the other members of the tarwad. The case may be different where the plaintiffs themselves have executed the instrument under which the defendant claims.

9. Certain cases were relied upon by the respondent's pleader in which it was held that a minor was bound to set aside an alienation by his guardian. The case of a guardian and a minor is governed by a separate article in the Limitation Act. Those cases maybe distinguished on the ground that in such cases a guardian executes the instrument solely on behalf of a minor and if it is not binding on the minor it ceases to have any legal effect, whereas an alienation by a karnavan though not binding on the other members of a family may continue to be binding on the karnavan.

10. We therefore reverse the decree of the lower Appellate Court and direct the appeal to be restored to the file and disposed of in accordance with law. Costs will abide the result.