

(1948) 03 MAD CK 0024
In the Madras High Court

M.V. Kalyanasundaram Chetty		APPELLANT
	Vs	
Nagalinga Achari and Another		RESPONDENT

Date of Decision : 12-03-1948

Acts Referred:

Citation : (1948) 2 MLJ 141

Hon'ble Judges : Horwill, J

Bench : Division Bench

Judgement

Horwill, J.—The suit was brought for recovery of certain property which had been alienated by limited owners. The alienations were made

at different times to different persons. In appeal it was held that the alienations were not binding on the plaintiffs' reversioners, and a decree for

possession and mesne profits and costs was passed. In the concluding paragraph of the judgment the learned Judges said:

The plaintiffs are entitled to their costs in this Court and below in respect of items Nos. 1, 2 6 and 7 as against the first, second, fifth and sixth

defendants. They will pay the costs here of the third, fourth and fifth defendants in respect of items 3, 4 and 5.

By Ex. D. 4 the second defendant entered into an arrangement with the decree-holder by which he obtained possession of one of the suit items

and by which they settled all their outstanding claims with regard to mesne profits, costs, and improvements. The first defendant also claimed in

evidence that he had entered into an agreement with the decree-holder, whereby the value of his improvements had been set off against the costs

due by him to the decree-holder. The fifth defendant, who is the plaintiff here, and the sixth defendant later entered into another agreement with the

decree-holder and they claimed that in that agreement, allowance was made for the total costs due by all the defendants. They have brought this suit for now contribution against defendants 1 and 2.

2. The lower Court held that the decree was a several one against the various defendants and that the plaintiff should not therefore have paid the whole of the costs. It further held that the second defendant entered into an agreement setting off his share of the costs even before the suit agreement, so that in any event he would not be liable.

3. With regard to the second defendant the case is clear; but unless it is to be held that the first defendant had also entered into an agreement prior to the suit settlement--and the lower Court did not come to that conclusion, it would be necessary to consider whether the decree passed was a joint one or a several one. If the learned Judges in the passage set out in the first paragraph above had added the word "" respectively "" after "" sixth defendants "" it would have been clear beyond all doubt that the decree was a several one. It is to be noted that the word "" respectively "" is not even used with regard to the order directing the plaintiff to pay the costs of the third, fourth and fifth defendants in respect of the items in their possession, although it is clear that in their cases the decree-holder would have to pay their individual costs and would not be liable to these three defendants jointly for their total costs. In a suit of this nature, where it is sought to avoid a number of alienations to different persons, the plaintiff would, if successful, ordinarily recover from each individual alienee the possession of the particular item in his possession, together with mesne profits on that item and the costs relating to that item. So one would expect in such a suit that a decree passed against the alienees would be a several one, even with regard to costs.

4. The wording of the decree is slightly more favourable to the plaintiff, because one does find the word ""respectively"" in connection with the third, fourth and fifth defendants, whereas it is not found in connection with the first, second, fifth and sixth defendants; but even here the decree is, to say the least, ambiguous. It is argued that since the total cost of the plaintiff was embodied in the decree, that in itself is an indication that a joint decree had been passed; but I am unable to accept this argument. It does not seem to me that any duty was cast upon any-individual defendant to ask at

that stage that the costs of the plaintiff should be apportioned between them.

5. Reading the decree in the light of the judgment, it seems to me that the decree is a several and not a joint decree. In any event, it is ambiguous;

and I am unable to say in appeal that the decree of the lower Court is wrong.

6. The appeal is dismissed with the costs of the second defendant.