
(1892) 04 MAD CK 0030
In the Madras High Court

Nagasami

APPELLANT

Vs

Sundararajan

RESPONDENT

Date of Decision : 27-04-1892

Acts Referred:

Citation : (1892) 2 MLJ 203

Judgement

1. In suit No. 582 of 1884 the plaintiff obtained a decree for his share in the house, it being held that the sale effected by his father to defendant was purely nominal and that the property did not pass. Plaintiff's half-share was placed in his possession, and after his father's death he made an ineffectual attempt to get possession of the other half--vide Exh. I--to which as his father's legal representative in that suit, he was of course not entitled. He now sues as his father's heir to get possession on the ground that the sale-deed executed by his father did not pass the property.

2. It was urged that plaintiff could have no higher rights than his father would have had if alive; and that his father could not recover against defendant. In support of this contention the decision in Seshaiya v. Kandaiya, 2 M. H. C. R 249 was quoted.

3. We do not think that this case applies. It may be true that in certain cases a defendant may plead the joint fraud of himself and plaintiff as a bar to an action, but in this case it is hardly necessary to consider whether the plaintiffs father could have succeeded. The fraud attempted was against the present plaintiff as the son of his father, and the fraud was as much directed against his (then) present right of partition as against his rights of survivorship in the event of his father's death. By the partition these rights of survivorship were turned into rights of inheritance subject to be defeated by any subsequent alienation of the father, which is not alleged to have taken place.

4. It may moreover be pointed out that in Suit No. 582 of 1884 the plaintiff's father though at first ex parte afterwards came in and denied defendant's alleged rights as vendee, and the decree in the suit established that contention.

As between the plaintiff's father and the defendant it has therefore been held that the sale was a nullity and the adjudication was necessary in order to give the appropriate relief to the plaintiff, Ramachandra Narayan v. Narayan Mahadev, I. L. R 11 B 216.

5. Although the deed so far as it affected plaintiff's rights was found to be a nullity in the former suit, plaintiff's right to the possession of the other half-share in the house did not accrue till his father's death in January 1889. There is no question of limitation and the second appeal must be dismissed with costs. The memo, of objections was not argued.