

(1970) 02 SC CK 0060

In the Supreme Court Of India

Case No : Civil Appeal No. 118 Of 1967

Naruthappan Chettiar

APPELLANT

Vs

Veeramany Chettiar and Others

RESPONDENT

Date of Decision : 20-02-1970

Acts Referred:

Citation : (1971) 3 SCC 884

Hon'ble Judges : K. S. Hegde, J;J. C. Shah, J;A. N. Grover, J

Bench : Full Bench

Final Decision : Allowed

Judgement

J.C. SHAH, J.-On May 13, 193G, Arumugam Chettiar and his five sons Madlirayyan. Sivathanu, Subbayyan. Sankaran and Bhagavathy executed a deed of partition of the property belonging to their joint family. In the last paragraph of the deed it was provided that Madurayyan, Sivathanu, Subbayyan and Bhagavathy "shall offect alienations among themselves in respect of the property falling to their respective shares in case any alienations are to be effected" . On 2/05/1959, Subbayyan transferred his share of the property to one Veeramany for Rs. 2,500.00. Madurayyan and Bhagavathy then filed a suit in the court of the Principal District Munsiff, Nagarcoil, against the purchaser Veeramany for a decree declaring that they had a "right of pre-emption" inrespect of the property sold by Subbayyan and to obtain possession of that property from Veeramany on payment of Rs. 2,500.00. To this suit Subbayyan Chettiar and his son Arumugam Chettiar were impleaded as partie. To this suit Sivathanu was not impleaded as a party. The Trial court dismissed the suit holding that the plaintiffs were estopped by reason of their conduct from claiming to purchase property pursuant to the covenant in the deed of partition. The District Court reversed the decree holding that the plaintiffs were entitled to enforce the covenant. In second appeal the High court of Madras held that the covenant in the deed of partition did not bind the alienees of the property; and could not on that account be enforced against Veeramany the purchaser. The High court also observed that the covenant was

vague and indefinite. With special leave the first plaintiff has appealed to this court.

2. We are unable to agree with the High court that the covenant in the deed of partition was binding only between the parties thereto. But we agree with the High court that the covenant was vague and unenforceable. The covenant, it may be recalled, provided that Madurayyan, Sivathanu, Subbayyan and Bhagavathy, "shall effect alienations among themselves in respect of the property falling to their respective shares" in case any alienations are to be effected. In the present case Subbayyan sold the property which fell to his share. On the terms of this covenant it is not clear whether the offer was to be made to the other brothers who were governed by the covenant and whether there was any order of priority; nor does the covenant disclose whether in the event of one or more of the brothers not desiring to purchase the property, only the remaining would be entitled to purchase it.

3. Again there is a procedural difficulty which faces the appellant. Sivathanu is not made a party to the suit. He had the right to purchase the property under the terms of the deed of partition and it was necessary that he should be made a party to the suit. In the absence of Sivathanu the suit was not maintainable.

4. The parties themselves were responsible for incorporating a covenant which is vague and indefinite, and on that account unenforceable. While dismissing the appeal we direct that there shall be no order as to costs.