
(1910) 05 MAD CK 0006
In the Madras High Court

Pandiri Bangaram and Others

APPELLANT

Vs

Karumoory Subbaraju and Others

RESPONDENT

Date of Decision : 05-05-1910

Acts Referred:

Transfer of Property Act, 1882 — Section 43

Citation : (1911) ILR (Mad) 159

Hon'ble Judges : Krishnaswami Ayyar, J;Benson, J

Bench : Division Bench

Judgement

1. The plaintiff has obtained a decree against the one-third share of the first defendant. He purported to mortgage one half during ""his father"s life-time when he was only entitled to a third. It is found by the District Judge in paragraph 17 of his judgment, and we entirely agree with him, that the plaintiff knew at the date of the mortgage that the first defendant was only entitled to a third share in the property. We are also clear that the plaintiff did not bargain and pay for a half share. Under these circumstances the question is raised whether the plaintiff can bring his case within the four corners of Section 43 of the Transfer of Property Act. We are asked to say that, in the absence of words in Section 43 to the effect that the benefit of that section can only be claimed by a person who has believed in and acted upon the representation, the plaintiff is entitled to proceed against the added interest of the father. We are unable to accept this view. It is true Section 41 of the Act requires a person who has obtained a transfer from the ostensible owner to have done so in good faith and after due enquiry in order to become entitled to the interest purported to be transferred. But, as pointed out by the learned Advocate-General, the difference in language between Sections 41 and 43 of the Act may be due

to the fact that under the latter section mere belief in and acting upon the representation may be sufficient to pass the subsequently acquired interest, while u/s 41 such mere belief of the transferee is insufficient. The case of L. Angannayya and Others Vs. Daroor Narasanna and Others, does not decide the question under consideration. On the other hand, the Advocate-General has drawn our attention to the observations in Mokhoda Debi v. Umesh Chandra Banerjee (1908) Cri.L.J. 381 and Gangabai v. Baswant ILR (1910) Bom. 175 which seem to show that the principle of Section 43 of the Transfer of Property Act is the acting by the transferee on the erroneous representation of the transferor. Further, the well-known maxim of the law to which effect is given in Section 41 is interest feeds the estoppel. That section only enunciates a rule which is an illustration of the general principles of estoppel not confined to the law of evidence, but ! extending to the region of substantive law. No authority has been cited to us to induce us to take a different view of the section. We must therefore hold that the decree of the District Judge is right. It is unnecessary to express any opinion on the other questions, and especially on the genuineness of the will. We dismiss the appeal with costs.