

(1937) 09 MAD CK 0003
In the Madras High Court

Pappu Reddi and Another

APPELLANT

Vs

Appaji Nayakkar and Others

RESPONDENT

Date of Decision : 30-09-1937

Acts Referred:

Citation : AIR 1938 Mad 224

Hon'ble Judges : Newsam, J

Bench : Division Bench

Judgement

Newsam, J.—The correct position, it seems to me, may be thus stated. An alienation of joint family property made by a Hindu father

without the consent of the coparceners existing at the time is void ab initio at their instance. Where the only other coparcener in existence besides the

father at the time of the alienation is a minor son, the son alone has a right to sue to avoid the alienation of his share of the family property. His right

to sue is personal to him, but if his suit is successful, the property is gained back for the family and ensures for the benefit of all future members. If

he dies without suing, the property is lost to the family for ever. The question raised in this case is whether such a son's right to sue on behalf of the

family can be exercised by a brother born after the alienation but before his own death. I am of opinion that it cannot, for the reason that the right

to challenge alienations of family property is and must necessarily be confined to the coparceners alive on the date of the alienation. They alone are

affected. They represented the family on that date. The interests of future members of the family were theirs and must continue to be in their hands

only. They have power to ratify and power to challenge and death may rob them of either power and may rob their family of the only

representatives competent to protect it in this respect. But it is plain that their power and their responsibility to succor the family fortunes must die

with them, and it is just that alienations should be perfected by the death of all the coparceners in whom lay the power to ratify or to challenge or

by their prolonged neglect or by their positive assent.

2. The consent, the prolonged carelessness or the death of all other coparceners who were alive when family property is alienated by a Hindu

father-these three things finally deprive the family of all right to challenge such an alienation. This view, it seems to me, receives support from

(Maddali) Visweswara Rao Vs. (Maddala) Suryarao and Others, , Rano Dip Singh v. Parameshwar Prasad, ILR 47 AH 165, AIR 1925 PC 33

and all the other cases quoted to me. I agree with the lower Court that the plaint disclosed no cause of action. I dismiss this petition with costs.