

(1926) 08 MAD CK 0027
In the Madras High Court

Paruchuri Rattamma

APPELLANT

Vs

Surugutchi Seshachalam Sarma and Others

RESPONDENT

Date of Decision : 09-08-1926

Acts Referred:

Transfer of Property Act, 1882 — Section 52

Citation : AIR 1927 Mad 502 : 101 Ind. Cas. 806 : (1927) 52 MLJ 520

Hon'ble Judges : Devadoss, J

Bench : Division Bench

Judgement

Devadoss, J.—The only point in this case is whether the sale by the 1st defendant in favour of the plaintiff is affected by the doctrine of lis

pendens. The 2nd defendant who is the wife of the 1st defendant brought a suit for maintenance and asked for a charge on the property of the

husband. 1st defendant sold one of the six items belonging to him to the plaintiff in order to pay off a decree debt. The 2nd defendant obtained a

decree for maintenance and the plaintiff's suit is for a declaration that the charge in her favour is not binding upon the plaintiff's property. The learned

District Judge held that the plaintiff's sale was not affected by the doctrine of lis pendens and the charge for maintenance would not bind the

property in the hands of the plaintiff. Mr. Ramamurthi for the appellant contends that inasmuch as the property was sold pending her suit the sale

must be held subject to the result of the suit. It is difficult to see how the doctrine of lis pendens applies to a case like this for u/s 52 of the Transfer

of Property Act right to the Immovable property should be directly and specifically in question in the suit. When a wife brings a suit against the

husband for maintenance and asks for a charge on the property belonging to him she does not ask for any right directly and specifically in respect

of the property. In order to get maintenance properly paid, she is entitled to ask for a charge and the Court in decreeing maintenance gives her a charge on the property. The mere fact that she mentions in the plaint all the property belonging to her husband would not make the property of the husband the subject-matter of the suit. I therefore hold that the right to Immovable property which was sold was not in question in the suit for maintenance by the 2nd defendant.

2. The next contention is that inasmuch as the wife is entitled to maintenance against her husband she is also entitled to a charge on "the property."

There is difference between the case of a widow seeking maintenance against her husband's relations on the ground of their having family property

and the case of a wife asking for maintenance against the husband. The liability of the husband to maintain his wife or to provide for her

maintenance is a personal one and if he has property charge will be given against the property. Even if there is no property the husband is bound to

maintain the wife and she would be entitled to ask for a decree for maintenance against him. As I said the case of a widow claiming maintenance

from her husband's relations is different and their liability arises from there being family property in their hands. Therefore the case in *Doss*

Thimmanna Bhutta v. Krishna Tantri 16 MLJ 413. and *Krishna pattar v. Alamelu Ammal* (1914) 16 MLT 551. do not apply directly to the

present case. As observed by Mr. Justice Bhashyam Aiyangar, in *Jayanti Subbiah v. Alamelu Mangamma* 12 MLJ 270.

It is only the residue that is left after discharging her husband's debts that will belong to her. During her husband's life-time she had, no doubt, a

right of maintenance against him but that was only a matter of personal obligation on the part of the husband, quite independent of the possession of

any property and it did not form a charge upon his property.

3. The contention is that the moment the wife brings a suit for maintenance and asks for a charge on his property it should be considered that a

charge is given to her from the date of the suit in case the suit is decreed in her favour. I do not find any authority for that position. A charge takes

effect only from the date of the decree. In this case the decree was after the sale and therefore it cannot be said that there was a charge on the

property sold to the plaintiff on the date of the sale. As observed by the learned

Judges in Sham Lal v. Banna ILR (1882) A 294.

the property will not be liable if the transfer was made to satisfy a claim for which the ancestral property is liable by Hindu Law and which under

that law takes precedence of that of maintenance.

4. In this case there is evidence to show that the 1st defendant was entitled to six items of property and only one item was sold to the plaintiff. The

2nd defendant could have been given a charge on the other items.

5. In the result the second appeal fails and is dismissed with costs.