

(1921) 07 MAD CK 0003
In the Madras High Court

Pattani Valappil Payyanatan Krishna and Others	APPELLANT
Vs	
Manalil Inkirias Govindan and Others	RESPONDENT

Date of Decision : 27-07-1921

Acts Referred:

Citation : (1921) 14 LW 539 : (1921) 41 MLJ 381

Hon'ble Judges : Spencer, J; Ramesam, J

Bench : Full Bench

Judgement

Spencer, J.—As it has been found that there was necessity for the sale to the extent of a substantial amount (viz) Rs. 1001, out of Rs. 1400,

the proper course for the Courts to follow was in my opinion to uphold the sale instead of directing it to be set aside on condition of the plaintiffs

paying the amount for which necessity was proved.

2. This is the effect of the decisions in Thalagara Ramanna v. Kalagare Gangayya (1913) 27 M.L.J. 132 Kannan Chetty v. Ainirithammal (1914) 1

L.W. 877 and Asa Varada Seshamma v. Bava Venkatakrishnarayanam (1916) 33 I.C. 833 .

3. For the respondents Mr, K.P.M. Menon relied on decisions in Kunhamma Umtna v. Ibrahim Haji (1913) 12 M.L.T. 264 and Padammah v.

Themana Amma I.L.R(1897). Mad.232 and Second Appeal No. 782 of 1919 (un-reported) but those were casps of mortgages and in such

cases different considerations arise from those which arise in cases of sales.

4. It was next contended for the respondents that the appell-lant should be made to pay over again the difference between the amount shown to be

for necessity and the whole sale price as they did not pay the purchase money into the hands of all the tarwad members.

5. The 6th defendant who joined in the sale is the Karnavan of the tarwad and he is by his office invested with the management of the moveable

property of the tarwad (See Subramania Pattar Vs. Krishna Embranderi and Others, .

6. In the absence of proof of any fraud or collusion on the part of the purchasers they cannot be compelled to account for the application of the sale proceeds or to pay any part of the price twice over.

7. The appeal is therefore allowed and the Lower Court's decree will be reversed and the suit dismissed with costs throughout. The memo of

objections is not pressed and is dismissed.

Ramesam, J.

8. I agree. The major portion of the consideration having been found to be for necessary purposes this is a case, in which the whole transaction

ought to be upheld. See Thalagara Ramatna v. Kalagare Gangayya (1913) 27 M.L.J. 132, Kannan Chetty v. Amirithammal (1914) 1 L.W. 877,

Felaram Roy v. Bagalanand Banerjee (1910) 14 C.W.N. 895 and Viswanatha Sastrigal v. Valambal Animal Since reported in (1919) 62 I.C. p.

701. The cases relied on by Mr. Menon the learned Counsel for the respondents, Kunhamma Utnma v. Ibrahim Haji (1912) 12 M.L.T. 264 and

Padammah v. Thernana Ammah ILR (1897) 17 Mad 232 are cases of mortgage and have no bearing on cases of sale. The decision in S.A. No.

1597 of 1914 goes to the length of holding that, even in a case of mortgage, the original transaction would be affirmed, subject to an equity in

favour of the plaintiffs in respect of the portion which was found not to be justified by necessity.

9. It is next contended by Mr. Menon that the plaintiffs should obtain a refund of the difference between the consideration in the sale deed and the

amount found to be required for necessary purposes and he relied on Thalagara Ramana v. Kalagare Gangayya (1913) 27 M.L.J. 132 S.A. No. -

1597 of 1914, S.A. No. 782 of 1919, Rukmani Sundaratnmal v. Muthu Animal (1915) M.W.N. 8, S.A. No. 1814 of 1918 and 33 I.C. 833.

The first two are cases of mortgage and considerations different from those applying to sale arises. In Rukmani Sundarammal v. Muthu Ammal

(1915) M.W.N. 8 the sale was not affirmed and the remarks about refunding the amount of the consideration not shown to be for necessary

purposes were not necessary for the decision. In *Thalagara Ramanna v. Kalagare Gangayya* (1913) 27 M.L.J. 8 the point was not argued but was

conceded by the appellant's vakils who succeeded in getting the main transaction affirmed. In *Viswanatha Sastrigal v. Valambal Ammal* the point

does not seem to be argued. In the case of alienation by widows where the sale is found to be for necessity, the mere fact that a portion of the

consideration was not required does not justify the purchaser in withholding it from the hands of the widow who is certainly the owner for the time

being of the estate she was dealing with though her powers may be limited. The cases in *Kannan Chetty v. Amirithammal* (1917) 1 L.W. p. 877

and *Felaram Roy v. Bhagaland Banerjee* (1910) 14 C.W.N. 895 where the plaintiff's suits were wholly dismissed justify this view. Even in the

cases of guardians (of minors) trustees, managers of joint families the same considerations apply. So long as there is nothing suspicious in the

management they are the proper persons to receive the consideration for the sales of the Immovable property belonging to the minors, cestui que

trust and the joint members respectively. There is no reason ordinarily justifying the withholding of the payment from their hands. These considera

tions become stronger in the case of a Karnavan of a Malabar Tarwad - See *Subramania Pattar Vs. Krishna Embranderi and Others*, In this case

the Karnavan and five other members effected the sale and the Subordinate Judge found that they were the persons actually dealing with the family

property. I concur with the order purposed by my learned brother.