

(1942) 03 MAD CK 0029
In the Madras High Court

Pothuru Sreeramulu Chetti and Another	APPELLANT
Vs	
Duvvuru Subbarami Reddi and Others	RESPONDENT

Date of Decision : 04-03-1942

Acts Referred:

Citation : AIR 1942 Mad 554 : (1942) ILR (Mad) 738 : (1942) 55 LW 405 :
(1942) 2 MLJ 90

Judgement

1. These second appeals have been placed before a Full Bench for decision because they raise a question of Hindu law of some importance and there is no textual or other authority having any bearing.

2. On the 7th September, 1931, Seshayya Chetti, the appellant in S. A. No. 58 of 1939 filed a suit in the Court of the District Judge of Nellore to recover an amount claimed by him to be due on a promissory note. The promissory note had been executed by the first respondent and his brother Rani Reddi, who is now dead and is represented by his sons, the second, third and fourth respondents. The defendants to the suit were the makers of the instrument and their respective sons, the family being joint. On the 26th September, 1931 the plaintiff obtained an interim order for attachment before judgment of the properties in suit and the interim order was made absolute on the 11th January, 1932. On the 7th October, 1932 the Court, passed a decree for Rs. 3,118 with interest and costs against the makers of the promissory note personally and against their sons, limited so far as the sons were concerned to their interests in the family properties. On the 16th November, 1932, the two principal defendants applied for their own adjudication in insolvency, and on the 8th March, 1933 an order of adjudication was passed. On the 2nd May, 1933, the

decree-holder asked to be allowed to implead in the execution proceedings the Official Receiver as the representative of the makers of the instrument. The District Judge refused the application on the ground that execution could not be allowed against the Official Receiver. It is regrettable that an arrangement was not made that the interests of all the members in the properties should be sold in the execution proceedings. This could have been done by consent with full safeguard to the creditors of the insolvents and if such an arrangement had in fact been made the present suits would have been avoided. The result of non-cooperation was that the decree-holder was compelled to limit his application for execution to the interests of the sons in the properties attached. On the 19th October, 1933, the sons' interests in some of the items of the properties were sold by the Court and purchased for Rs. 10,455 by the appellant in Appeal No. 57 of 1939. Their interests in the rest of the properties were sold on the 27th October, 1933 and were purchased by the decree-holder for Rs. 830.

3. It is common ground that the promissory note sued upon represented moneys borrowed in order to meet a family necessity. After the order of attachment had been passed, five other creditors who had obtained decrees against the family applied for rateable distribution of the proceeds of sale. Again, it is common ground that the debts due to them were debts which were binding on the family. When the proceeds of the sales were paid into Court, they were paid out to the decree-holder and the five other creditors rateably. On the 19th March, 1934, the purchasers of the properties obtained symbolical possession and on the 16th April, 1935, each of them filed a suit for partition of the shares of the sons in these properties. These suits were numbered as O.S. Nos. 52 of 1936 and 70 of 1936, respectively. S.A. No. 57 of 1939 arises out of the first of these suits and S.A. No. 58 of 1939, out of the second. The Subordinate Judge of Nellore, in whose Court the suits were tried, granted to the plaintiffs decrees for partition, but at the same time held that they were only entitled to take the shares of the sons in the properties in suit subject to the payment of other family debts. The total value of the properties held by the family was Rs. 25,000 and the family owed altogether Rs. 40,000. The plaintiffs appealed to the District Judge against the decision of the Subordinate Judge that they were only entitled to the shares of the sons, subject

to the liability for payment of the remaining debts of the family but the District Judge concurred in the decision of the Subordinate Judge. The

question which this Court is called upon to decide is whether the conditions imposed by the Courts below is sound in law.

4. Under the Mitakshara law a member of a joint family cannot claim to be given his share in a particular asset of the family. The coparceners are

entitled to joint possession and there is community of interest. If a member of the family wishes to take his share there must be a partition of the

whole estate. In the same way a person who has acquired the interest of a member of a joint family in the family properties must, when he wishes

to enforce his rights, institute a suit for partition of all the assets, and the value of the share acquired is, of course, only arrived at after making

provision for the payment of the debts of the family. When the plaintiff has obtained a decree for partition and it appears that the value of a

particular property does not exceed the net value of the member's share, the Court may direct that the particular property shall be allocated to the

plaintiff, but in ordinary circumstances the Court will not go beyond this.

5. The appellants limited their claim for partition to the sons' interests in the attached properties; and in holding that they were only entitled to take

the sons' interests in these properties subject to the sons' liability in respect of other family debts, the Courts below had regard merely to the

principles to which reference has just been made. The appellants say, however, that the Subordinate Judge and the District Judge lost sight of an

important factor which must be taken into consideration under the peculiar circumstances which we have here. They admit that if the moneys paid

into Court had not been utilised for the payment of debts due by the family, they would be compelled to take the sons' interest in the properties in

suit subject to the liability for payment of the debts due by the family, but they say that, inasmuch as the sons' interests had already been sold for

the payment of family debts, the condition imposed below amounts to a direction that the same properties shall be sold twice over for this purpose,

a position which no Court with the power to apply principles of equity could ever contemplate.

6. We agree, and in doing so we have regard also to the terms of the decree under which the appellants bought the interests of the sons in the

properties in suit. By the decree all the sons were directed to pay from their interests in the properties the decretal amount, and therefore under it the decree-holder had the right of bringing to sale the interests of the sons as they then stood; By reason of the sales which took place on the 19th and 27th October, 1933 the value of the sons' interests in the properties was realised and applied in full in the discharge of family debts, a burden which the Courts below would subject them to again. The situation is undoubtedly unique and consequently the Court is called upon to formulate a rule which is in keeping with natural justice and the spirit of Hindu law. We consider that it is in consonance with both to hold that a sale for the satisfaction of family debts is capable of conveying to the purchaser a good title in such circumstances as we have here notwithstanding that other debts equally binding on the family were left unsatisfied. The creditors who had been diligent got their shares of the proceeds when the sons' interests in the properties were sold in order to meet family liabilities and we can see no warrant for the condition which has been attached to the decree obtained by the appellants. The interests of the fathers remain and as these have devolved on the Official Receiver he can realise them for the benefit of the creditors who are still unpaid.

7. For these reasons we hold that the decisions of the Courts below are erroneous and the appeals will be allowed. This means that the appellants will be entitled to a decree for partition free from any condition. It follows that the appellants are entitled to their costs throughout.