(1912) 04 MAD CK 0007

In the Madras High Court

Puthenpurayil Amman Paruykyi and Others APPELLANT

Vs

Mangalaseri Pullikandi Pakram Haji RESPONDENT

Date of Decision : 30-04-1912

Acts Referred:

Transfer of Property Act, 1882 — Section 100, 82

Citation : (1913) ILR (Mad) 493 : 15 Ind. Cas. 262

Hon'ble Judges : Sadasiva Aiyar, J;Miller, J

Bench : Division Bench

Judgement

Miller, J.—The District Judge bases his decision on the ground that the plaintiff and defendants are co-owners in the parambas on which the

plaintiff has paid the land revenue, but the allegations in the plaint do not seem to support this view. The plaintiff in the plaint alleges that the

defendants are, by a karar, which is not on the record, owners in jenini right of one of the three parambas contained in the survey field in question,

and that he himself is the owner in jenmi right of the other two. The plaintiff does not claim any interest in the paramba of defendants, nor admits

that the defendants have any interest in his parambas.

2. The District Munsif gave him time to amend his plaint and rely on the karar by which parambas were divided, but he failed to take advantage of

the opportunity so given. If then, the District Judge''s order is to be supported, it must be on the ground that the fact that the survey field is

undivided for purposes of assessment of the land revenue upon it, brings the case within the rule established, so far as we are concerned, by the

Fall Bench of this Court in Rajah of Vizianagram v. Rajah Setrucherla Somasekhararaz 26 M.I 686.

3. Now, in that case, both Bashyam Iyengar, J., (in the referring order) and Benson, J., were inclined to hold that Sections 82 and 100 of the

Transfer of Property Act were applicable and the former learned Judge points out (at page 709) that those sections would clearly have applied but

for the fact that the property then in question was not strictly the ""several properties of several owners."" Here, in the plaint, the parambas are the

''several properties of several owners,"" and they are all charged, by reason of the Revenue Recovery Act, with the payment of a single debt, the

revenue assessed on the survey field. I have no doubt that Bashyam Iyengar, J., and, I think, also Benson, J., would have held in the present case

that the plaintiff is entitled to a charge by virtue of Section 82, Transfer of Property Act read with Section 100.

4. I should be content to base my decision on the Transfer of Property Act on the authority of those learned Judges, but it may equally rest on the

principles of equity on which both Subramanya Jyer, J., and Benson, J., rested theirs in the same case in delivering the judgments of the Full Bench.

The principle does not, I think, depend on the parties being co owners in the lands; they must be co-sharers of the burden, and, in this case, as the

pleadings show, the burden is common to the plaintiff and defendants because their lands are both charged with the payment of the whole revenue.

It is true that defendants are not debtors of the Government not being the registered pattadars, but their land is nonetheless subject to the burden,

and has been by the plaintiff relieved of it. But as the common burden is a burden on the land only, as the Government could recover the revenue

only from defendants'' land and not from them personally, so all that plaintiff is entitled to is a charge on the land for the amount, if any, paid by him.

5. I think, therefore, that, though the District Judge is wrong in holding the plaintiff and defendants to be co-owners of the land, so far as the

pleadings have at present disclosed their position, he is right in reversing the decision of the District Munsif on the 2nd issue. I do not think we can

or need decide what are the interests of the parties in the land. The plaintiff, if he has paid the revenue, is entitled to a charge on the lands, and the

other issues in the suit must be decided. I would, therefore, confirm the order of the District Judge and dismiss the appeal with costs.

Sadasiva Iyer, J.

6. I entirely agree. The case of Subramania Chetty v. Mahalingaswami Sivan 33 M.k 41 : 3 Ind. Cas. 624 : 19 M.L.J. 627 : 6 M.L.T. 193 went

upon the ground that a person, who, as pattadar, pays the whole revenue on the pattah land, cannot sue for a mere money contribution from the

owner of a share in the pattah land, that is, cannot get a personal decree for money claimed as due on such share because neither Section 35 of the

Revenue Recovery Act, nor Section 69 of the Contract Act gives the pattadar such right or imposes an obligation on the owner of the share.

7. The question whether, when several shares on the same land or when several lands are liable under a common burden, the discharge of the

whole burden by the owner of a distinct share or a distinct land would give him a charge on the remaining shares or lands for the proportionate

sums they were equitably liable for was not gone into in Subramania Chetty v. Mahalingaswami Sivan 33 M.l 4l : 3 Ind. Cas. 624 : 19 M.L.J. 627 :

6 M.L.T. 193 but was, on the other hand, expressly decided in Rajah of Vizianagram v. Rajah Setruhcherla Somasekhararaz 26 M.l 686. The

reason why it was not gone into in Subramania Chetty v. Mahalingasami Sivan 33 M.k 4l : 3 Ind. Cas. 624 : 19 M.L.J. 627 : 6 M.L.T. 193 was

because the question did not arise in, that case.

8. In the present case, the plaintiff claims recovery of the proportionate sums chargeable as revenue in defendant''s paramba. both from defendants

personally and by sale of defendant''s parambas on which he claims a charge for such proportionate sums. It may be that Subramania Chetty v.

Mahalingaswami Sivan 33 M.K 4l : 3 Ind. Cas. 624, 19 M.L.J. 627 : 6 M.L.T. 193 would prevent plaintiff from getting a personal decree against

defendants for any portion of such amounts. The case of Rajah of Vizianagram v. Somasekhararaz 26 M.P 686 undoubtedly, prevents him from

getting such a personal decree for more than three years'' dues. But the ratio of the decision in that case allows him clearly a charge on defendants''

parambas for the proportionate dues, the limitation period being twelve years under Article 132. The present suit claims a charge of only six years

before suit.

9. A co-owner or co-sharer may not be liable personally to contribute towards sums paid to remove a burden on his property also, the whole

burden being jointly imposed on the payor''s and his co-owner''s property. He may not have cared to discharge the burden as he might have been

content to lose the property itself as not worth the expense of the removal of the burden It may, therefore, not be equitable to give a personal

decree against him as the contribution required may be larger than the value of his property. But these considerations do not apply to the claim for

a charge on his share for a proportionate share of the burden. The case of Rajah of Viziangaram v. Rajah Setrucherla Somasekhararaz 26 M.L

686 allowing such a charge, has been followed in Alaya-kammal v. Subbaraya Goundan 28 M.K 493 : 15 M.L.J. 219 the limitation to enforce

such a charge being twelve years. I find also that in Sri Maharaja Parbu Narain Singh v. Babu Beni Singh 14 C.W.N. 361 : 5 Ind. Cas. 779 the

learned Judges, while refusing plaintiff''s right to rely on Section 69 of the Contract Act, gave him a charge on the defendants'' shares for the

proportionate fraction of the amount paid by plaintiff to discharge the burden on all the shares.

10. The remand order of the District Judge is, therefore, right and the appeal will be dismissed with costs.