
(1890) 09 MAD CK 0015
In the Madras High Court

Rathna Naidu

APPELLANT

Vs

P.R. Aiyanaachariar and Others

RESPONDENT

Date of Decision : 11-09-1890

Acts Referred:

Citation : (1908) 18 MLJ 599

Judgement

1. In these cases the plaintiff appellant is the same person. Defendants Nos. 1 and 2 are also the same, the latter being the son of the former.
2. The suit to which second appeal No. 1022 of 1905 relates is to recover from the 1st defendant and by sale of the mortgaged property the sum of Rs. 1,034 being the principal and interest due on a mortgage deed executed to the plaintiffs by the 1st defendant in 1900.
3. The suit to which second appeal No. 1023 of 1905 relates is to recover possession of certain lands sold to the plaintiff by the 1st defendant.
4. In the first suit the District Munsif gave the plaintiff a decree against the 1st defendant personally, but exonerated the property. The second suit was dismissed. The decrees were confirmed in appeal.
5. Prior to the mortgage and sale there was a partition between the 1st and 2nd defendants in which the properties now in suit fell to the share of the 2nd defendant. The plaintiff alleged that the 2nd defendant subsequently released his share in favour of the 1st defendant who thus became exclusively entitled to the property. Both the Courts below have found, however, that the release was not binding upon the 2nd defendant, and this finding of fact is binding upon us. The position then is, that the 1st defendant sold and mortgaged property to which he had no right but which belonged to the 2nd defendant. Prima facie, therefore, the decrees of the lower Courts are right.
6. It is, however, contended in second appeal No. 1022 of 1905 that the consideration for the mortgage consisted, to the extent of Rs. 500, of antecedent debts incurred by the 1st defendant prior to the partition, and in second appeal

No. 1023 of 1905, that the whole consideration was similar antecedent debts of the 1st defendant and that to the extent of these debts the sale and mortgage are binding on the share of the 2nd defendant. It is sufficient answer to this contention to point out that no foundation was laid for it in the plaints. There was no plea by the 2nd defendant, that the debts were illegal or immoral, a plea which was open to him to raise if the plaintiff had asked for relief on the basis of the duty to pay his father's debts, and no issue was taken on the point. These cases are, therefore, distinguishable from the case of Maharaj Singh v. Balwant Singh ILR (1906) A. 508 which has been quoted before us. Further we have not been referred to any authority for the proposition that it is open to a father to deal with the property of his divided son so as to bind that son, On the other hand Krishnasami Konan v. Rangasami Ayyar ILR (1899) M. 519 is authority for holding that where the estate is divided the father cannot sell what does not fall to him in the division. We, therefore, dismiss these second appeals with costs.