

(1897) 02 MAD CK 0017
In the Madras High Court

Sami Ayyangar

APPELLANT

Vs

Ponnammal

RESPONDENT

Date of Decision : 22-02-1897

Acts Referred:

Citation : (1898) ILR (Mad) 28

Hon'ble Judges : Subramania Ayyar, J;Benson, J

Bench : Division Bench

Judgement

1. As regards the liability of the son's share for the debt of the father as a more money claim, there can be no question, since it is found that the mortgage was for consideration and was not illegal or immoral

2. The next question is whether the mortgage is binding on the son in respect of his share. It is argued for the appellant that, the father having borrowed money not prior to the mortgage but only at the time of the mortgage, the debt cannot be considered to be an antecedent debt so as to

come within the rule in the Privy Council case, Suraj Bansi Koer v. Sheo Persad Singh ILR 5 Cal. 148 . This is the view taken by this Court in

Srini-vasa Ayyangar v. Ponnammal Letters Patent Appeal No. 12 of 1893 unreported and Chinnayya v. Perumal ILR 13 Mad. 51. The

respondent refers us to the case reported as Khalilul Rahman v. Govind Pershad ILR 20 Cal. 328 in which it was held that even in circumstances

such as those of the present case, the mortgage will be enforced against the son's share as well as against that of the father. We do not find any

sufficient grounds for differing from the rule hitherto followed by this Court, viz., that in order to justify a sale or a mortgage by a father so as to

bind the son's share, there must be, in fact, an antecedent debt, i.e., a debt,

prior to the mortgage or sale. We must, therefore, allow the appeal with costs, and modify the decree of the lower Appellate Court accordingly, but this will not affect the right of the plaintiff to proceed against the son's share in execution of the decree, treating it as a more money decree. We make no order as to costs in the lower Appellate Court.