

(1918) 12 MAD CK 0004
In the Madras High Court

Sarvothama Row

APPELLANT

Vs

Chinnasami Pillai and Others

RESPONDENT

Date of Decision : 09-12-1918

Acts Referred:

Citation : (1919) ILR (Mad) 507 : (1919) 19 LW 379 : (1919) 36 MLJ 157

Judgement

1. The managing member of a joint Hindu family consisting of himself and his brother sold the suit properties to a stranger on 22nd December

1908. The younger brother sold his share alone to the plaintiff on 12th January 1909. There was also a mortgage outstanding on the property.

When the plaintiff attempted to take possession he was resisted by the purchaser from the manager. Thereupon he sued for possession of the half

share sold to him. He succeeded in the first court. The Lower Appellate Court held that the sale by the manager was binding on the plaintiffs"

vendor and dismissed the suit. In Second appeal, this decree was confirmed; an application to review the judgment also failed. The decision of the

High Court in the Second appeal was given on the 18th February 1915. This suit for refund of the sale price and for the expenses of the costs

incurred in the unsuccessful litigation was instituted within three years of the judgment of the High Court. The Courts below have held that the suit

was not barred by limitation.

2. Before us, the learned vakil for the appellant relied on Hanuman Kamat v. Hanuman Mandur ILR (1891) C. 123 for the proposition that the

cause of action for the refund of the money arose when the plaintiff was refused possession. In the case before the Privy Council, the managing

member of a Mithila family who was only entitled to dispose of the shares of his

brothers with their consent and not, as under the Mitakshara Law to alienate family property for justifiable purposes alienated the family property. When the vendee sought to take possession the other brothers resisted. The Judicial Committee pointed out that as the alienation depended on consent and as that consent was certainly refused when the brother refused to give possession, the cause of action arose on that date. In the present case, the plaintiff's vendor was competent to dispose of his share and the manager had a right *prima facie* without consulting his brother to deal with the property for family purposes. It was only when it was finally determined that the sale by the plaintiff's vendor could not take effect against the sale by the manager that the former sale became infructuous; consequently it was only then that the consideration failed. This case is practically the second of the class of cases referred to in *Subbaraya v. Rajagopala* ILR (1914) M. 887. The decision in *Parvataneni Venkataramayya and Others Vs. Lanka Rambrahman and Others*, also supports this view. We think the suit is not barred by limitation.

3. It was next contended that the costs of the litigation should not be given to the plaintiff. He was bound to have sought the aid of the court to vindicate the title of his vendor and the litigation expenses must be regarded as having been legitimately incurred. These damages are not too

remote as laid down in *Krishnan Nambiar v. Kannan* ILR (1897) M. 8 and in *Digambar Das v. Nishibala Debi* (1910) 8 I.C. 91.

4. We are, however, of opinion, that the plaintiff is not entitled to recover the costs of this unsuccessful attempt to have the decision of this Court

reviewed. It is a luxury he indulged in for which the defendant should not be held liable. The sum of Rs. 55-0-9 allowed under this head should be

deducted from the decree. In other respects, we confirm the decree of the Lower Appellate Court.

5. Parties will pay and receive proportionate costs throughout.