(1955) 02 MAD CK 0005

In the Madras High Court

Case No : Letters Patent Appeal No. 167 of 1951

Sengoda Goundan APPELLANT

Vs

Muthuvellappa Goundan by next friend and maternal grandfather Palani Goundan and Others RESPONDENT

Date of Decision : 15-02-1955

Acts Referred:

Citation : AIR 1955 Mad 531 : (1955) 2 MLJ 331

Hon'ble Judges : Rajamannar, C.J;Somasundaram, J

Bench : Division Bench

Advocate : K.S. Desikan, T. Raghavan and M.R. Narayanaswami, for the Appellant; B.V. Viswanatha Iyer, T.R. Srinivasa Iyer and A. Shanmugavel, for the Respondent

Final Decision : Dismissed

Judgement

Rajamannar, C.J.—This is an appeal under the Letters Patent against the judgment of Subba Roa J. in A. Section No. 534 of 1947, which

arose out of a suit filed by the first respondent in the court of the Subordinate Judge, Coimbatore, for partition of joint family properties.

The plaintiff is the grandson of the first defendant, appellant before us, by a deceased son whose widow is the fourth defendant. The second and

third defendants are two other sons of the first defendant. The plaintiff claimed a one-fourth share in the suit properties after setting aside certain

alienations which had been made by the first defendant and others. The first defendant and other alienees pleaded ''inter aha'' that the properties in

suit were the self-acquisitions of the first defendant, but that plea was found against, and it has not been pressed before us. There was a further

plea that the alienations were binding on the plaintiff, as they were made either for necessity or for the benefit of the family. The learned

Subordinate Judge upheld all the alienations except in regard to item, 6 and passed a preliminary decree for partition in regard to the remaining

family properties.

The plaintiff filed an appeal to this court which was heard by Subba Rao J. as mentioned above. The learned Judge held that some of the

alienations were valid and binding on the plaintiff on the ground that they were made, for necessity. He differed from the trial Judge'' and held that

the other alienations were not binding on the plaintiff, as they could not be supported either on the ground of necessity or benefit of the family. The

first defendant has filed this appeal in respect of the alienations which had been held to be not binding on the plaintiff.

2. The learned Judge dealt with the several alienations in five groups: The first of these groups we are not concerned with, because the learned

Judge has upheld the alienations falling in this group. The second group comprises two sales covered by two deeds dated 2-11-1935 in favour of

defendants 23 and 24, Exs. P. 12 and D, 22. The third group comprises two sales under Ex. D. 23 and Ex. D. 24 dated 6-2-1937 and 22-5-

1939 in favour of defendants 25 and 26, and 27th defendants respectively. The fourth group comprises 12 sales made between 22-4-1940 and

21-5-1941 in favour of defendants 28 to 42. It is not necessary to give a reference to the sale deeds, as they are mentioned in the judgment of

Subba Rao. J. In the fifth and last group fall 7 sales under deeds executed between 2G-4-1943 and 10-5-1943 in favour of defendants 43 to 50.

It may be mentioned that in the sale deeds falling in the fourth group there were recitals that the plaintiff''s share of the consideration had been paid

to the plaintiffs mother, fourth defendant, while in the sale deeds falling in the third group there were recitals that the plaintiff''s share of the

consideration had been left with the respective vendees.

3. The learned Judge, Subba Rao J.. held that the alienations falling within these four groups, that is, groups 2 to 5 could not be supported either on

the ground of necessity or benefit to the family. Learned counsel for the appellant, Mr. Narayana-swami did not attempt to argue that these

alienations could be supported on the ground of necessity. He confined his argument to the contention that they would be justified on the ground of benefit to the family. He developed the argument thus: The lands covered by these alienations were dry lands which were not yielding any income

to the family or to use his expression, they were unproductive properties. They, however, became valuable, because of a town planning scheme

which had been made by the Municipality and therefore, there was the prospect of obtaining a good price for the lands if and when sold in small

plots. So it was argued that the family stood to, gain by these alienations. Learned counsel relied upon the judgment of Yaliya Ali J. in -- ''In re,

A.T. Vasudevan'', AIR 1949 Mad 260 (A), as supporting his contention that a sale by the manager of a joint family, of family lands which had not

been yielding any income, for an advantageous price which could be obtained because of special circumstances-would per se'' be for the benefit of

the family.

We, however, do not agree that the decision of Yahya Ali supports this proposition. In that case, the father and manager of a Hindu joint family

who had two adult sons and five minor sons applied to this court of the original side under Clause 17 of the Letters Patent for being appointed,

guardian of the family property and for sanction of the sale of that property as being beneficial to the interests of the minor so us. The learned Judge

found that the proposed sale was highly advantageous to the interests of the entire family, including the minors and gave his sanction subject to

proper safeguards being provided for the minor''s share of the purchase money, by being invested in Government securities, which should be

deposited with the Registrar of the High Court. This circumstance, namely, that in giving the sanction the learned Judge gave directions as to the

disposal of the minor''s snare of the sale proceeds is not without significance, as that should not be treated separately from, the order granting

sanction. If so viewed, the decision is in accordance with other decisions of this Court in which, for instance, it was held that sale of unproductive

family property at an advantageous price for the purpose of buying other land could .be supported on the ground of benefit to the family''

The instances given by Venkatasubba Rao J. in -- ''Sellappa Chettiar v. Subbanna Chettiar'', AIR 1037 Mad 496 (B), are all instances where

these two elements are present, namely, sale of unproductive property and investment of the proceeds in purchase of other and better productive property. In this case, it may be assumed that the sales were for an adequate price and that but for the town planning scheme these properties

would have had no appreciable market value and we''re not fetching any income to the family. But the latter requirement is totally absent. There is

no evidence, and it was not even suggested that with the proceeds of these sales other income-fetching property was purchased. There was an

attempt to rely upon a purchase made by the ""mother the fourth defendant (Ex. D. 15) as having been made with the plaintiff''s share of the

purchase money.

But that attempt failed as the mother herself denied that the property had been purchased for the benefit of the minors. In the absence, therefore, of

any proof of utilisation of the sale proceeds in the purchase of other property for the family, we must hold that the alienations were not for the

benefit of the family. In this view, it is immaterial whether the plaintiff''s share of the consideration was received by the mother in any of these

transactions or whether the plaintiff''s share was retained by the respective vendees. We agree with Subba Rao J. that the alienations were not for

the benefit of the family and therefore were not binding on the plaintiff.

4. The learned Judge Subba Rao J. himself directed that in the final decree proceedings the properties alienated to the various defendants should

be allowed to the shares of the members of the family who were parties to the alienations. In our opinion, this is the only equity to which the

alienees are entitled.

5. This would not affect the rights, if any, which the first defendant may have either against his vendees or against the fourth defendant, consequent

on the setting aside of the alienations so far as the plaintiff''s share is concerned. The rights ''inter se'' between the first defendant and his alienees or

between the first defendant and the fourth defendant are outside the scope of the suit for partition. In the result, the appeal fails and is dismissed

with costs of the plaintiff-respondent.

