

(1897) 02 MAD CK 0014
In the Madras High Court

Srinivasasami Aiyangar

APPELLANT

Vs

Ponnammal

RESPONDENT

Date of Decision : 22-02-1897

Acts Referred:

Citation : (1898) ILR (Mad) 28 : (1897) 7 MLJ 96

Judgement

1. As regards the liability of the son's share for the debt of the father as a mere 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 Pershad Singh* I.L.R.(1879) C. 148 . This is the view taken by this Court

in the case in *L, P.*, appeal No. 12 of 1893, and in *Chinnayya v. Perumal* ILR (1889) M. 51. The respondent refers us to the case reported in

Khalilul Rahman v. Gobind Pershad ILR C. 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 as 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.,

3. 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 mere money decree. We make no order as to costs in the lower appellate Court.