
(1913) 08 MAD CK 0004
In the Madras High Court

Subramania Nadan, Minor by his Maternal Uncle and Next Friend Kuthalalinga Nadan APPELLANT

Vs

Ramasami Nadan and Others RESPONDENT

Date of Decision : 04-08-1913

Acts Referred:

Citation : (1913) 25 MLJ 563

Judgement

1. The first point raised by the Appellant is as to whether the mortgage deed executed by the 1st defendant to the 17th defendant Exhibit III is

binding on the plaintiff. Two of the three items of consideration for this transaction aggregating Rs. 677 were admittedly devoted or intended to be

devoted to paying the sale price of certain other lands purchased by the 1st defendant, the family manager by Exhibit X. The Munsif found these

items of consideration not binding on the plaintiff.

2. The District Judge has reversed this decision on the ground that it has not been shown that the purchase under Exhibit 10 was disadvantageous

to the family or contrary to the interests of the plaintiff (who was a minor at the time). This is in our opinion not the true test, the mortgage affected

by the manager included the share of a minor co-parcener the purchaser must show that it was effected for family necessity or at any rate that he

(the purchaser) believed bona fide that it was for family necessity (Vide Krihnaram Keshav v. Sakham Keshav (1901) 3 Bom. L.R. 243. No

necessity has been shown or even alleged and it is clear from the evidence of the purchaser (as 4th witness for defendants) that he made no

enquiries at all. In our opinion the mortgage in so far as it relates to these items must be held not binding on the plaintiff.

3. As regards the third item of consideration for Exhibit VIII and also as regards the sales by Exhibits I and II we see no reason to differ from the District Judge.

4. In the result the mortgage deed, Exhibit VIII will be held binding on the plaintiff's share of the mortgaged properties only to the extent of half of Rs. 723, and interest there on. The order of the District Judge directing the plaintiff to bear the costs of the 17th and 19th defendants must also be set aside. In other respects the judge's decree is confirmed.

5. The plaintiff will bear the costs of the 13th defendant in this court, the plaintiff and the 17th and 16th defendants will bear their own.