

(1922) 07 MAD CK 0005
In the Madras High Court

Subramaniyan Pattar

APPELLANT

Vs

Kizhakkakara Uthananthil Raman Puduval and Others

RESPONDENT

Date of Decision : 21-07-1922

Acts Referred:

Citation : (1922) 16 LW 620 : (1923) 44 MLJ 596

Judgement

1. The appellant the first defendant, holds a mortgage decree against the tavazhi property of the plaintiffs and certain other defendants. The

plaintiffs sued for a declaration that this decree was not binding on the property. The appeal has been argued first on the ground that the plaintiffs,

junior members of the tavazhi, were not entitled to sue For the recovery of this property without showing that the karnavan, who is the fourth

defendant, had refused to proceed himself. This objection was not, so far as we have been shown taken in either of the Lower Courts. We cannot

entertain it now as a ground of second appeal, the more so as the respondents have had no notice in the memo of appeal that it would be urged.

2. The next contention is that the Lower Court erred in its finding that the property belonged to the tavazhi. That finding was supported by

evidence and we cannot see how any question of law arose in connection with it. This contention also therefore fails.

3. The next question raised is whether the lower appellate Court was right in imposing the burden of proof as to the binding nature of the mortgage

debt, for which the decree was passed on the first defendant. Reliance has been placed on decisions to the effect that, when the karnavan of a

tarwad or tawazhi has been impleaded in that capacity by a mortgagee or other alienee, a decision against him and the tawazhi property binds the

other members, such as the present plaintiff, unless and until they show that the litigation was not honestly conducted on their behalf. The leading case on that point is *Ittiachan v. Velappan* 106 E.R. 873 (875). We were referred also to *Vasu-devan v. Sankaran* (1810) 2 Camp. 506 . Contra, reliance has been placed on another principle of equally general application, that the burden of proof of the legitimacy of an alienation by a limited owner in his representative capacity is on the alienee as against persons whom that limited owner represents. That principle is of course a common place in the ordinary Hindu Law, as applied to Managers of Hindu joint families, to widows and to minors. It is recognised with special reference to the Malabar Law in *Kutli Mannadiar v. Payanur Muthan* (1871) 17 W.R. Cr. 15 (17) and *Narsaya Upada Vs. Venkataramana Bhatta*, . For the dictum in the latter case that the burden of proof depends on the circumstances and not on any presumption invariably arising out of Malabar institutions, though expressed generally, involves in our opinion the principle we have referred to. There remain the cases similar to the one before us, in which the alienation is neither one resting on a mere private contract between the parties nor one which has been embodied in a decree passed after contest, but is represented by a compromise decree. It has been urged that such alienations should be treated as on the same footing as decrees passed after contest and that the burden of proof should be imposed as in the case of the latter. We cannot agree. It is no doubt not obligatory on a limited owner to contest a hopeless case; but, if he chooses not to do so, we think he and the alienee must in Malabar, as elsewhere, be prepared to prove that the compromise was entered into honestly and for the benefit of the estate. That in fact is what the lower appellate Court held when it imposed the burden of proof in the present case on the first defendant.

4. As we agree that he did so rightly and must accept the finding that the lands so imposed was not discharged and as no other question of law has been raised, the second appeal fails and is dismissed with costs of respondents 1 to 13 one set.