
(1926) 01 MAD CK 0028
In the Madras High Court

Suryadevara Mahalakshamma APPELLANT
Vs
Suryadevara Ramaswami and Others RESPONDENT

Date of Decision : 08-01-1926

Acts Referred:

Citation : AIR 1926 Mad 641 : 94 Ind. Cas. 950 : (1926) 23 LW 596 : (1926) 50 MLJ 651

Hon'ble Judges : Spencer, J

Bench : Division Bench

Judgement

Spencer, J.—This is an idle suit and an idle appeal. The plaintiff, who was the daughter of the last male-holder, brought this suit to set aside

an alienation made by her mother on the 24th February, 1900, of Immovable property which belonged to her deceased father and to recover the

same. At the trial, it came out that the land in question was sold because it was situated far away from Kollur, which was the plaintiff's mother's

residence, in order to buy better land in Kollur itself. Both the District Munsif and the District Judge found that the sale was valid and binding on

the plaintiff, because the lands sold were situated in an out-of-the-way village and yielded very little and because the object of the sale was, with

the aid of the proceeds of the sale and some other money contributed by the plaintiff's mother, to purchase in plaintiff's name better land which

was more convenient for cultivation. The suit was therefore dismissed.

2. Now it is argued in second appeal that the defendants failed to prove necessity for the sale. Reliance is placed on a decision in Ganeyar v.

Amrithasami Odayar (1917) 23 M L T 245 in which Kumaraswami Sastri, J. observed: "Families often own lands at some distance from their

village and I do not think the mere fact that the lands are a few miles away would justify a Hindu father in alienating the lands. "" In that case the lands that were sold were within 10 miles of the 1st defendant's village. The substantial reason for the Court setting aside the alienation in that case appears from the words at page 247: ""The family was not a trading family or one carrying money-lending business and the starting of prospective money-lending transactions is no ground for alienating family properties."" The starting of money-lending transactions was one of the objects with which the family property had been sold.

3. Then in *Ganap v. Subu* ILR (1908) 32 Bom 577, there is this observation of Justice Batchelor: ""a widow can alienate in order to preserve the estate but we do not think that she is entitled to alienate merely in order to improve it."" In *Subramania Chetty Vs. Chidambara Mudali, Sadasiva Aiyar*. In *re Krishnaswami Doss Reddi* (4) that manifest benefit was sufficient and it was not necessary to prove necessity for an. alienation made by a manager of a Hindu family (for it to have a binding effect on the junior member's shares. What Sundara Aiyar, J., said was. ""It must certainly be shown that the family would not lose by parting with ancestral lands and purchasing new land. This would necessitate the giving of evidence to show that the new lands are at least not inferior in quality and value to the old lands. It may be open to an alienee to establish reasonableness by showing that though the new lands are not superior in value to the old lands, the family would otherwise " gain by the changes."" The learned Judges was inclined to substitute the question of whether the sale was a proper and reasonable act for the question whether it was necessary, in cases of alienation. This view finds support in the case decided by the Privy Council in *Ramasuman Prasad v. Shyam Kumari* (1922) 49 I A 342 . Their Lordships point out that the word ""necessity"" when used in this connection has a somewhat special, almost technical meaning. They say that if an act alienation of a widow is reasonable and prudent and for the interest of the estate in matters of compromise, it will fall within the power of the holder of a Hindu women's estate, either as being an alienation which is deemed to be induced by necessity or as being in a parallel position to an alienation induced by necessity. I am of opinion that the view taken in *Ganap v. Subu* ILR(1908) 32 Bom 577 as to the meaning of ""necessity"" and

benefit"" is too narrow. If the parties who have to support an alienation made by a widow can show that the estate has been improved by selling

Immovable property and buying other lands of equal or greater value and more convenient for cultivation and management, Courts will not set

aside such transactions. In Subramania Chetti v.Rantakrishnamma(6), a case came before Devadoss, J., and myself in which a widow borrowed

money and improved her husband's estate by completing an unfinished house. We held that the reversioner who had taken the benefit of the

improvements made by the widow was not entitled to impeach the act of alienation by which the estate had been improved. The present case is a

stronger one, because there has been no loss or encumbrance upon the estate caused by the alienation, seeing that the plaintiff's mother left the

estate in possession of better lands in place of those sold away and more conveniently situated for cultivation.

4. There are no merits in this second appeal. It is dismissed with costs.