

(1934) 08 MAD CK 0003
In the Madras High Court

Thoppai Kaveri Ammal

APPELLANT

Vs

Subba Ayyar Deceased and Others

RESPONDENT

Date of Decision : 09-08-1934

Acts Referred:

Transfer of Property Act, 1882 — Section 39

Citation : AIR 1934 Mad 731 : 152 Ind. Cas. 709 : (1934) 40 LW 678

Hon'ble Judges : Varadachariar, J;Burn, J

Bench : Division Bench

Judgement

1. Tenth defendant-appellant is the mother of certain mortgagors and she was impleaded as a party in the mortgage suit. She contended that the mortgage could not avail against her right to maintenance because the properties mortgaged were joint family properties and she as the widow of a deceased co-parcener was entitled to be maintained therefrom. The learned Judge has found that the transfer was for consideration and was not intended to defraud or defeat the lady's claim for maintenance. An incidental reference is made to a decree obtained by her on December 19, 1924, declaring her maintenance a charge, but we need not deal with that matter at any length because, whether it is collusive or not, it cannot affect the rights acquired by the mortgagees under a mortgage of much earlier date. We have, therefore, to deal with the case on the footing that at the date of the mortgage this widow had the general right of a Hindu widow to maintenance out of joint family property, which had not ripened into a charge on any specific property.

2. On the footing above stated, the authorities prior to the recent amendment of Section 39 of the Transfer of Property. Act, are fairly clear, that as

against a bona fide transfer for value such an indefinite claim for maintenance cannot avail, i.e., unless the transferee took with notice of an intention

on the part of the transferor to defeat the claims, of the maintenance holder. See Venkatammal v. Andyapapa 6 M 130 and Mulla's Hindu Law,

7th Edn. para. 569. The passages referred to by Mr. Sesha Ayyangar from Ramanadan v. Rangammal 12 M 260 and P. Suryanarayana Rao

Naidu Vs. P. Balasubramania Mudali and Others, relate to the widow's claim for residence in the family house and whatever may be the reason

for drawing a distinction between the right to maintenance and a claim to reside in the family house, the learned Judges in Venkatammal v.

Andyappa 6 M 130 have drawn the distinction and none of the later cases has disapproved of that distinction. In these circumstances we do not

think we can accede to Mr. Sesha Ayyangar's contention that we have got to examine the binding character of the suit mortgage as if the widow

was herself a co-parcener with the joint Hindu family. The appeal fails and is dismissed with costs of first and second respondents.