

(1912) 07 MAD CK 0035
In the Madras High Court

V.A. Istoop

APPELLANT

Vs

K. Ayappen and Others

RESPONDENT

Date of Decision : 18-07-1912

Acts Referred:

Transfer of Property Act, 1882 — Section 91

Citation : 16 Ind. Cas. 435

Hon'ble Judges : Sundara Aiyar, J; Sadasiva Aiyar, J

Bench : Division Bench

Judgement

1. Both the Courts have found that the 5th defendant is one of the Uralans of the Devaswom. The melcharth sued on was granted by two out of three Uralans without consulting the 5th defendant. They acted in defiance of his rights contending that he was not an Uralan at all. It is now settled law that a demise granted by even a majority of the trustees of Devaswom without consulting the minority is not binding on the temple. See Charavur Teramath v. Urath Lakshmi 6 M. 270 and Kumban v. Moorthi 20 M.L.J. 951. No special reason was alleged in this case for not following this rule.

2. It is then argued that, although the melcharth may be regarded as invalid, a decree should be passed in favour of the plaintiffs Nos. 3 to 5 on behalf of the Devaswom, and reliance is placed on Section 91 of the Transfer of Property Act, which lays down that any one of several mortgagors may redeem a mortgage, but the prayer in the plaint was that possession should be delivered to the melcharth holders, 1st and 2nd plaintiffs, and in the memorandum of appeal to the lower Appellate Court, no objection was raised to the Munsif's judgment on the ground that redemption ought to have been allowed in favour of plaintiffs Nos. 3 to 5. We are not, therefore, disposed to pass a decree in favour of plaintiffs Nos. 3 to 5, even if we could do so. It is unnecessary to deal with the question, whether the rule embodied in Section 91 of the Transfer of Property Act would be of any avail where the question whether the redemption of a mortgage would be in the interests of the Devaswom has never been considered by the

Uralans as a body. It may be that there are no funds of the Devaswom available for discharging the prior Kanom, and to pass a decree in favour of one or more only of the Uralans, who sue for redemption, without consulting the other Uralans, might often be detrimental to the interests of the Devaswom. We reverse the decree of the lower Appellate Court and restore that of the District Munsif with costs here and in the lower Appellate Court.