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(1926) 12 MAD CK 0062

In the Madras High Court

Vadapilli Jogarao — APPELLANT

Vs

Kala Venkamma and Others — RESPONDENT

Date of Decision : 09-12-1926

Acts Referred:
Transfer of Property Act, 1882 — Section 43

Citation : AIR 1927 Mad 497 : (1927) 25 LW 523

Hon'ble Judges : Devadoss, J

Bench : Division Bench

Judgement

Devadoss, J.—The plaintiff''s suit is for setting aside the decree in O. S. No. 606 of 1915 on the ground that his guardian was grossly negligent in not putting forward proper defences to that suit. The Subordinate Judge has granted a decree in plaintiff''s favour and the 6th defendant has preferred this second appeal. It is strongly contended by Mr. Rama Rao for the appellant that P. W. 11, the vendor of the plaintiff''s property, was estopped from contending that the decree Ex. D, is not binding upon him and, therefore, the plaintiff who derives title from him cannot set up a plea which is not open to P. W. 11 and he is also bound by anything which would bind P. W. 11. If as Mr. Rama Rao contends the 1st defendant was misled by any misrepresentation made by P. W. 11 at the time when Ex. D was passed and if the 1st defendant believed that representation and on that representation she got a charge on the Thuruvolu properties, no doubt P. W. 11 would be estopped from afterwards contending that Thuruvolu properties were not the subject of charge for maintenance,

2. It is suggested on the other side by Mr. Suryanarayana that that would depend upon the evidence in the case and it might be open to the parties to say that one Latchmma was the owner of the property and, therefore, 1st defendant could not have been misled by any representation that was made by P. W. 11. At present there is no evidence that P. W. 11 made any representation at the time Ex. D was passed, nor is there any evidence that the 1st defendant believed any representation that was made by P. W. 11. That being so, the question is whether

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the guardian of the plaintiff should have put forward the defences that were open to the plaintiff to the suit of 1915. As the Subordinate Judge remarks:

The guardian of the plaintiff in the prior suit must have, therefore, set up the defence that the share purchased by Paravatulu was not liable to be brought to sale and must have proved that at any rate Paravatulu was saved by the proviso to Section 43 of the Transfer of Property Act.

3. Mr. Rama Rao''s contention is that he has got a very good defence to meet any case that the plaintiff could have put forward to the suit 606 of 1915. That may be so, but the question is whether we have to judge of the conduct of the guardian by anything that has transpired since. If she had put forward all the defences open to the plaintiff in that suit it might be that her defences might have been very successfully met by the plaintiff in that suit. But that is no ground for saying that the plaintiff''s guardian was not negligent. On a consideration of the argument on both sides I am satisfied that the Subordinate Judge was right in setting aside the decree in O. S. No. 606 of 1915, so far as the plaintiff was concerned and directing that the suit should be proceeded with from the stage of the filing of the written statements:

4. The next contention on behalf of the appellant is that the plaintiff''s suit is barred under Order 2, Rule 2. I do not think there is anything in this contention.

5. I, therefore, dismiss this appeal but in the circumstances without costs.

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