(1912) 07 MAD CK 0031

In the Madras High Court

Vadivalam Pillai APPELLANT

Vs

Natasam Pillai RESPONDENT

Date of Decision : 16-07-1912

Acts Referred:

Citation : (1912) 23 MLJ 256

Judgement

1. A question of Hindu Law of some importance has been raised for decision in this second appeal. The necessary facts may be very briefly stated.

One Manikam and Chinnappa were two Hindu brothers. They were living separate for a considerable time. The plaintiff is the son of Manikam. He

sues to recover one-half of certain lands which were sold by Chinnappa in 1898. Evidently the lands in question as well as other property

belonging to the brothers were managed by Chinnappa. The plaintiff''s case was that he and Chinnappa were undivided members and that the sale

made by Chinnappa was not binding on him. He therefore claimed to recover one-half of the properties sold treating the sale of the other half as

valid as Chinnappa was entitled to alienate his own share for consideration.

2. Several questions of fact were raised by the defendant which it is unnecessary to refer to for the purposes of this judgment. The lower Courts

found that the family was undivided. The appellate Court also overruled the contention of the defendant that the plaintiff''s right to a share of the

family properties was extinguished by the statute of limitations; no good reason is shown for interfering in the second appeal with the finding on this

latter question.

3. Mr. Seshagiri Aiyar argued that the plaintiff was estopped by his conduct from disputing the alienation made by Chinnappa but the finding of the

Munsif on the question of estoppel was against him and no facts have been brought to our notice which would show that the plaintiff was estopped.

The Lower Appellate Court held that out of Rs. 500 the consideration of the sale deed Exhibit VIII executed by Chinnappa, Rs. 250 was

borrowed by him for purposes binding on the family consisting of himself and his nephew the plaintiff but that the remaining Rs. 250 was not

binding on the plaintiff. On these facts he had to decide what decree the plaintiff was entitled to. He came to the conclusion that the plaintiff was

entitled to a decree for the half share claimed by him without making any payments to the defendant. In doing so he considered himself supported

by the authority of the decision in Marappa Gounden v. Rangasami Gounden ILR (1899) M. 89.

4. In second appeal it is contended by the learned Vakil for the appellant that the view taken by the Judge is wrong. Mr. Seshagiri Aiyar asks us to

proceed on the basis that the amount Rs. 250 which is found to have been borrowed for family purposes must be regarded as a charge on the

plaintiff''s share of the property. He argues that the family having benefitted to the extent of Rs. 250 by the sale the plaintiff cannot recover his share

without paying the amount. In effect he asks us to treat Chinnappa as having sold his own half share for the portion of the consideration which has

been held to be not binding on the family and the other half share for the portion held to be binding. Mr. Natesa A''iyar fqr the respondent asks us

to do just the contrary that is, to hold that Chinnappa must be taken to have sold his own half share for the portion of the consideration held

binding on the family and the remaining half share for the portion held not to bind the family. We can find no legal principles on which, we can

adopt either of these courses. According to accepted equitable principles in the absence of anything appearing to the contrary, the consideration

for sale must be distributed over the whole of the property sold in proportion to the value of each part. On this principle the whole of Rs. 500 must

be distributed over the shares belonging to the plaintiff and Chinnappa respectively. There is no ground for supposing that one portion of the

consideration was allocated to a particular half share and the other portion to the other half share. The valid portion of the consideration as well as

the invalid portion must be distributed over each of the half shares of the plaintiff and Chinnappa respectively. The result would be that the plaintiff would be bound to pay one-half of the Rs. 250 held binding on the family, that is, Rs. 125 before he can recover possession of the half share

claimed by him.

5. Only one decided case Marappa Gounden v. Rangasami Gounden ILR (1899) M. 89 bearing; on the point has been brought to our notice

namely, the case relied on by the District Judge. That case was in its facts similar to the present one. A Hindu father sold certain property. The sale

was held to be invalid but a portion of the considsration was found to have been used for the benefit of the family, namely, for the discharge of the

mortgage of the family property. The sale was impeached by the alienor''s son. Subramania Aiyar, J. held that the son was entitled to recover his

half share without repaying any portion of the consideration which was used for the benefit of the family. With great deference to the learned Judge

we find it difficult to accept the reasoning on which his judgment is based. He was much influenced by the practical inconvenience which according

to him was likely to arise if the alienee was allowed in such a case to claim reimbursement of a portion of the consideration found to be binding on

the family. The learned Judge observes ""Now a sale of joint property by a co-parcener though made without a legal necessity is in this presidency

valid to the extent of the vendor''s share. Suppose that that share is really worth the whole of the amount paid by the vendee as the price, why

should he get anything more? Next, suppose that that share is really worth less than the price paid, the vendee cannot in such a case reasonably

ask for more than the difference between the real value of the share which he gets and the price he has actually paid. It is scarcely necessary to say

that questions as to such valuation are often not capable of easy or satisfactory settlement."" The whole of this reasoning proceeds on the

assumption that when a co-parcener sells his share as well as the share of the other members, the other co-parceners are entitled to raise the

question as to what is the real value of the share of the alienor. It cannot be doubted that a co-parcener is entitled to part with his own share in any

family property for any consideration he pleases. It is equally clear that as between the vendor and the vendee in the absence of any contract to the

contrary the consideration for a sale will be apportioned between all the items of the properties sold, in case of dispute. There seems to be no reason for allowing the alienor''s co-parceners to ask the Court to adopt any other principle. It may be, as observed by the learned Judge, that

questions as to valuation are often not capable of easy or satisfactory settlement; assuming it to be so, the right of a co-parcener to sell his own

property being now well recognised, the equities as between the vendee and the other co-parceners have to be adjusted by the Court in the best

manner possible. Nor does such adjustment seem to present any inseparable difficulties. No question is raised in this case of any collusion between

the vendee and Chinnappa and it is difficult to find any reason for proceeding on any other view than the principle already enunciated of

apportioning the consideration on the whole of the property sold. The learned Judge proceeds to say, ""the simpler and better view undoubtedly is

that if the vendee wishes to stand by a sale which is valid only partially such as the present, he must be content with the vendor''s share, but that if

he wishes to repudiate the transaction altogether, his remedy is only against the vendor in a suit for the return of the price paid on the ground that

the consideration for the payment failed."" It is hardly necessary to say that the remedy proposed might be altogether useless in many cases. On the

whole the proper course in this case appears to be to direct that the decree of the Lower Appellate Court be modified by decreeing to the plaintiff

a half share in the properties sold by Chinnappa after division by metes and bounds on condition that he pays to the defendants Rs. 125 with

mesne profits from the day that he deposits the said amount of Rs. 125 into Court and give notice thereof to the defendants.

6. The Memorandum of Objections relates only to the form of decree and as we have already dealt with it no further order is necessary. The

defendant will pay two-thirds of the plaintiff''s costs throughout.