

(1912) 07 MAD CK 0055
In the Madras High Court

Vadivelam Pillai

APPELLANT

Vs

Natesam Pillai and Another

RESPONDENT

Date of Decision : 16-07-1912

Acts Referred:

Citation : (1914) ILR (Mad) 435

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

Bench : Division Bench

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 Manickam and Chinnappa were two Hindu brothers. They were living separately for a considerable time. The plaintiff is the son of Manickam. He sues to recover one-half of certain lands which were sold by Chinnappa in 1899. 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 purpose 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 has been shown for interfering in Second Appeal with the finding on (his latter question.

3. Mr. Seshagiri Ayyar 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 for 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 Gaundan v. Rangasami Gaundan* (1900) 23 Mad. 89. In Second Appeal it is contended by the learned vakil for the appellant that the view taken by the Judge is wrong. Mr. Seshagiri Ayyar 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 benefited to the extent of Rs. 250 by the sale the plaintiff cannot recover his share without paying that 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 Ayyar for 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 the 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 the 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.

4. 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 Gaundan v. Rangasami Gaundan* (1900) 23 Mad. 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 portion of the consideration was found to have been used for the benefit of the family, namely for the discharge of a mortgage of the family property. The sale was impeached by the alienor's son. Subrahmanya Ayyar, 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 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 a charge 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 shares of 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 property 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", but assuming it to be so, the right of a co-parcener to sell his own property being now well recognized, 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 insuperable 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 the 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 gives notice thereof to the defendants.

6. The memorandum of objections relates only to the form of the decree and as we have already dealt with it no further order is necessary. The defendants will pay two-thirds of the plaintiff's costs throughout.