

(1934) 10 MAD CK 0056
In the Madras High Court

Veerappa Chettiar

APPELLANT

Vs

S.A. Ar. M. Annamalai Chettiar and Others

RESPONDENT

Date of Decision : 20-10-1934

Acts Referred:

Citation : AIR 1935 Mad 316 : 156 Ind. Cas. 439

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

Bench : Division Bench

Judgement

1. This is an appeal by the plaintiffs, who are uncle and nephew, against a decree which dismissed their suit to have it declared that a half share in certain properties is not liable to be attached in execution of the decree, obtained by the first defendant against the second defendant, in Order No. 215 of 1929. The debt for which that decree was obtained was contracted by the second defendant on December 14, 1928. On February 1, 1929, the second defendant, under the advice of certain elders and mediators, executed a release deed Ex. A in favour of the plaintiffs, the first plaintiff being his younger brother and the 2nd plaintiff being his minor son. That document recites that the second defendant since he attained majority has not been properly looking after the family or its affairs and that he has taken to bad ways. These recitals are now confirmed by the evidence of P.Ws. Nos. 1 and 2. Plaintiff Witness No. 2, is no doubt interested in the minor plaintiff, being the grandfather of the minor's mother. But having regard to the fact that these statements are openly made in a registered document and spoken to by P.Ws. Nos. 1 and 2, there is no reason to doubt the truth of those recitals.

2. Under the Hindu Law, the only course open to those interested in the minor members of a joint family, if they wish to protect these members from the misdeeds of the father or elder member, is either to bring about a partition or to get a release from the misbehaving elder member on paying him a certain amount. Such transactions are no doubt open to attack by the creditors of the person so cut off from the family, and creditors are justified in insisting that such transactions should be carefully scrutinised. But in the circumstances appearing

in this case, we have no reason to think that Ex. A. was either a sham transaction or a dishonest transaction in the sense that its main purpose was to cheat creditors. Its main purpose undoubtedly was to put beyond the power of the second defendant, as far as was possible under the law to endanger his minor son's interests in the family property. The learned Judge has pointed to certain defects in the way in which the second defendant's share in the family has been arrived at in Ex. A., and we are not prepared to say that those criticisms of the learned Judge are not well-founded; but they will only justify the conclusion that to the extent to which the second defendant parted with his share for a sum of Rs. 5,000, the transaction cannot be held binding upon the creditors. That is not the same thing as saying that the release is wholly inoperative or that it is not a bona fide arrangement or that even after that date, the second defendant must be regarded as continuing in a state of non-division with his minor son so as to make the minor son liable for the debts contracted after that date, or so as to make the minor's share liable to be proceeded, against in execution of decrees in suits to which he has not been made a party.

3. The Full Bench decision in K.R. Subramania Aiyar and Others Vs. Sabapathi Aiyar and Another, has no doubt established that even after partition the son could be proceeded against, by way of suit, in respect of debts incurred by the father prior to partition. But we do not agree with the learned Subordinate Judge that even after the son and the father have ceased to be undivided, the son's share could be proceeded against in execution, on a decree obtained against the father alone after the division.

4. In this view, we must allow the appeal so far as the second appellant's one-fourth share in the family properties is concerned. To that extent we must set aside the order in the claim proceeding. The parties will bear their own costs both here and in the Court below.