

**Subramaniyayyan Vs. Subramaniyayyan**

**Subramaniyayyan Vs. Subramaniyayyan**

**SooperKanoon Citation :** [sooperkanoon.com/776138](http://sooperkanoon.com/776138)

**Court :** Chennai

**Decided On :** Feb-20-1882

**Reported in :** (1882)ILR5Mad125

**Judge :** Charles A. Turner, Kt., C.J., ;Innes, ;Kernan, ;Kindersley and ;Muttusami Ayyar, JJ.

**Appellant :** Subramaniyayyan

**Respondent :** Subramaniyayyan

**Judgement :**

Charles A. Turner, Kt., C.J.

1. The facts of the case so far as they are material to the decision of this appeal are as follow:

2. Ramayyan, respondent's father, and Setuvayyan owned a house, and the site on which it stood, in moieties.

3. Ramayyan mortgaged his moiety to Saminadhayyan. It is not alleged nor proved that the mortgage debt was contracted for an [126] immoral or illegal purpose. It does not clearly appear whether Sundarappayyan, elder son of Ramayyan, joined with his father in the execution of the original mortgage, but after his father's death, when he was managing the property during the minority of his younger brother the respondent, he executed a mortgage in renewal of the

original mortgage.

4. Saminadhayan brought a suit to enforce this second mortgage and obtained a decree in 1873 in execution of which the property was sold and purchased by him. In 1875 he sold the moiety of the property to Subramaniyayan (appellant).

5. The respondent claims to recover a one-half share in the moiety.

6. It was decided by the Judicial Committee in Hunoomanpersaud Panday v. Massumat Babooee Munraj Koonweree 6 M.I.A. 421 that ancestral estate may be charged by a manager to satisfy a father's debt, and that the charge binds the interest of a minor son. This doctrine has been affirmed by their Lordships in recent decisions which, we have held, constrain the Courts of this Presidency equally with the Courts of other parts of British India administering the law of the Mitakshara.

7. It must then be held that the respondent's interest, as well as that of his brother was bound by the mortgage. But the decree which the Court passed for the enforcement of the mortgage cannot be held binding on the respondent, and the sale operated on the interest only of the party to the suit. The respondent is entitled in respect of his interest in the property to be restored to the position in which he would have been had the decree not been passed nor the sale held. He would have taken his share, if he had demanded partition burdened with\* the obligation of one moiety of the mortgage debt. Before he can recover his one-fourth share he must discharge his moiety of the obligation with interest, but the auction purchaser is accountable to him for his share of mesne profits.

8. I would, therefore, allow the appeal in part, and modify the decree of the Lower Appellate Court. Each party should recover proportionate costs in all Courts.

Innes, J. (Muttusami Ayyar, J., concurring)

9. This was a partition suit. Plaintiff (respondent) sues to recover from his brother, first defendant, in a partition of the family property (first) one-fourth of a house, the half of which had been the property of their father, and (second) half of the mortgage amount advanced by their father to his brother Setuvayyan on the other

moiety of the house, and (third) the value of building materials removed by second defendant (appellant).

10. Second defendant answered that he was assignee of the mortgagor, Setuvayyan, and that as regards the other half of the house, in which plaintiff claimed his share, he had purchased it of Saminadhayyan, who had purchased it at a Court auction in execution of a decree obtained by Saminadhayyan against first defendant in Original Suit No. 272 of 1873 for a debt incurred for proper family purposes.

11. The District Munsif at first gave judgment for plaintiff for one-fourth of the house and its materials, or their value, Rs. 38-8-0, and dismissed the rest of the claim; but, on review, dismissed plaintiff's claim altogether, on the ground that the mortgage on which the decree passed was executed by first defendant to discharge a prior mortgage made by the father of himself and plaintiff while plaintiff was a minor.

12. The Subordinate Judge, on the authority of the case of Deendyal Lal v. Jugdeep Narain Singh L.R. 4 IndAp 247 gave judgment for plaintiff for his share of the house and the building materials removed by second defendant, without finding the character of the mortgage or whether it was executed to discharge a prior mortgage debt executed by the father.

13. In the second appeal it was contended that plaintiff's suit should have been dismissed, because the debt was due by all the members of the family and is binding on the plaintiff, because this question was not considered by the Lower Appellate Court, and because the plaintiff's suit is fraudulent.

14. This is not a case in which the doctrine laid down in Girdharee Lall v. Kantoo Lall L.R. 1 IndAp 321 of the pious duty of a son to pay all debts of his father, which were not immorally contracted, comes in question. We have to deal here with the question of the effect of a sale to a person who purchased from one who had become a purchaser at a Court-sale held in execution of his decree obtained against the first defendant alone, first defendant being the brother of the plaintiff.

15. The first defendant, though manager, had only a qualified power of dealing with the property except for family purposes. For his own purposes, he could only alienate or charge it to the extent of his own interest. See as to this Virasami Gramini v. Ayyasami Gramini 1 M.H.C.R. 471 Palanivelappa Kaundan v. Mannaru Naikan 2 M.H.C.R. 416 Raycharlu v. Venkataramaniah 4 M.H.C.R. 60. As to what alienations may be impeached by coparceners according to the law current in Madras, see the Privy Council decision in Suraj Bunsu Koer v. Sheo Proshad Singh L.R. 6 IndAp 88 and unless the suit is so framed as to enable those interested to contest the allegation that the debt is one binding upon the family, the decree can only be a personal decree binding the interest of the defendant in the suit.

16. Saminadhayan, the creditor, sued first defendant personally and obtained a decree against the hypothecated property.

17. It would be strange and novel to find that a decree, by reason of the terms in which it was drawn up, to the effect that the 'property' should be sold, could affect the interests of parties other than those made liable by the decree. But it was argued before us that we should look not to the decree or to the capacity in which first defendant was sued, but to the nature of the transaction. If the debt was incurred for family purposes, and one who is the managing member was sued personally upon the obligation, all the members of the family, it was said, are liable.

18. But if Saminadhayan elected to enforce his remedy against first defendant alone, plaintiff was not bound to come forward and ask to be made a party and to be allowed to take part in the liability upon the bond. The decree being a decree against first defendant alone, all that passed by the sale in execution was the interest of first defendant, and that is all that Saminadahyyan, the purchaser at the Court-sale, had to sell to second defendant by private sale.

19. Samindhayan purchased at the Court-sale an equity to at partition and allotment to him of the share of the first defendant, and this is what he sold to second defendant.

20. Second defendant maintains that he is bona fide purchaser for value without notice, and, as such, ought to be protected. This contention wrongly assumes that his vendor was in a position to convey and did convey to him more than the share or interest of [129] first defendant. But the share or interest of first defendant was all that the sale under the decree could possibly give him. Assuming, however, that the sale purported to be a sale of plaintiff's interest also, that circumstance ought not, in my opinion, to prevent plaintiff from recovering.

21. Deceit on the part of plaintiff or gross negligence which may have misled the purchaser would properly be held to estop him in the present case, if it were disclosed by the evidence. But nothing of the kind has been set up or established. Only now for the first time in second appeal is fraud alleged. Second defendant did not, in his written statement, advance any plea of that nature, and we ought not at this stage to re-open the inquiry upon an allegation which should have been clearly insisted upon at the first hearing.

22. I would dismiss the second appeal with costs.

**Kernan, J.**

23. I agree with the Chief Justice in holding that the plaintiff was not bound by the sale to the auction-purchaser, and I also agree with him in holding that the plaintiff in recovering his half is bound to pay half of the debt due by his father and for which plaintiff's brother gave the mortgage. I also agree as to mesne profits.

Kindersley, J.

24. It appears to me that while Sundarappayan, Ramayyan's elder son, may probably have had power to mortgage his younger brother the plaintiff's interest on account of the father's debt, yet, as Saminadhayyan, the plaintiff in Original Suit No. 272 of 1873 on the file of the Mannargudi District Munsif's Court, omitted to make the plaintiff a party to the suit which he brought upon the mortgage, the plaintiff's interest was not included in the decree and his interest did not pass to the purchaser. It seems to follow that the plaintiff may recover from the vendee of the purchaser without payment of his share of the mortgage amount.

25. Decree.--Appeal dismissed with costs.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**