

Veeri Chettiar and ors. Vs. Karion Chettiar and ors.

Veeri Chettiar and ors. Vs. Karion Chettiar and ors.

SooperKanoon Citation : sooperkanoon.com/787070

Court : Chennai

Decided On : Jul-22-1952

Reported in : AIR1953Mad240; (1952)2MLJ584

Judge : Chandra Reddi, J.

Acts : Hindu Law

Appeal No. : Second Appeal No. 2253 of 1948

Appellant : Veeri Chettiar and ors.

Respondent : Karion Chettiar and ors.

Advocate for Def. : K. Veeraswami and ;C.N. Pattabhiraman, Advs.

Advocate for Pet/Ap. : S. Ramachandra Aiyar, Adv.

Disposition : Appeal dismissed

Judgement :

Chandra Reddi, J.

1. Defendants 1 to 4 are the appellants. The plaintiff filed the suit for partition of the joint family properties of himself and defendants 1 to 6, defendants 1, 5 and 6 being his brothers and defendants 2 to 4 being the sons of a deceased brother of his, who died even during the lifetime of their father, Peddi Chetti. The joint family

properties consisted of 76 acres of land, two houses and vacant sites. In 1329, a creditor of the plaintiff filed a small cause suit, obtained a decree and brought his share of the joint family properties to sale in execution of the decree. The decree-holder himself purchased the share and obtained symbolical delivery of the same. Shortly thereafter, Peddi Chetti, as manager of the joint family, obtained a release of it from the auction purchaser on payment of Rs. 300 as seen from Ex. B. 1 dated 13-9-1933. Peddi Chetti seems to have died in or about 1937 and the members of the family seem to have continued as a joint family. Later on, the defendants denied a share to the plaintiff in the joint family properties on the ground that, by reason of the sale of his share in execution of the small cause decree, he ceased to have any interest therein. This led the plaintiff to bring the present suit.

2. The defence to the suit was that there was a partition in 1934 at which the family properties were divided between Peddi Chetti and his other sons excluding the plaintiff and that the plaintiff was not given any share in the family properties owing to his having lost all interest therein by virtue of the sale of his share in execution of the small cause decree.

3. The trial court decreed the plaintiff's claim only for a $\frac{1}{25}$ th share in the joint family properties on the ground that the release of the plaintiff's share by the auction-purchaser was only for the benefit of Peddi Cetti and, therefore, the plaintiff was entitled only to a $\frac{1}{5}$ th share in that property after the death of Peddi Chetti. On appeal, the District Judge reversed the decree of the trial court in the view that the release under Ex. B. 1 was for the benefit of the whole joint family. The defendants, who are aggrieved by that decision, have preferred this second appeal.

4. In support of this appeal, various contentions were raised by Mr. Ramachandra Aiyar, the chief of which is that the repurchase or release of the plaintiff's share under Ex. B. 1 was only for the benefit of the non-alienating members and, therefore, the plaintiff would not be entitled to a $\frac{1}{5}$ th share in the whole joint family properties but only to a $\frac{1}{5}$ th share in the share of the father. I do not think that there is much substance in this contention. It cannot be disputed that despite

the sale of the undivided share of the plaintiff In the joint family properties, the plaintiff continued to be a member thereof, because the alienation of the undivided share of a member of a joint family does not bring about a disruption in the family. The result is that the sale does not make any difference so far as the status of the plaintiff as a member of the joint family is concerned. That being so, the repurchase of the plaintiff's undivided share by the family cannot be said to be only for the benefit of the non-alienating members, unless it is proved to be so with reference to the terms of the document. Ex. B. 1 read in the light of the recitals in the other relevant documents, shows that the acquisition was for the benefit of the whole family and not for the benefit of non-alienating members or only for the benefit of the father. Hence, there is no reason why the plaintiff should be excluded from a share in the joint family properties. In this view, I must say that the judgment of the lower appellate court that the plaintiff is entitled to a 1/5th share in the joint family properties is correct and cannot be successfully challenged.

5. But in allotting 1/5th share in the joint family properties to the plaintiff, the lower appellate court should have debited the plaintiff with the sum of Rs. 300 paid by the joint family for the purpose of getting back the share of the plaintiff.

6. Mr. Viraswami strenuously argued that the other members of the family are not entitled to ask that this sum of Rs. 300 should be debited to the share of the plaintiff. This objection can be answered by referring to a passage in Mayne's Hindu Law and Usage (11th Edn.) page 516 :

'Where advances are made to any member for his separate and exclusive purpose for which he would have no right whatever to call upon the family purse, or to discharge his own personal debts, contracted for his own exclusive benefit without the authority of the other members and there is no intention of making a present of them to him, the moneys advanced might be treated as joint family funds in his hands which are to be brought into the hotchpot at the division.'

There is no suggestion that the debt incurred was not for the separate and exclusive purpose of the plaintiff for which he could not legitimately have a charge upon the joint family purse. In these circumstances, the plaintiff is certainly liable to be debited with the money spent on his behalf for the purpose of getting back his

share in the joint family property. It follows that the plaintiff will be entitled to 1/5th share in the family properties subject to this liability.

7. With this modification, the second appeal is dismissed. The plaintiff will get 2/3rds of his costs throughout.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com