

P. Kuthatinga Mudaliar Vs. M.N. Shanmuga Mudaliar and ors.

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Court : Chennai

Decided On : Oct-23-1925

Reported in : (1926)50MLJ234

Appellant : P. Kuthatinga Mudaliar

Respondent : M.N. Shanmuga Mudaliar and ors.

Judgement :

Devadoss, J.

1. The only point in this appeal is whether the sale should be upheld in view of the findings of fact of the learned Subordinate Judge. He has found that out of the consideration of Rs. 600, Rs. 300 went towards discharging the debts binding on the reversioner and the other Rs. 300 was for the maintenance of the 2nd defendant. The 2nd defendant, who is a widow, was unable to maintain herself out of the income of her husband's property, which consisted only of the plaint house, and was obliged to borrow. It has been proved satisfactorily and has been found by the Judge that she did incur a debt of Rs. 300 in order to maintain herself: The property left by the husband was only a house which produced no income. She had to sell the house for the purpose of paying off the debt already incurred and for maintaining herself. It is not suggested that the house was worth more than Rs. 600 paid by the plaintiff for the sale. The Subordinate Judge has set aside the sale of the property with regard to a half and has upheld the sale as regards the other

half. It is difficult to see how a house like this could be divided into two halves. No doubt if the house can be divided into two halves it might be said that his order is sustainable. But this being a small house in a town and in the absence of any evidence that the house could be divided into two equal moieties and that the two moieties could be conveniently enjoyed, such a decree cannot be said to be correct.

2. The question is whether the sale of the property should be upheld or not. The Subordinate Judge seems to think that a widow cannot alienate property for future maintenance. It is well settled that a widow can alienate her husband's property for paying off the debts incurred for her own maintenance. The question is whether she can do so for future maintenance? There is no hard and fast rule that a widow cannot alienate property for future maintenance. Each case would depend upon its circumstances. In this case there is no other property and the only property is not capable of yielding any appreciable income. I do not see why the widow should starve herself in order to benefit the reversioners. It is admitted by the plaintiff that the widow (2nd defendant) is living by begging. If that is so, there is every reason why she should find means to support herself by selling the only property that descended to her from her husband. No doubt if there are other properties from which she, could get some income it may be said that she is not justified in selling the house. Where land of considerable extent is sold and only a part of the consideration is found to be binding on the reversioner, it may be a question for the Court whether a portion of the land should be taken by the alienee and the rest should be released from the sale. But in a case like this I see no reason why in order to benefit the reversioner the widow should be prevented from selling the property and maintaining herself from the proceeds of the sale. As I have already observed, it is not suggested that the sale is not a bona fide one. On the other hand it is clear that Rs. 600 was paid in cash before the Sub-Registrar, half of which went towards liquidating the debt incurred for maintenance and the other half was kept for maintaining herself with. It is unnecessary to discuss this point at any length as I am quite satisfied that in this case the widow had no other means of maintaining herself than by selling the only property that descended to her.

3. Mr. Ramaswami Aiyar referred to *Naman Mal v Har Bhagwan* (1921) 2 Lab 357 in support of his contention that the sale should be upheld. In that case the learned Judges held that the proposition that a widow cannot anticipate personal necessity is not an inflexible rule. In *Kulak Chandra Das v. Kula Chandra Das* (1918) 46 IC 169 a Bench of the Calcutta High Court held that a widow need not borrow at an usurious rate of interest for maintaining herself and then allow the property to be sold by the creditor by bringing a suit against her. I think that a widow borrowing in order to maintain herself and then allowing the property of her husband to be sold for the debt incurred by her for maintenance would not be in the interests of the reversioners, for the interest and the costs would amount to a large amount and a prudent person would rather sell the property and get ready cash than borrow at an usurious rate of interest and then allow the creditor to file a suit and bring the property to sale and thereby cause loss to the reversioners. The same principle has been laid down in *Kannan Chetty v. Amirthammal* (1914) 1 LW 877 and *Bal Krishna Das v. Hira Lal* ILR (1918) All 338 On the other side I am referred to the decision in *Appajee Panthulu v. Ramacharlu* (1910) 9 MLT 307 as supporting the contention of the respondent that the sale should be set aside inasmuch as a portion of the consideration was for maintenance. On a perusal of the case I am unable to find that any principle was laid down in that case. The learned Judges found that considerable suspicion attached to the transaction and in the circumstances they set aside the alienation by the widow. There was no question of the maintenance of the widow in that case. A widow is entitled to live by selling the property of the husband if there is no other means available for her maintenance. As I have already observed no widow is bound to starve herself or die in order to benefit the reversioners. Such a proposition would be monstrous and opposed to all principles of Hindu Law. *Dhondhia v. Hekayet Pandey* (1918) 49 IC 841 and *Paparayadu v. Rattamma* (1912) 24 MLJ62 do not apply to the facts of the present case. No, doubt, if the sale is not found to be a bona fide sale, the plaintiff would be entitled to have it set aside. But in this case I am quite satisfied that the proper decree would be to allow the sale to stand inasmuch as the transaction was a bona fide one and the consideration was for the purposes which could bind the reversioners.

4. I allow the appeal and dismiss the plaintiff's suit with costs throughout.

5. The Memorandum of Objections is dismissed. No costs.

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