

Devarandi Chettiar Vs. Sivasubramania Chettiar and ors.

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Court : Chennai

Decided On : Nov-09-1945

Reported in : AIR1946Mad307; (1946)1MLJ86

Appellant : Devarandi Chettiar

Respondent : Sivasubramania Chettiar and ors.

Judgement :

Somayya, J.

1. This second appeal arises out of a suit filed on a mortgage deed executed by the first defendant's mother as his guardian for a sum of Rs. 1,500. The mortgage was executed on 19th November, 1933 and the suit was filed in 1941. The interest provided in the document was 18 per cent, simple and in default of regular payment of interest year after year, compound interest was payable at the same rate at 18 per cent. The mortgagee was the first defendant's mother's sister's husband who, it is said, was living next door to the mother. The defence is that there was no consideration for the mortgage and that even otherwise it was not binding on the minor. The document recites that there were two prior promissory notes, under which the mother had borrowed Rs. 300 on 24th September, 1932 and Rs. 500 on 7th June, 1933, that a sum of Rs. 900 was found due on those two documents on the date of the mortgage and that there was a further cash advance of Rs. 600 on that date. Undoubtedly, it is upon the mortgagee to prove the

necessity for the debt. The trial Court has found that there was no necessity and no consideration even and dismissed the suit. On appeal, the learned District Judge has taken the view that where the mother of a minor executes a mortgage, we must presume that it was for necessity as the mother would not act against her son's interest and has written several long paragraphs as to what he considers would be the natural conduct of a mother or of a father. Then he refers to the observations of their Lordships of the Privy Council in *Hunoomanpersaud Panday v. Mst. Babooee Munraj Kooriwerree* (1856) 6 M.I.A. 393 about the representations made by a guardian, bonafide belief on the part of the lender and so on. Even in cases where the father or the mother of a minor executes a mortgage, there is no onus on the part of the minor to prove that the father or the mother was a reckless or careless person, or that there was ill-feeling between himself and the parent, or any other circumstances to justify an inference that the guardian was acting against the minor. I have not been referred to any authority which lays such a duty on the minor. Undoubtedly, it is the duty of a creditor who seeks a decree against the minor's estate to prove both consideration and actual necessity. In case where the lender is a stranger who may not know the circumstances of the family, representations made by the guardian may, in some cases, even without independent enquiries, be enough to support the transaction if the alienee acted bona fide and in good faith, i.e., if he believed the representations of the guardian and if there was no call to make independent enquiries. But here is a case of the mother's sister's husband who is said to have advanced all the monies--in 1932 a sum of Rs. 300; the very next year another sum of Rs. 500 on 7th June, 1933; and within 5 1/2 months there is the mortgage with a further cash advance of Rs. 600. It is admitted and indeed it is the case of the mortgagee that the minor's mother was living next door to him at Coimbatore looking after the education of her sons. This is not a case in which it can possibly be said that the alienee is a person who believed the representations of the guardian and in good faith acted upon such representations. He must have known all the circumstances of the family and it is ridiculous to say that the test to be applied to a bona fide alienee could be applied to this case. In this case he must prove both consideration and necessity. I do not wish to deal with the case further as I am sending the case back for fresh disposal. The decree of the lower appellate Court is reversed and the appeal is sent back

for proper disposal in the light of the observations made above. The appellate Court will proceed upon the footing that the mortgagee cannot support his mortgage on the theory of being a bonafide lender and that he must prove actual necessity. The fact that the mother was the guardian who executed the document is not a relevant consideration and there is no duty on the part of the minor to prove that there was ever ill-feeling between himself and his mother or that his mother was a reckless or careless person.

2. Court-fee paid on the memorandum of the second appeal shall be refunded. Other costs shall abide and be provided for in the revised decree of the lower appellate Court.

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