

K. Ananthachariar Vs. Rangachariar and ors.

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Court : Chennai

Decided On : Mar-29-1926

Reported in : AIR1927Mad209

Appellant : K. Ananthachariar

Respondent : Rangachariar and ors.

Judgement :

1. The plaintiff-appellant sues to set aside the mortgage-decree obtained against his father, his uncle and himself as minor and several others and all subsequent proceedings in execution of that decree, and to recover his one-fourth share in the properties. His suit has been dismissed by the Subordinate Judge on the ground that there are no allegations in the plaint entitling the plaintiff to contend that the appointment of the 13th defendant as his guardian ad litem was bad ab initio and that he was not properly represented in the suit. On this finding, it was held that Section 47 was applicable to this suit and any application under that section was barred by limitation.

2. It is now contended in appeal that both these findings are wrong and that on the allegations in the plaint a sufficient case has been made out for further enquiry. It appears that the 13th defendant who is a High Court vakil was appointed guardian ad litem of the appellant at the instance of the plaintiffs in the mortgage-suit. The fraud is said to have commenced in that they contrived to get this High Court vakil appointed as guardian ad litem and that the High Court vakil is a close relation of

the plaintiffs. It is not alleged that the plaintiffs in that suit suppressed this fact of relationship, and consequently, there is no definite allegation of fraud.

3. As regards the subsequent acts of fraud alleged on behalf of the guardian, it is merely stated that the guardian failed to defend the suit. No presumption of fraud can be drawn from that especially as the parties mainly concerned in the suit did not choose to defend it, either. It is alleged also that the guardian purchased some of the properties on his own behalf in Court-auction and that, therefore, he must be deemed to be fraudulent. The whole of the plaint is based on so-called presumptions from certain facts, but inasmuch as those facts do not necessarily entail any such presumption at all, the whole of the allegations must be held to be too vague to constitute a specific charge of fraud. If there was no fraud in the appointment of the guardian, he was validly appointed by the Court and the minor was duly represented in the suit. The minor was, therefore, a party to the decree rightly passed and any action that he takes to set aside that decree or to invalidate the proceedings taken in execution of it must be taken under Section 47 of the Civil P. C. If this is treated as an application under Section 47, it is clearly barred by limitation.

4. It is then contended that so far as one portion of the plaint is concerned, Section 47 will not apply, and that is the allegation that, after the guardian had purchased the properties in Court auction, he resold properties which were not included in the Court-sale. It is admitted that the mortgaged properties were all sold and that these properties which were said not to have been included in the Court-sale are mortgaged properties. It was, therefore, incumbent upon the plaintiff to prove that the properties sold by the guardian were not those purchased by him, and this he should have proved in order to show that the application did not come under Section 47 and was, therefore, not barred by time. The limitation issue and another were both tried together as preliminary issues. The plaintiff failed to adduce any evidence at all on these issues. It must, therefore, be presumed that when the mortgaged properties were sold by the Court they were properly sold and that, when the guardian re-sold the same properties, he was justified in doing so. The argument that has been addressed as to whether the guardian was justified in purchasing the properties of the minor in Court-auction does not arise

because the application is barred by limitation.

5. The appeal is, therefore, dismissed with costs. The appellant will have to repay, to Government the costs of the stamp on the appeal memorandum.

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