

Sreenivasan and ors. Vs. Rangachari and ors.

Sreenivasan and ors. Vs. Rangachari and ors.

SooperKanoon Citation : sooperkanoon.com/808073

Court : Chennai

Decided On : Jan-12-1953

Reported in : AIR1953Mad815; (1953)1MLJ595

Judge : Satyanarayana Rao and ;Balakrishna Aiyar, JJ.

Acts : Hindu Law; [Code of Civil Procedure \(CPC\) , 1908](#) - Order 21, Rule 94

Appeal No. : Appeal No. 599 of 1949

Appellant : Sreenivasan and ors.

Respondent : Rangachari and ors.

Advocate for Def. : S.V. Rama Iyengar, ;P.S. Srinivasa Desikar, ;D. Ramaswami Iyengar, ;P.R. Varadarajan, ;K. Kalyanasundaram, ;T.K. Sundarachari and ;K. Satyanarayana, Advs.

Advocate for Pet/Ap. : N.R. Raghavachari, Adv.

Disposition : Appeal dismissed

Judgement :

Satyanarayana Rao, J.

1. The plaintiffs are the appellants and are the sons of defendant 1 by his second wife. Defendants 2 and 3 are his sons by his first wife. There is another son

Aravamudha Aiyangar, who is not made a party to the suit. In 1931, defendant 1 purchased an extent of 73 cents of property for a sum of Rs. 1,000. He paid cash in part and for the balance executed a promissory note in favour of the vendor for a sum of Rs. 570 on the date of the sale. The vendor, in his turn, endorsed over the promissory note to defendant 4, one Srinivasachari. The father failed to pay the debt with the result that Srinivasachari, defendant 4, instituted a suit on the promissory note O. S. No. 31 of 1934, District Munsif's Court, Arni and obtained a decree against the father. As he was only an endorsee of the promissory note and was not an assignee of the debt as well, he could not under law implead the sons also as parties to the action and obtain a decree on the debt against the sons. In due course, the decree was put into execution and items 15 to 56 of the plaint schedule properties were sold for a sum of Rs. 1501 and the decree-holder himself purchased the property. The sale was on 16-9-1935 and there was also delivery of possession of the property on 17-2-1938. The purchaser, in his turn, made various alienations, the details of which are not material for the disposal of this appeal. The second wife's sons of defendant 1 instituted the present suit for partition of the family properties and in this suit included also the items, which were sold in execution of the decree in O. S. No. 31 of 1934 and claimed partition and separate possession of these items also on the ground that the sale did not affect their interest in the properties. There were also other contentions raised in the suit but we are not now concerned with them in this appeal. The lower Court held that the court sale conveyed not only the interest of the father, who was the judgment-debtor, but also the shares of the sons to the purchaser; in other words, it was held that what was sold was the property itself and not merely the right, title and interest of the judgment-debtor. In the result) he negatived the claim of the plaintiffs for a share in items 15 to 56 of the plaint schedule in the possession of defendants 4 to 24. The appeal by the plaintiffs is, therefore, confined to the question whether the decision of the trial Court excluding items 15 to 56 from partition was correct or not.

2. The learned Advocate for the appellants raised two contentions. In the first place, he urged that as in a suit by an endorsee of a promissory note against a maker, the sons of the maker could not be impleaded as parties to the action and no decree could be passed against them on the debt, the shares of the sons could

not be seized in execution of the decree so obtained against the father alone in enforcement of the pious obligation, of the sons under Hindu law. For this contention, however, the learned counsel was not able to cite any authority. It is no doubt true, as held by the Pull Bench in--'Marutha Muthu Naicker v. Kadir Badsha Rowther', AIR 1938 Mad 377 (A) that no decree in such a suit could be made against the sons as the plaintiff, who is an endorsee of the promissory note, was not the assignee of the debt in respect of which the pious obligation of the sons would attach, but the decree against the father, the maker, itself constitutes a debt which could be enforced in execution against the shares of the sons as well by reason of the pious obligation of the son to discharge the antecedent debts of the father not tainted with illegality or immorality. If the sons are impleaded in the execution proceedings, it would be perfectly open to them to establish, if they can, that the debt was such as would not bind their shares. If they were not however impleaded, it is open to them in an independent suit to have the sale to the extent of their shares set aside on the ground that the debt was not one which would bind their interest in the property. In this case, no question of illegality or immorality of the debt arises as the debt was not attacked by the sons on that footing. The only question, therefore, is whether in execution of the decree against the father, the sons' shares also could be sold or not. As pointed out by Bhashyam Aiyangar J. in -- 'Periasami Mudaliar v. Seetharama Chettiar', 27 Madras 243 (B), the decree itself is a debt and as it is not tainted with illegality or immorality, it could be enforced in execution against the shares of the sons as well.

3. The second aspect of the case is that the court sale did not pass in fact the interest of the sons to the purchaser. It is one thing no doubt to say that the Court has got a wider power of selling not only the father's share but also the shares of the sons and it is a totally different thing to decide whether, in fact, what was sold was the smaller interest or the entire property. That would depend upon, as pointed out repeatedly by the Privy Council, as to what was intended to be sold and what was in fact brought to sale. No such contention seems to have been raised in the plaint by the plaintiffs-appellants and it is perhaps for that reason that no material has been place_d before the Court such as the sale proclamation etc. to consider whether what was sold was the property itself or only the right, title and interest of the judgment-debtor. There is the sale certificate, Ex. B-3 which

however states that what was sold was the property described in the schedule. It does not state that what was sold was only the right, title and interest of the judgment-debtor. The decision of the Privy Council in -- 'Simbunatha Pande v. Golap Singh', 14 Cal 572 (C) to which our attention was drawn by the learned . counsel for the appellants was clearly a case in which from the beginning the interest of the judgment-debtor alone was intended to be sold by the Court. The specification of the property, as stated in the judgment, was the right and interest of the judgment-debtor in a four anna share out of 16 annas of mehal kindwar. It is an obvious case in which the property that was sold was only the right, title and interest of the judgment-debtor and no more. That is not the case in the present action. Even the meagre material that is available to us shows that the property itself was sold.

4. For these reasons, we are in entire agreement with the view taken by the lower Court and affirm the decision and dismiss the appeal with costs.

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