

In Re: Krishnasawmi Doss

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SooperKanoon Citation : sooperkanoon.com/821708

Court : Chennai

Decided On : Jan-25-1912

Reported in : 13Ind.Cas.648

Judge : Sundara Aiyar, J.

Appellant : In Re: Krishnasawmi Doss

Judgement :

Sundara Aiyar, J.

1. I am of opinion that there is no ground for interference in second appeal. The plaintiffs purchased certain lands from the 2nd defendant, one of the two members of an undivided family consisting of the 2nd defendant and his father, the 1st defendant. Before the sale to the plaintiff, the father had sold the lands to the 3rd defendant. The plaintiffs sued to enforce his sale of the son's half share and contended that the sale to the 3rd defendant by the father was not binding on the son. The son did not appear. The question decided by both Courts was, whether the previous sale by the father to the 3rd defendant was binding on the son, in which case the sale in favour of plaintiff could not be given effect to.

2. Both Courts have held that the sale is not binding on the son. The allegation of the 1st defendant, the father, in his written statement, was that, being old, he found it difficult to cultivate the lands and sustained loss in consequence, and that he sold them to meet family debts and to pay up some antecedent debts. His

written statement itself is not before me, but what I have stated above appears from the summary in paragraph 6 of the judgment of the Munsif. It is not stated that there are any further material allegations in it. The 3rd defendant, the vendee from the father, alleged that the sale was effected for justifiable purposes and for meeting family necessity. The material issue relating to this question as in these terms: 'Whether the sale-deed, relied on by the 3rd defendant, is true and whether it would defeat the plaintiff's claim....' The facts found are that a portion of the purchase-money was used for paying up certain debts and the remainder was invested in the purchase of certain lands situate in the village where the 1st defendant's son-in-law was living, and, it is stated, that the 1st defendant hoped that this would make the management of his property easier. The Munsif held that a Hindu father has no right to sell ancestral lands for buying other lands, even supposing that the lands so bought were of equal value with those sold away and even though a Court might hold that the sale was, from a pecuniary point of view, beneficial to the family. The District Judge is also of opinion that the sale in this case would not come within the rate which justifies alienations for necessity. He seems to distinguish the case of an exchange from one in which family land is sold for buying other land. I find it difficult to agree in the view that there is any distinction between the two classes of cases. He observes that it is not proved that the lands newly purchased were of equal value with those sold away. It is strongly contended that a father would be entitled to sell family land, if the object of doing so is to purchase other land which would not injuriously affect the interests of the other members of the family and might be more convenient for purposes of management. It may be that the rule relating to the powers of a father or other manager of a Hindu family to alienate immoveable property belonging to it has sometimes been enunciated in too strict terms. Expressions are to be found in reported cases that there must be actual necessity. It may be that if a sale is positively beneficial to the family, it may be supported as against the other members of the family, and that mere sentimental considerations against the alienation of ancestral property may not entitle them to set aside a sale. And it may be that the question would be more aptly expressed by putting it in the form whether the sale was a proper and reasonable act, instead of 'whether it was necessary.' The propriety and reasonableness would, of course, be judged,

without ignoring the fact that the alienation is an absolute sale of family property. But where no necessity is established, it would lie on the alienee to show that, for some reason other than necessity, the alienation was, beyond doubt, a reasonable one not affecting the interests of the other members in any way. It must certainly be shown that the family would not lose by parting with ancestral lands and purchasing new lands. This would necessitate the giving of evidence to show that the new lands are at least not inferior in quality and value to the old lands. It may be open to the alienee to establish reasonableness by showing that, though the new lands are not superior in value to the old lands, the family would otherwise gain by the change. I should be unwilling to lay down any hard and fast rule and the reasonableness and validity of a sale of ancestral immoveable property should be determined by the Courts.

3. In this case, as already observed, neither the first nor the 3rd defendant pleaded any consideration which would induce the Court to support a sale, and no issue was framed to try any such question. Some evidence, it is stated, was adduced to show that the lands newly purchased were as valuable as those sold away. I am by no means sure that this circumstance would, by itself, be sufficient to support the sale. But it has to be remembered that no issue was framed to try that question, and I cannot assume that the plaintiff either adduced all his evidence on the question or would have felt bound to do so, having regard to the pleadings and the frame of the issues.

4. I must, therefore, hold that the judgment of the lower Appellate Court is right and dismiss this second appeal.