

R. Sudhakar and Others Vs. D. Ramaraja and Others

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Court : Karnataka

Decided On : Jun-21-2011

Judge : The Honorable Mr. Justice N.K. Patil & the Honorable Mr. Justice Arali Nagaraj

Appeal No. : RFA No. 2377 OF 2006 (PAR)

Appellant : R. Sudhakar and Others

Respondent : D. Ramaraja and Others

Advocate for Pet/Ap. : For the Petitioners: V. Javahar Babu, Advocate. For the Respondents: R2 - A. Venkatachalaiah, Sr. Counsel, R1 – Served.

Judgement :

1. This appeal is by plaintiff Nos.1 to 3 in O.S.No.7712/2004 on the file of the learned XVIII Addl. City Civil Judge (CCH-32) Bangalore City (hereinafter referred to as '**Trial Court**' for short). These appellant plaintiffs have challenged in this appeal the legality and correctness of the impugned Judgment and Decree dated 21.08.2006 passed in the said case declining to grant the second relief sought for in the said suit.

2. Stated in brief the **case of the plaintiffs** as averred in their plaint is as under:

(a) Plaintiff Nos.1 and 2 are the sons and plaintiff No.3 is the daughter of defendant No.1, Sri D.Ramaraju. Plaintiffs and first defendant constitute joint Hindu family.

Their family owns the house property bearing No.14/1, measuring East to West: 66 ft and North to South: 36.6 ft situate at 2nd Cross Road, Mission Road, Sampangirama Nagar, Bangalore-27, which is fully described as item No.1 in the schedule annexed to the plaint. It also owns another house property bearing No.8 measuring 42 ft. East to South and 45 ft. North to South, situate at the same place in Bangalore City. Plaintiffs and first defendant have been in joint possession and enjoyment of the said properties. Both the suit properties are ancestral properties of first defendant, the father of plaintiff Nos.1 to 3.

(b)First defendant has been in the habit of incurring 'Avyavaharika debts'. He has been leading an immoral life, being addicted to vices, such as consuming liquor. He is in the habit of executing several documents in favour of strangers.. Taking undue advantage of this weakness of the first defendant, some strangers have got bogus and fraudulent documents executed by him.

(c)On 02.09.2004 second defendant viz., the Syndicate Bank, Industrial Finance Branch, Manipal Centre, Dickenson Road, Bangalore affixed a notice under Section 13(2) of The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the 'Securitisation Act' for short) on the outer door of the residence of the plaintiffs, when first defendant was not in the house. The said notice revealed that first defendant stood as guarantor to one M/s. Anand Polytech (India) Pvt.Ltd. having its office at Deepanjalinagar, Mysore Road Cross, Bangalore. The plaintiffs came to know that first defendant has offered the suit schedule properties as security in favour of the second defendant-Bank for securing repayment of the loan availed by the said Company from the second defendant Bank.

(d)Immediately after coming to know of the same, the plaintiffs enquired with the second defendant. They further came to know that the first defendant had created equitable mortgage in favour of the 2nd defendant -Bank on the suit schedule properties by offering the same as security for securing the repayment of the loan of the said Company.

(e)Creation of the said mortgage on the suit schedule properties by the first defendant was not for family necessities or for discharging the debts of the family.

First defendant created the said mortgage for his immoral and illegal activities such as gambling, consumption of alcohol etc. By reason of his said vices, the first defendant neglected to maintain the plaintiffs and failed to provide them food and education.

(f) During second week of August 2004, the plaintiffs orally demanded first defendant that the suit properties be partitioned amongst plaintiffs and the first defendant, but he went on postponing the same.

(g) The second defendant-Bank has been making efforts to sell the suit properties for realization of the loan borrowed by the said M/s. Anand Polytech (India) Pvt. Ltd, by exercising its powers under Section 13 of the Securitisation Act. The plaintiffs are not liable to any amount to the second defendant-Bank and there is no privity of contract between the second defendant on the one side and the plaintiffs on the other.

(h) Therefore the plaintiffs pray for a decree for partition of $3/4^{\text{th}}$ share together in the suit schedule properties and also for a declaration that second defendant is not entitled to enforce any right in respect of the shares of the plaintiffs in the suit schedule properties.

3. First defendant, the father of plaintiff Nos.1 to 3, though appeared before the Trial Court through his counsel, **has not chosen to file any written statement** contesting the suit of the plaintiffs. It is only the second defendant-Bank which has filed its written statement contending as under:

(i) M/s. Anand Polytech (India) Pvt. Ltd. Availed loan from the second defendant-Bank. First defendant herein offered the suit schedule properties as security for securing the repayment of the said loan and accordingly, he created equitable mortgage by depositing the title deeds in respect of the suit schedule properties. The said borrower-Company committed default in repayment of the loan availed by it. Therefore the second defendant-Bank proceeded to recover the loan amount by invoking the provisions of the Securitisation Act.

(ii)As provided under Section 32 of the Securitisation Act, no suit or any other legal proceedings could be initiated against the defendant-Bank, the secured creditor, in respect of the said loan transaction. The plaintiffs herein, instead of approaching the Tribunal as provided under Section 17 of the Securitisation Act, have filed the present suit and therefore the suit is not maintainable.

(iii)Since the suit properties are standing in the name of guarantor viz., the first defendant B.Ramaraju, and he offered the same as security by creating equitable mortgage, the second defendant has rightly initiated action against him under the provisions of the Securitisation Act. The plaintiffs cannot object to the same by way of the present suit.

(iv)Mortgage on the said properties was created by the first defendant on 01.12.1998 **when all the plaintiffs were minor**. If at all the plaintiffs were aggrieved by the said mortgage, they ought to have questioned the same after they attaining the age of majority. Therefore the plaintiffs are not entitled to question the said mortgage by way of this suit.

(v)the allegations made by the plaintiffs against the first defendant, their father, as to his vices such as gambling, consumption of alcohol etc., are not within the knowledge of this second defendant. However, it is reliably learnt by this second defendant that first defendant has been leading quite a good life, engaged in his business and had been looking after the plaintiffs properly by providing them food, education etc. The present suit is filed by the plaintiffs in collusion with the first defendant with intent to defraud the second defendant-Bank and to deprive it of its legitimate claim to the suit properties.

4. Based on the above pleadings, the Trial Court framed following five issues:

S1.No.

Issues

1. Whether the plaintiffs prove that the suit property is the joint family property as pleaded?

2. Whether the plaintiffs prove that the mortgage created on 01.12.1998 by their father i.e., the 1st defendant as security for the loan is not binding on them?

3. Whether the suit is not maintainable in this court as contended?
4. Whether the plaintiffs are entitled to 3/4th share in the suit properties?
5. To what relief the plaintiffs are entitled?

5. Trial Court has not recorded its definite findings on each of the above issues. However, on appreciation of the oral evidence of PW1 R Sudhakar (plaintiff No.1), DW1 H Chami (an Officer of second defendant-Bank) and the documents at Exs.P1 to P6 and Exs.D1 to D5, the Trial Court, by its impugned Judgment and Decree, held that each of plaintiff Nos.1 to 3 is entitled to 1/4th share in the suit schedule properties, but subject to the mortgage created by the first defendant in favour of the second defendant-Bank. The Trial Court declined to grant the second relief of the plaintiffs that the second defendant-Bank is not entitled to enforce any right in respect of the shares of the plaintiffs in the suit properties. Therefore aggrieved by the second part of the decree, the plaintiffs have filed the present suit. However, either the first defendant, the father of the plaintiffs, or the second defendant- Bank has not filed any appeal aggrieved by the first part of the decree granting 1/4th share to each of plaintiff Nos.1 to 3 in the suit schedule properties subject to the said mortgage.

6. We have heard the arguments of Sri V.Javahar Babu, learned counsel for the appellant-plaintiffs and Sri A.Venkatachaliah, learned Senior Counsel appearing for the second respondent-defendant Bank. First respondent-defendant has remained absent in this appeal despite service of notice of this appeal on him. We have perused the impugned Judgment and Decree and also entire material found in the records obtained from the Trial Court.

7. Learned Counsel for the appellant-plaintiffs strongly contended that the first defendant, the father of plaintiff Nos.1 to 3, being Manager of the joint family did not have any right to create mortgage of the suit schedule properties in favour of the second defendant- Bank binding the shares of the plaintiffs and therefore the second defendant-Bank cannot be permitted to enforce the said mortgage in respect of shares of the plaintiffs in the suit properties and hence the Trial Court is not justified in declining to grant the second relief in favour of the plaintiffs that the

second defendant-Bank is not entitled to enforce any right in respect of the shares of the plaintiffs in the said properties. He further contended that there was no legal necessity for the family of the first defendant to create mortgage on the suit properties in favour of the second defendant for securing the repayment of loan availed by the said Company which is a total stranger to the joint family and in which, either the first defendant or the plaintiffs, did not have any interest and therefore, the said mortgage cannot be enforced by the second defendant-Bank against the shares of the plaintiffs therein.

8. Per contra, learned Senior Counsel appearing for the second respondent-Defendant-Bank strongly contended that there is no prohibition under Hindu law for the father of a joint family as its Manager to alienate the family property so as to bind the interests of his minor children either by creating a mortgage or by sale or in any other mode of alienation and therefore admittedly, since all the three plaintiffs were minors as on the date of creation of mortgage on the suit properties by the first defendant in favour of the second defendant-Bank, the plaintiffs cannot contend that their father had no right to create the mortgage in question. He further contended that though it is alleged by the plaintiffs in their plaint that, the first defendant, their father, was addicted to vices and was leading immoral life and therefore, he created the said mortgage for his illegal activities and as such the same is not binding on the plaintiffs, they have not adduced any evidence, oral or documentary, to substantiate the said allegations and therefore, the impugned Judgment and Decree does not call for any interference in the present appeal.

9. Having heard the arguments of learned Counsel for both the sides, the only point that arises for our consideration in this appeal is:

“Whether the Trial Court is not justified in declining to grant in favour of the plaintiffs their second prayer in the suit that the second defendant-Bank is not entitled to enforce any right in respect of the shares of the plaintiffs in the suit schedule properties?”

10. The following facts are not in dispute:

(i) The suit schedule properties are inherited by the first defendant, the father of plaintiff Nos.1 to 3, from his father i.e., the grandfather of the plaintiffs.

(ii) The plaintiff Nos.1 to 3 and the first defendant constitute Joint Hindu Family and the suit schedule properties are possessed and enjoyed jointly by all the members of the family.

(iii) The first defendant created mortgage in favour of the second defendant-Bank on 01.12.1998 by depositing the title deeds pertaining to the suit schedule properties. The said mortgage was created for offering the suit properties as security to the second defendant-Bank towards repayment of the loan availed from the said Bank by the said M/s.Anand Polytech (India) Pvt. Ltd. Bangalore, in which Company either the first defendant or any of the plaintiffs did not have any interest.

(iv) All the plaintiff Nos.1 to 3, were minors as on the date of creation of the said mortgage by their father i.e., first defendant in favour of the second defendant-Bank.

(v) None of the plaintiff Nos.1 to 3 challenged the said mortgage within the period of limitation after the attained the age of majority.

11. We have carefully read the evidence of PW1 who is none other than the first plaintiff. In his affidavit sworn to as his examination-in-chief, this PW1 has reiterated the very averments made in the plaint that first defendant, being Manager of the family, was addicted to vices like gambling, consuming liquor and has been leading immoral life and that, he created the said mortgage for his immoral and illegal activities, the plaintiffs have not placed on record any evidence either oral or documentary to substantiate the said allegations. On the other hand, he has admitted in his cross-examination that the house property at item No.2 in the schedule was built in the year 1995-96. Had the first defendant-father been addicted to such vices, it could not have been possible for him to construct the said house in the year 1995-96. PW1 has gone to the extent of making allegations against his father that he was not providing all his children (plaintiffs) food and education. It has come in the cross-examination of PW1 that his mother has been residing with him and the other two plaintiffs. If the said allegation were to be true,

nothing prevented these plaintiffs to get their mother examined to substantiate the same. Therefore, as rightly submitted by the learned Senior Counsel for the second defendant-Bank, the plaintiffs have failed to establish that the first defendant had been leading immoral life, was addicted by him cannot be held to be the one for 'Avyavaharika debt' so as to not bind the plaintiffs.

12. In support of his contentions that the first defendant had every authority and right to create the said mortgage in favour of the second defendant so as to bind the plaintiffs, who were undisputedly minors as on the date of creation of the mortgage, and therefore, in the absence of any proof that the first defendant was incurring 'Avyavaharika debts', the said mortgage has to be held binding on the plaintiffs, learned Senior Counsel representing the second defendant-Bank has placed his strong reliance on the following decisions:

1. **AIR 1951 Bom 1** (Lingbhat Tippanbhat Joshi and other Vs. Parappa Mallappa Ganiger and other)
2. **AIR 1970 Punjab and Haryana 67** (Hindustan Commercial Bank Ltd, Amritsar Vs. Sohanlal Gagu Mal and another)
3. **AIR 1979 Patna 151** (Prasanjit Mahtha Vs. United Commercial Bank)
4. **1966 (2) Mys.L.J.575** (A.Chinnaswamy Vs. S.Chandrasekhara Sharma and Others)
5. **1967(1) Mys.L.J. 557** (Vishwanath Malakappa and Others Vs. Vosjwanatha and Others)

In first of the said decisions in the case of Lingbhat Tippanbhat Joshi and others Vs. Parappa Mallappa Ganiger and others reported in **AIR 1951 Bom 1**, the question that was considered was "Whether the sons are liable by reason of their pious obligation, to pay the father's debt incurred as a surety for payment of money, out of their interest in the joint family properties?" While answering the said question, in the 'affirmative' High Court of Bombay observed at para No.7 of its judgment as under:

Para7: The whole question, in our opinion, turns on the terms of the surety bond. If under the terms of the surety bond the father has rendered himself personally liable, be it an ordinary personal bond or even a mortgage or a pledge importing personal liability for the deficit if any on the realization of the security, the sons are certainly liable to pay the father's personal debt incurred in this manner to the extent of their right, title and interest in the joint family properties. If it is a pure personal bond, the question can never arise of the nature which has been mooted before us. If it is a mortgage bond or a pledge, as and by way of security, even there the question would have to be considered whether in the event of a deficit arising on the realization of the mortgage or the pledge by the creditor there would remain over a personal liability of the father to the extent of the deficit if any. If the surety bond was of the nature which obtained before their Lordships of the Privy Council in 72 Ind, App, 165: AIR(32) 1945 P.C.91, there would be no question of the sons being liable for any debt due by the father by reason of their pious obligation, because there would be no personal liability of the father and consequently there would be no debt due by the father as such. In such a case there would not arise any question of the sons being liable to pay the father's debt by reason of the pious obligation because there would be no debt due by the father. In those cases, however, where the father has rendered himself personally liable even in the case of a mortgage bond or of hypothecation or pledge of goods to pay the balance over or the deficit, if any, after the realisation of the security, the sons' obligation to pay the father's debt by reason of the pious obligation would arise and the debt to the extent that it has not been satisfied by the realization of the security would be recoverable by the creditor from the father as well as the sons out of the joint family properties inclusive of the sons' share, right, title land interest therein.

13. In the instant case, execution of surety bond, creating mortgage on the suit properties in favour of the 2nd defendant-Bank by the first defendant as security for repayment of the loan availed by the said Company are not in dispute.

Second of the above said decisions relied upon by the learned Senior Counsel for the second defendant-Bank if Full Bench decision of High Court of Punjab and Haryana in the case of **Hindustan Commercial Bank Ltd. Amritsar Vs.**

Sohanlal Gagu Mal and another (AIR 1970 Punjab and Haryana 67). One of the three questions that had arisen for determination by the Full Bench was “Whether the son is under a pious obligation to pay his father’s surety debt when the debt is not actually due from him?” In the said case also, the debt, for payment of which surety bond was executed by the father was not incurred by him and there was no legal necessity for the father to incur his personal liability. The said debt, which was raised by the firm, was neither illegal nor immoral and the property mortgaged was the joint Hindu family of the father and the sons. Those facts are almost identical with the facts in the instant case. On those facts, Full Bench observed at Para No.24 as under:

24.After considering the matter carefully, I am clear in my mind that the surety bond in question created a personal liability on the father to pay the third person’s debt; and that debt being neither illegal nor immoral, the joint family estate in the hands of the sons is liable for the payment of the same in view of the pious obligation of the sons to pay their father’s debts.

Third of the above said decisionsrelied upon by the learned Senior Counsel for the second defendant-Bank is Division Bench decision of Patna High Court in the case of Prasanjit Mahtha Vs. United Commercial Bank (**AIR 1979 patna 151**) at para No.23 of the said judgment, the Bench has observed as under:

23. I have already referred to the relevant terms of the surety bond in question and after considering the matter carefully, I am clear in my mind that the surety bond created a personal liability on the father of the plaintiff to pay the debt of the company which was formed at Nagpur and comes within the meaning of the term ‘Vyavaharika’ i.e. lawful, usual and customary and the joint family estate in the hands of the plaintiff-the son, is liable for the payment of the same in view of his pious obligation to pay his father’s debt.

Fourth of the above said decisionsis of this Court rendered by learned Single Judge in the case of **A. Chinnaswamy Vs. S. Chandrasekhara Sharma and Others** reported in **1966 (2) Mys.L.J.575**. In the said case, the father had collected during the course of his management as trustee, large sums of money and thereafter, instead of applying the same for the purpose of the trust,

misappropriated them and therefore, decrees were obtained against the father for those sums, On these facts it was held as under:

The debts were not avyavaharika debts and the son was liable for debts under the pious obligation rule.

While a son is not liable for his father's debts arising out of criminal acts, he cannot be exonerated if the debt incurred by the father was not wrongfully taken by him, though subsequently, either it was misappropriated by him or he committed breach of trust. The son could claim immunity only when the debt in its origin was immoral by reason of the money having been obtained by the commission of an offence, but not where the father came by the money lawfully and subsequently misappropriated it.

Last of the above said decisions relied upon by the learned Senior Counsel for the second defendant-Bank is the Division Bench decision of this Court in the case of Vishwanath Malakappa and Others Vs. Vishwanatha and Others reported is 1967 (1) Mys.L.J. 557 (DB). While dealing with the nature of 'Avyavaharika debt' and its proof, the Bench observed (at page No.562) as under:

On the strength of these propositions, there could be no difficulty that in the case of a debt incurred by the father so long as it is not for any illegal or immoral purposes, sons' share in the joint family property would be liable, entitling the father to alienate the joint estate inclusive of his sons' interest for the discharge of those debts and empowering the creditor to realize his debt by enforcing it in a Court of law bringing the joint estate including the sons' interest to sale through Court.

The plaintiffs in this case, except making vague allegations that defendant 1 led an immoral life, have not proved that defendant 1 contracted debts from defendants 2 and 3 for illegal or immoral purposes. The learned Civil Judge has evidently forgotten the rule that direct connection should be shown between the debt and the immorality set up. Ignoring this simple principle, the learned Civil Judge adopted a wrong method of approach with the result he has arrived at an erroneous conclusion. All that had been shown in this case was to establish a

general charge of immorality. That is not sufficient. It has been repeatedly held that some connection must be shown between the debt and the father's immorality.

14. Learned Counsel for the appellant-plaintiffs has relied upon the following decisions viz:

1. AIR 2009 SC 2735 (Ramdas Vs. Sitabai and Others)
2. (2008) 7 SCC 46 (Hardeo Rai Vs. Sakuntala Devi and Others)
3. AIR (35) 1948 Madras High Court 1 (Koru Issaku and Others Vs. Gottumukkala Seetharamaraju and others (C.N.1.)
4. AIR 1932 Privy Council 235 (Mohammad Afzal Khan Vs. Abdul Rahman and Others)
5. AIR 1938 Madras 547 (C.Krishnaveni Ammal and another Vs. P.S.Subrahmanyam Chetty and others)
6. 2007 (2) KCCR 1136 SC (Subodhkumar and Others Vs. Bhagwant Mandeorao Mehetre and Others)

In Air 2009 Sc 2735 (first decision relied upon by the learned Counsel for the appellant-plaintiffs), it is held that a purchaser cannot have a better title than what vendor had, an undivided share of co-sharer may be a subject matter of sale, but possession cannot be handed over to the vendee unless the property is partitioned by metes and bounds amicably and through mutual settlement or by a decree of the Court.

In (2008) 7 SCC 46 (second of the decisions relied upon by the learned Counsel for the appellant-plaintiffs) Honorable Supreme Court has observed at Para No.22 as under:

22. For the purpose of assigning one's interest in the property, it was not necessary that partition by metes and bounds amongst the coparceners must take place. When an intention is expressed to partition the coparcenary property, the

share of each of the coparceners becomes clear and ascertainable. Once the share of a coparcener is determined, it ceases to be a coparcenary property. The parties in such an event would not possess the property as “joint tenants” but as “tenants-in-common”. The decision of this Court in SBI (1969) 2 SCC 33:AIR 1969 SC 1330, therefore, is not applicable to the present case.

In AIR (35) 1948 Madras 1 (C.N.1) (third of the decisions relied upon by the learned Counsel for the appellant-plaintiffs), the Court observed on page No.5 as under:

“A coparcener may alienate either his undivided share in the whole of the family property or his undivided share in certain specific family property, or the whole of a specific item of the family property. In all these cases, the alienee does not acquire an interest in the property so as to become a tenant-in-common with the members of the family entitled to possession, but only an equity to stand in his vendor’s shoes and to work out his right by means of a partition In dividing the family properties, the Court will no doubt set apart for the alienating coparceners share in the property alienated if that can be done without any injustice to the other coparceners, and such property if it is so set apart, may be given to the transferee of the interest of such coparcener If such property is not so set apart, then the alienee would be entitled to recover that property which was allotted to his vendor for his share, in substitution for the property that was alienated in his favour.”

In AIR 1932 Privy Council 235, (fourth of the decisions relied upon by the learned Counsel for the appellant-plaintiffs) it is observed as under:

(a) Mortgage - substituted security - mortgagor owner of undivided share - subsequent partition - Other cosharers taking properties free from mortgage - Mortgagee can proceed against properties allotted to mortgagor’s share in substitution of undivided share.

Where one of two or more cosharers mortgages his undivided share in some of the properties held jointly by them, the mortgagee takes the security subject to the right of the other cosharers to enforce a partition and thereby to convert what was

an undivided share of the whole into a defined portion in severalty. If the mortgage therefore is followed by a partition, and the mortgaged properties are allotted to the other cosharers, they take those properties, in the absence of fraud, free from the mortgage, and the mortgagee can proceed only against the properties allotted to the mortgagor in substitution of his undivided share.

In AIR 1938 Madras 547 (fifth of the decisions relied upon by the learned Counsel for the appellant-plaintiffs) the Court observed (on page No.549) as under:

“The next question is whether it was binding on the joint family of Sadasiva and Gangadhara which existed at the time of its execution. Here again the evidence is not very detailed. Ex.A does not state the purpose of the loan. Plaintiff 2 states that Sadasiva and Gangadhara were members of a joint family and were running two businesses, one a shop at Madras, the other a mill at Ponneri, managing them by turns. He also states that Sadasiva signed as the manager of the joint family and that the borrowing was for the paddy business - paddy being purchased and milled at Ponneri and the rice sold at Madras shop. He says that he did not take Gangadhara's signature because the latter was at Ponneri and he did not think it necessary. P.W.4, the attesor, says that these two businesses were owned by the family from the time of Munisami, the father of the two brothers. It appears that in the partition suit Sadasiva asserted that the Madras shop belonged to his brother-in-law and the Ponneri property belonged to a stranger; but on the materials before me it seems unlikely that this assertion was true. In the absence of any other evidence I must hold that the mortgage of 2nd August 1930 was raised for the purpose of family business by the manager of the joint family and was binding on the family.

In 2007 (2) KCCR 1136 (B) (sixth of the decisions relied upon by the learned Counsel for the appellant-plaintiffs) Honorable Supreme Court held as under:

B. HINDU LAW - Ancestral Property-Alienation-Karta has power to alienate the value of the joint family property either for necessity or for benefit of the estate. He can alienate with the consent of all the coparceners of the family. When he alienates for legal necessity, he alienates an interest which is larger than his undivided interest.

When the Karta, however, conveys by way of imprudent transaction, the alienation is voidable to the extent of the undivided share of the non-consenting coparcener.”

15. We have gone through all the above said decisions relied upon by the learned Counsel for the appellant-plaintiffs. There cannot be any dispute as to the propositions laid down in all the said decisions. Suffice it to say that none of the said decisions can be made applicable to the facts of the present case.

16. In the instant case, admittedly all the plaintiffs were minors as on the date of creation of mortgage on the suit properties by their father (first defendant) in favour of second defendant and the said mortgage was for securing the repayment of loan amount that was availed from the second defendant-Bank by the said Company, in which, neither the first defendant nor any member of his family had any interest. It is also not in dispute that the plaintiffs did not choose to challenge the said mortgage after attaining majority. Further, plaintiffs have failed to prove that the said mortgage was created by their father for any immoral purpose so as to make it not binding on them. Therefore, respectfully agreeing with the propositions laid down in all the above decisions relied upon by the learned Senior Counsel for the second respondent-defendant-Bank, we are of the opinion that the plaintiffs are bound by the said mortgage and therefore, the Trial Court did not commit any error in declining to grant the second relief in favour of the plaintiffs that the second defendant-Bank is not entitled to enforce any right in respect of shares of the plaintiffs in the suit properties. The facts and circumstances of the case, the conduct of the plaintiffs and that of defendant No.1, their father, clearly go to show that defendant No.1 has got the instant suit filed against the Bank through his children with intent to avoid his liability to the Bank.

For the reasons aforesaid, while answering the point raised for our consideration in this appeal ‘in the negative’, and against the appellant-plaintiffs, we are of the considered view that the Trial Court is quite justified in declining to grant in favour of the plaintiffs their second prayer in the suit that the second defendant-Bank is not entitled to enforce any right in respect of the shares of the plaintiffs in the suit properties. The plaintiffs shall have to take their respective shares in the suit properties subject to the mortgage created by their father (1st defendant) in favour

of the second defendant. Therefore, we do not find any reasons to interfere with the impugned Judgment and Decree passed in the said suit by the Trial Court. Hence the following.

ORDER

The Present appeal filed by the plaintiffs in O.S.No.7712/2004 on the file of the learned XVIII Addl. City Civil Judge, (CCH-32), Bangalore, is hereby dismissed as being devoid of merits. The impugned Judgment and Decree of the Trial Court is hereby confirmed. The plaintiff Nos.1 to 3 together shall pay to the second defendant therein a sum of Rs.10,000/- towards costs in this appeal.

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