

(1937) 09 MAD CK 0023

Madras High Court

Case No: None

Revula Ponneria Rao
alias Venkata Rao

APPELLANT

Vs

Revula Lakshmi
Narasamma and
Others

RESPONDENT

Date of Decision: Sept. 27, 1937

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 41 Rule 33

Citation: (1938) 47 LW 751 : (1938) 1 MLJ 154

Hon'ble Judges: Venkatasubba Rao, J

Bench: Division Bench

Judgement

Venkatasubba Rao, J.

The plaintiff attacks in this suit certain alienations made after his father's death by his stepmother and grandmother,

who acted as his guardians during his minority. This appeal has been filed by the plaintiff and except as regards defendant No. 11, it was disposed

of by us some two days ago. We are now concerned with the sale in favour of himself and another, for Rs. 700, evidenced by Ex. II dated the

26th February, 1917. The suit was brought in 1929, almost when the period of limitation prescribed for such actions was coming to an end. The

plaintiff challenged the sale on the ground that his father was leading an immoral and vicious life and the debts to discharge which the alienation was

made were incurred for purposes not binding upon him. The learned Judge finds clearly that these allegations are utterly untrue, that the sale was

effected for discharging binding debts, that they were in fact -paid off, that Rs. 700 was a fair price and that the plaintiff's guardians; who were

capable women, acted in his interests for his benefit. On these grounds the sale ought to have been upheld and the judgment leaves the impression

that the judge meant to uphold it. But somewhat abruptly he remarks towards the close of his discussion, that no pressure on the estate has been

shown and it follows therefore that the sale is not binding on the plaintiff. Having said so, he set aside the sale, but on the condition that the plaintiff

before recovering the property must pay Rs. 700 to the vendees.

2. The plaintiff questions the validity of this direction and on his behalf it is contended that the sale ought to have been set aside in toto. The lower

Court's judgment is undoubtedly wrong, but the plaintiff has no reason to complain against it. It has conferred on him an advantage which he does

not possess under the law. There is no other course open to us than to dismiss the appeal and we accordingly do so.

3. The respondent (defendant 11) unfortunately is not represented here and the appeal has been heard in his absence. But we have come to the

conclusion that in the interests of justice we ought to take action under Order 41, Rule 33, Civil Procedure Code, which has been enacted to

empower the appellate Court to do complete justice between the parties. There are several cases, of which it is sufficient to mention S.M.S.

Subramanian Chettiar (dead) and Another Vs. Sinnammal and Others, which have held that the appellate Court has power under this rule to vary

the decree of the lower Court, although the variation may benefit a party who has not appealed. To take a simple illustration, if a person sues for

Rs. 1,000 and after getting a decree for Rs. 400 files an appeal urging that he ought to have been allowed a larger sum, this section enables the

appellate Court to interfere in favour of the defendant who has not appealed and dismiss the suit in toto. It goes without saying that the Court will

exercise a wise judicial discretion in using the power under this section. We are quite satisfied that the circumstances of this case are such as to call

for our interference under the wide terms of this very salutary provision. The alienees in this case are men of very humble status, one being a Boya

and the other a Golla and it is not surprising, when in all probability all their earnings have been invested in this property, that the respondent has

not been able to find the money for preferring an appeal. This is a harassing suit of the usual type, brought to unsettle a title acquired by honest

purchasers and we think we ought in the interests of justice to use our powers under the provision mentioned above. We are unable to accede to

the strenuous contention to the contrary of Mr. P.C. Parthasarathy Aiyangar, the appellant's learned Counsel. We need hardly mention that the

lower Court's view of the law is thoroughly wrong. To mention only one authority, it has been laid down in Vembu Iyer alias Ramanadha Iyer Vs.

Srinivasa Iyengar and Others, that it would be unreasonable to hold that a guardian cannot effect a sale in the absence of pressure from the creditor

to whom the debt is due.

4. It therefore follows that not only is the appeal rejected, but the suit as against defendant 11 is dismissed.