

have agreed to execute exhibit A if Kunhi Lakshmi, who was fully conservant with the facts, had not agreed to acknowledge him as the jenmi and agreed to hold the land under him on that footing. Kunhi Lakshmi by her conduct induced Iswara to execute exhibit A, as she would otherwise have been bound to surrender the lands to him as the auction purchaser of her tavazhi's rights. We cannot agree with the contention that any express admission of jenm right by the demisee otherwise than by the acceptance of the demise was necessary in the circumstances of the case to estop her from denying the plaintiff's jenm right.

BENSON
AND
SUNDARA
AYYAR, JJ.

KUNYIL
PARKUM
PUTHUKKAYI
KOTTAYE
KANAKAN
2.
VARANAKOT
ILLOTH
KANAPATHE
NAMBUDRI.

In the view we take on the questions discussed it is unnecessary to consider the contention that the *otti* right that Iswara Vadhvan first purchased in auction was not irredeemable. The defendants did not in this suit allege that the jenm sale to Iswara was not binding on the Kurungot tarwad but relied solely on exhibit I.

In the result this appeal must be dismissed with costs. Time for payment of the mortgage money and the value of improvements is extended till the re-opening of the District Court after the summer recess.

APPELATE CIVIL.

Before Mr. Justice Benson and Mr. Justice Krishnaswami Ayyar.

KANDASAMI ASARI (EIGHTH DEFENDANT), APPELLANT,
v.
SOMASKANDA ELA NIDHI, LIMITED, THROUGH ITS
SECRETARIES,
CHIDAMBARAM CHETTIAR AND ANOTHER (PLAINTIFFS),
RESPONDENTS.*

1910.
January, 31.
February, 16.

*Hindu law—Undivided family—Manager, position of—Alienation by
Manager—Effect of subsequent assent of co-parceners.*

The Manager of a joint Hindu family is not, in the exercise of his powers, the agent of the family in the strict sense of the term and consequently no ratification of his act by the other members of the co-parcenary is possible.

* Second Appeal No. 215 of 1908.

BENSON AND KRISHNA-SWAMI AYYAR, JJ. The assent of the other members of the family to an alienation by the manager is only evidence of justifiable family necessity. Where therefore it is found that there was no such necessity, such assent is no evidence for that purpose.

KANADASAMI ASARI v. SOMASKANDA ELA NIDHI, LTD. As however the property vests in the undivided family, the manager with the assent of the other members may give a good title to an alienee even though the alienation is not for any family necessity. Such assent is not that of a principal to the acts of an agent but supplies the want of capacity on the part of the manager to alienate family property.

An alienation by a manager without justifiable necessity is void as regards the shares of the other members of the family and where such necessity exists it is valid in its entirety. An assent by all the members at the time of alienation without taking part in it, will pass the property. An assent by some only, though evidence of necessity, will not, in the face of positive evidence of the impropriety of such alienation, suffice to pass their interests.

The subsequent assent of all the members will not, apart from any question of estoppel, validate an alienation by the manager, which is void in its inception for want of justifiable necessity.

Annamalai Chetty v. Murugesu Chetty, [(1903) I.L.R., 26 Mad., 544] referred to.

Umni v. Kunchi Amma [(1891) I.L.R., 14 Mad., 26 at page 28], referred to.

SECOND APPEAL against the decree of C. G. Spencer, District Judge of Tinnevely, in Appeal suit No. 384 of 1906, presented against the decree of V. K. Desika Chariar, District Munsif of Tinnevely, in Original Suit No. 255 of 1905.

The facts are stated in the judgment of the lower Appellate Court which is as follows :—

The suit was brought on a registered chit mortgage bond executed by Ramaswami Asari now deceased. Appellant who is eight defendant, in the lower Court is brother of Ramaswami Asari. The suit was contested between the plaintiffs who are secretaries of the Somaskanda Ela Nidhi and the eighth defendant, who applied on his own motion to be made a party to the suit.

The grounds of appeal are that plaintiffs did not allege or prove that being a member of the joint family appellant was bound by his brother's act or that he subsequently consented and so became bound. Appellant's pleader urges that plaintiff having failed to set up this case, his suit should have been dismissed.

The plaintiffs' case was that the plaint properties were the exclusive properties of the late Ramasami Asari and that he was divided from his brother. The District Munsif found this to be not a true case but he found on the third issue that the eighth defendant acquiesced in what his brother did as manager of the joint

family. Appellant therefore takes the objection that the plaintiff has not attempted to prove that Ramasami Asari's act was binding on (him) appellant as being done for the benefit or necessity of the family. He also argues that supposing appellant made payments towards the chit, he may have done so only to save his brother's share for the benefit of himself as survivor.

It does not seem to have been at all contended hitherto that the mortgage was not binding on Ramasami Asari's share, for it is recognised law that a co-parcener can deal with his own share. Therefore under the third issue the District Munsif proceeded directly to consider whether Ramasami Asari's act would bind the appellant's interest as well.

The signatures of appellant on the reverse of exhibit C series do not prove that he made payments for which the receipts were granted. But the District Munsif was certainly right in assuming from them that appellant knew of and probably also acquiesced in the transaction especially as there was more than once isolated instances in which appellant took the receipts.

According to appellant's own case the brothers were undivided. So the argument that he may have paid to save the share of his brother will not hold water. As the properties stood in the name of Ramasami Asari, and the eighth defendant was added at his own instance, the plaintiff could not put forward the plea of acquiescence at first. But the District Munsif having found the family to be undivided there is no objection to the Court proceeding to a consideration of the question whether the transaction benefited the joint family and was ratified by the eighth defendant. On the evidence, such as there is of it and in the absence of proof to the contrary, the District Munsif's finding was justified.

The respondent has taken an objection to the finding on the second issue, but after reading the evidence I see no reason to differ from the District Munsif's view. Exhibit C series which respondent relies on to prove acquiescence themselves go some way to support the finding that the family was undivided.

The appeal is therefore dismissed with costs.

The eighth defendant appealed.

V. Purushothama Ayyar for The Hon. the Advocate-General for appellant.

Dr. S. Saminadhan for respondent.

K. Srinivasa Ayyangar for first respondent.

BENSON
AND
KRISHNA-
SWAMI
AYYAR, JJ.

KANDASAMI
ASARI
v.

SOMASANDA
ELA NIDHI,
LTD.

BENSON
 AND
 KRISHNA-
 SWAMI
 AYYAR, JJ.
 ———
 KANDASAMI
 ASARI
 v.
 SOMASKANDA
 BHA NIDHI,
 LTD.

JUDGMENT.—Ramasami Asari and the eighth defendant were brothers and members of an undivided Hindu family. Ramasami mortgaged the suit properties (which must now be taken on the findings of the Courts below to have belonged to the joint family) to the plaintiff, Nidhi. It is found by the Munsif, and that finding was apparently not disputed in appeal, that the mortgage was not for a family purpose. The facts set out in paragraph 14 of the Munsif's judgment make it abundantly clear that there was no justifiable family necessity for the alienation. The Munsif however found that the transaction was ratified by the eighth defendant and this conclusion has been accepted by the District Judge. It is argued on appeal that there could be no ratification of a transaction which was never entered into on behalf of the eighth defendant. This argument must be accepted as sound if Ramasami's alienation is rested on the footing of a contractual agency. The manager of a joint Hindu family exercising the powers of a manager is not the agent of the family in the strict sense of the term. See *Annamalai Chetty v. Murugesu Chetty*(1). No ratification is possible where the agent does not purport to act, though without authority, on behalf of a principal see *Keighley Maxsted & Co. v. Durant*(2). But the manager of a Hindu family has power to act for the family subject to certain restrictions. Alienations for a family purpose are within his competency. One mode of proving the family purpose, or justifiable family necessity as it has been called, is the assent of an adult member of the family competent to contract. The family purpose may also be proved by showing the circumstances which have necessitated the alienation when those circumstances are within the purview of the rules of the Hindu law on the subject. In this case the absence of the family necessity is distinctly found. In the face of such a finding the assent of co-parceners as evidence of such necessity cannot avail. But as the property vests in the undivided family the manager with the assent of the other members may give a good title to the alienee even though the alienation is not for any family necessity.

It is not necessary that the assenting members should join in the transfer. The manager having the power to act by himself the assent of the other members cures his incapacity to act singly

(1) 1908) I. L. R., 28 Mad., 544.

(2) 1901) A. C., 240.

in certain matters or clothes him with the necessary capacity for the complete representation of the interests of the family. The assent in this case is not that of principals to the acts of an agent, but, as Mr. Mayne says, it is the supplying by the consent of the co-parceners the want of capacity on the part of the manager to alienate family property. "Such consent" he adds "may either be express or implied from their conduct at or after the time of the transaction," section 345. It has been held by the Privy Council in the case of transactions by a Hindu widow that they are only voidable, not void and that the reversioner succeeding to the estate may by his conduct ratify the transactions, and give them full validity (*Modhu Sudan Singh v. Rooke* (1) and *Bijoy Gopal Mukerji v. Krishna Mahishi Debi* (2)). Is the act of the manager similarly voidable and not void where it is in excess of his powers limited to justifiable necessity? It has invariably been accepted as a sound canon of the Hindu Law that where the alienation is not for justifiable necessity it is void as regards the shares of the other members of the family and where such necessity exists it is valid in its entirety. See *Unni v. Kanchi Anna* (3). *Sheo Sankar Gir v. Ram Shevuk Chowdhri* (4) and *Bahvant Rao v. Ram Krishna* (5). It has never been suggested that the alienation by the manager is only voidable where it is not for justifiable necessity. Taking it that there are two classes of alienations by the manager some valid and others invalid, what is the true position of an alienation by the manager which is subsequently assented to by the remaining members of the joint family? An assent at the time of the alienation without taking part in it is, we have already said, sufficient to pass the property. An assent by some alone, though evidence of the propriety of an alienation, will not, in the face of positive proof of its impropriety, suffice to pass their interests, for such assent does not amount to a transfer. But where all the remaining members assent to the alienation subsequent to it, does it validate the alienation apart from any question of estoppel? The decision in *Masiligadu v. Nannigadu* (6) which was referred to appears to rest upon estoppel of which there is no suggestion in this case. At page 493 the

BENSON
AND
KRISHNA-
SWAMI
AYYAR, JJ.
—
KANDASAMI
ASARI
v.
SOMASUNDA
RAJ NIDHI,
LTD.

(1) (1908) I.L.R., 25 Calc., 1.

(3) (1891) I.L.R., 14 Mad., 26 at p. 28.

(5) (1901) 3 Bom., L.R., 682.

(2) (1907) I.L.R., 31 Calc., 329.

(4) (1897) I.L.R., 24 Calc., 77 at p. 52.

(6) (1905) 15 M.L.J., 492.

BENSON
AND
KRISHNA-
SWAMI
AYYAR, J.J.

KANDASAMI
ASARI
v.

SOMASKANDA
ELA NIDHI,
LTD.

learned judges who decided the case observe "If, as a matter of fact, the defendants after their father's death assented to the possession of the land being taken by the donee on their non-payment of the rent and also assented to the plaintiff's joining after the mother's death in redeeming the land, they cannot now be permitted to contend that their father had no right to assign the land in the first instance." The question remains whether the subsequent assent of the remaining members of the family can validate the prior alienation by the manager. It has been held by the Privy Council that the subsequent assent of the presumptive reversioners can validate an alienation by a Hindu widow otherwise not justifiable. They say "It is immaterial whether the concurrence of the reversioners was given at the time the alienation was made or it was given after the execution of the deeds of alienation. *Bajrangi Singh v. Manokarnika Baksh Singh* (1). But this probably rests on the view that the alienations themselves are only voidable. If on the other hand a manager's alienation is void because it is not for justifiable necessity it is difficult to see how the subsequent assent of the remaining members of the coparcenary can validate an alienation void in its inception.

But in this case the District Judge says "the District Munsif was certainly right in assuming that appellant knew of and probably also acquiesced in the transaction especially as there was more than one isolated instance in which appellant took the receipts." If this means that there was a consent to the mortgage at the time of its execution the appellant's interest is certainly bound. But if it means the same thing as the ratification which the Judge speaks of subsequently, we think it is not sufficient to bind the eighth defendant.

We must ask the District Judge to find upon the evidence on record "whether the eighth defendant assented to the mortgage at the time of its execution." The finding should be submitted within six weeks, and seven days will be allowed for filing objections.

(1) (1908) I.L.R., 30 All., 1.
