

(1915) 02 MAD CK 0015
In the Madras High Court

A.L.A.R. Arunachellam Chettiar and Others

APPELLANT

Vs

Velappa Thambiran and Others

RESPONDENT

Date of Decision : 09-02-1915

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 30

Citation : (1915) 28 MLJ 410

Judgement

1. In Appeal No. 137 of 1910. This is a suit brought by the plaintiffs, suing u/s 30 of the Old CPC on behalf of themselves and all the disciples of

the Dharmapuram Mutt, in the Court of the Subordinate Judge of Tinnevely for a declaration that the decree obtained by defendants Nos. 3 to 6

against the 1st and 2nd defendants, in O.S. No, 100 of 1902 on the file of the Court of the Subordinate Judge of Kumbakonum (subsequently

transferred to the Court of the Additional Subordinate Judge of Kumbakonum (subsequently transferred to the Court of the Additional

Subordinate Judge of Tanjore) on a mortgage executed by the 1st defendant, the then Pandarasannadhi of the Mutt, is not binding on the Mutt and

its properties, and for an injunction restraining defendants Nos. 3 to 6 from executing the decree and defendants Nos. 1 and 2 from alienating the

Mutt properties in satisfaction of it. The Subordinate Judge passed a decree declaring that the suit properties are not liable under the decree in the

said suit, restraining the plaintiffs from executing the said decree against those and other property of the Mutt; and the 2nd defendant from

alienating the said properties in satisfaction thereof.

2. Two preliminary points have been argued before us, that the Tinnevely court had no jurisdiction to make a declaration about a decree of the

Tanjore Court and that the present plaintiffs had no right to sue. As regards the first point a very small part of the mortgaged properties is situated within the jurisdiction of the Kumbakonam Court and the rest in Tinnevely, and though the present defendants, as they were entitled to do, sued on the mortgage decree in the Tanjore Court they subsequently had the mortgage decree transferred for execution to the Tinnevely Court and it was while execution was pending in that Court that the plaintiffs instituted the present suit. In this state of things we think the Subordinate Judge was right in holding that the Court had jurisdiction, following *Banke Behari Lal v. Pokh Ram* ILR (1902) A. 48. The most recent decision of the Allahabad High Court in *Umrao Singh v. Hardeo* ILR (1907) A. 418, does not lay down an absolute rule that no decree can be in any way impeached save in the Court in which it was passed. A decree passed by consent and without consent against the 1st and 2nd defendants whereby the Mutt properties are made liable, stands as will be seen later in no better position than a settlement effected out of Court, and we think there is no sufficient reason why it should be questioned only in the Court that passed it. See also *Earl of Bandon v. Becher* 63 E.R. 1517. We think this objection fails.

3. As regards the second point, the Subordinate Judge has found that the plaintiffs and other disciples of the Mutt have a special interest in the preservation and the maintenance of the Mutt and its properties which entitles them to sue on their own behalf and without obtaining sanction u/s 92 Civil Procedure Code. The decisions relied on by the Subordinate Judge *Budree Das Mukim v. Chooni Lal Johurry* I L.R. (1906) C. 789, and *Srinivasa Ayyangar v. Strinivasa Swami* ILR (1892) M. 81, and the rulings in S.A. No. 20 of 1898, ILR 23 M. 100, foot note and *Subramania Aiyar v. Nagarathnam Naicker* (1909) 20 M.L.J. 151, are authorities for so holding.

4. The substantial question in the case is whether the decree of the Tanjore Court passed on a compromise entered into between the present defendants Nos. 3 to 6 as plaintiffs in that suit and the 1st and 2nd defendants in that suit and this, was or was not binding on the Mutt properties.

The position and powers of a Pandarasannadhi or head of a Mutt in Southern India have been considered in *Vidyajwrna Tirthaswami v.*

Vidyanidhi Tirthaswami ILR (1901) M. 435 and Kailasam Pillai v. Nataraja Thambiran ILR (1909) M. 265. In the former case he has been

compared with reference to his rights of enjoyment to an English Ecclesiastical corporation sole. With reference to his powers of alienation he has

been compared in Daivasigamani Pandarasannadhi v. Ruppusami (1906) 17 M.L.J. 40 and Srinath Deivasikamani Pandarasannadhi v. Karutha

Ravuthan (1910) 21 M.L.J. 129 to a temple trustee whose position again has been held by the Privy Council to be analogous to that of the

manager of an infant heir in Prasannai Kutnari Debiya v. Golab Chandra Baboo (1875) 2 Ind. App. 146. More recently in Muthusami Iyer (died)

and Others and Annasami Iyer and Others Vs. Sree Sreemethanithi Swamiyar Avergal and Others, , the position of a Pandarasannadhi as regards

alienations has been compared to that of a Hindu widow; but we agree with the observation of Sadasiva Aiyar J. in the last case that it is

dangerous to press these analogies too far, in the case of the incumbent of a religious office whose rights and duties are mainly governed by usages.

As regards the present question, having regard to the position of a Pandarasannadhi as explained in the cases already referred to we think it may

safely be assumed that his power to compromise suits affecting Mutt properties cannot be larger than those of a trustee, and that it will be best to

begin by considering the extent of such powers. Trustees now possess certain statutory powers of compromise in England, and also in India, u/s

43 of the Indian Trusts Act, in the case of compromises effected after the passing of the Act, which however does not apply to religious or

charitable trusts. In Forshaw v. Higginson (1857) 8 De. G.M. & G. 827 Turner L.J. observed that cases of compromises by trustees without leave

of the Court rarely came before the Court, no doubt because trustees were generally advised to apply to the Court for directions before making

such compromises, inasmuch as if they made them of their own authority they were liable to have them called in question after they had lost the

evidence showing that they had acted in the bonafide exercise of their discretion. In that case, the Court refused to hold a trustee liable to the estate

for a payment made by him pursuant to a compromise effected out of Court under good professional advice. On the other hand, it was held in

Willes v. Gresham (1859) 5 De. G.M. & G. 770 that a trustee who accepted a composition must show that no more could have been obtained if

he was to escape being held liable for the balance. As regards compromise of suits, trustees have felt it even more necessary to obtain the sanction

which the Court has power to grant in the exercise of its jurisdiction over trustees, which is said by Turner L.J. in *Brooke v. Lord Mostyn* (1864) 2

De. G.J. & Smith 873 to be also the foundation of its power to compromise the rights and claims of infants and persons under disability. The cases

as to charitable trusts collected in Tudor at page 378 (4th Edition) are all cases in which the compromise was confirmed by the Court. In the case

of infants, both in England, and in India under the Code of Civil Procedure, compromises of suits entered into without the leave of the Court are

invalid, but there is no similar provision in the Code as to trustees. In *Leeming v. Lady Murray* (1879) 13 Ch. D. 123 Jessel M.R. seems to have

been of opinion that the power to compromise was incident to the power to institute and conduct suits and in *Sankaralinga Nadan v. Rajeswara*

Dorai ILR (1908) M. 236 which was a case of compromise by a trustee of a temple pending an appeal by the other side, their Lordships of the

Judicial Committee did not lay down that the trustee had no power to compromise a suit, but approved of judgment of this Court in *Rajah M.*

Baskara Sethupathi and Irrulappan Nadan v. Narayanaswami Gurukhal (1901) 12 M.L.J. 360 which refused to recognise the compromise in

question on the ground that it was not a lawful compromise but constituted a breach of trust. The better view appears to be that compromises of

suits entered into by trustees of charitable endowments are not necessarily void.

5. As regards the cases relied on by the appellant in support of the compromise in *Prosanna Human Debya v. Golab Chandra Baboo* ILR (1875)

A. 145 their Lordships merely lay down that a decree obtained after contest against the trustee for the time being is binding on his successor and

that a suit to set it aside will be dismissed in the absence of fraud and collusion. In *Sundaran v. Budan* ILR (1885) M. 80, all that the Court

decided was that a decree against the de facto head of a Mutt could not be resisted in execution on the ground that the debt sued on was not

incurred for the benefit of a Mutt; and that it must be set aside if at all by separate suit. So too in *Manikka Vasaka Desihar alias Gnana Sambanda*

Pandarasannadhi v. Balagopala Krishna Chetty ILR (1906) M. 553 as regards a compromise decree obtained against the present 1st defendant.

Incidentally however it was observed in that case that it would be unreasonable to hold that a Pandarasannadhi is bound to waste Mutt property in

litigation when it is in the interest of the Mutt to enter into compromise. In Subbammal v. Avudaiyammal 30 M.K 3 a suit to set aside a mortgage

and a sale of certain lands in satisfaction of a decree passed without contest in a suit against a widow on an alleged debt of her husband was

dismissed, as it was found that the debt was really due by the last male owner; and it was observed that the widow as representing the estate was

not bound to raise any defence when she was satisfied that the debt was really due. A still later decision of this Court Bhogaraju Venkatarama

Jogoraju v. Addepalli Seshayya 35 M.K 560, relied on for the respondent, lays down that such a consent decree against the widow stands in no

better position than a contract made by the widow, but this is not inconsistent with the recognition of such compromises when properly entered

into. Some of the other courts have gone further and have interpreted the decision of their Lordships in Imrit Konwar v. Boop Narain Singh (1880)

6 O. L.E. 76, as laying down absolutely that a decree against a widow is only binding on the reversioners when the suit was decided after contest

and not on a compromise. See the judgment of Mookerjee and Carnduff JJ. in Bajalakshmi Dasee v. Katyayani Dasee 38 C.D 639 where the

cases are collected. It is unnecessary to pursue this question because for the purposes of the present case it is sufficient to say that, in a suit to

declare a decree against a Pandarasannadhi not binding on the Mutt properties, once it appears that the decree was passed not after contest but

on compromise, the onus is on the defendants to show that the compromise was a lawful one entered into bona fide; and that in the present case,

apart from any question of onus it is proved that the compromise was not of that character.

6. In 1899 the 1st defendant who was then Pandarasannadhi executed a mortgage for Rs. 40,000 in favour of the father of defendants Nos. 3 to 6

Ex. AA, with the alleged object of raising money for the erection of a building, the discharge of debts left by his predecessor, the payment of kist

and expense of the Mutt. In 1902 the defendants Nos. 3 to 6 sued the 1st defendant on the mortgage in the Court of the Subordinate Judge of

Kumbakonum and, while the suit was pending, the 1st defendant executed a deed of relinquishment appointing the 2nd defendant Pandarasannadhi

in his place. The 2nd defendant was made a party defendant, and pleaded that the money had not been borrowed by the 1st defendant for

purposes binding on the Mutt. Issues, Exhibit DD were settled. On the 7th February 1903, and, shortly before the case came on for hearing, the

plaintiffs took out summonses calling on the 1st and 2nd defendants to attend and give evidence and produce documents at the trial. It is well

known that persons in the position of a Pandarasannadhi have a strong objection to appearing in Court as witnesses which they regard" as

derogatory to their dignity, and both accordingly applied to be examined on commission. It had recently been decided in this Court that they are

not entitled to exemption u/s 133 CPC in the absence of a special notification by Government, and accordingly, the Subordinate Judge rejected the

petitions and ordered them to attend and give evidence, the 1st defendant in open court, and the 2nd defendant in Chambers. These orders were

passed on the 1st and 11th August 1904; and after an unsuccessful application for transfer and stay had been made to the District Judge and

dismissed by him on the 19th September 1904, the plaintiffs and defendants Nos. 1 and 2 on the 31st October following put in a razinamah

petition under which the plaintiff obtained a mortgage decree for Rs. 52, 000. The plaintiffs in this suit plead that the razinamah was entered in-to

fraudulently by the 1st and 2nd defendants in that suit, and this, while the 2nd defendant pleads in effect that the plaintiffs, in order to prevent him

for defending the suit, unnecessarily summoned him as a witness and opposed his examination on commission and practically coerced him to enter

into the compromise. While we do not consider that the plaintiffs can be said to have exercised any coercion or undue influence on the 2nd

defendant in insisting, however ill-advisedly, on their legal right to examine him as a witness, we think the Subordinate Judge was well warranted, in

the absence of any satisfactory explanation as to why the 2nd defendant abandoned his defence and on the other evidence before him, in coming to

the conclusion that the 2nd defendant was actuated mainly by a desire to escape the necessity of having to attend and be examined as a witness. In

our opinion, a compromise entered into under the influence of an indirect motive of this kind by a person in the position of the 2nd defendant

amounted to a breach of his duty and cannot be regarded as lawful or bona fide. The evidence in the present case, which was also available in that

case, has satisfied the Subordinate Judge that the 2nd defendant was in a position successfully to maintain the defence he had pleaded if the case had been fought out and that it was his duty to contest it. No serious attempt has been made to question the finding arrived at by the Subordinate Judge on a careful examination of the evidence that the mortgage debt sued on has been proved by the plaintiffs to have been contracted for purposes not binding on the Mutt--except on the ground that before advancing the money the father of defendants Nos. 3 to 6 satisfied himself by inquiries of the nature indicated in Hunoomanprasad's case (1856) 6 M.I.A. 393 that the advance was necessary to discharge debts binding on the Mutt. It is no doubt proved that the father of defendants Nos. 3 to 6 ascertained by inquiry that the 1st defendant had contracted numerous debts on pledges of jewels and otherwise; but, as pointed out by the Subordinate Judge, there seems to have been no inquiry how far the debts so contracted were binding on the Mutt. As regards the accounts which are said to have been inspected, they either fail to show the purpose for which the debt was incurred or show purposes not binding on the Mutt such as the purchase of rings. The defendants did not plead that the mortgage debt sued on in the previous suit was binding on the Mutt because they had satisfied themselves by due inquiries as to the necessity for the loan, nor was any such issue raised; and apart from this objection, the evidence on record, as the Subordinate Judge has shown, fails altogether to support such a plea.

7. It is then said that even if this be so, the decree should be treated as an alienation binding on the life interest of the 2nd defendant as in the case of a decree passed in similar circumstances against a widow. The position, however, is not analogous. A Pandarasannadhi though he has been held not to be accountable for his expenditure of the income of the Mutt properties is yet under a moral if not a legal obligation to apply the surplus for purposes of a religious or philanthropic nature, and it would not, we think, be right to compel him to apply it in satisfaction of debts which have been found not to be binding on the Mutt.

8. The appeal is dismissed with costs.