

(1959) 06 KL CK 0021
In the High Court Of Kerala
Case No : S. A. 484 of 1956-E

Aliamma and Others

APPELLANT

Vs

Saraswathy Antharjanam

RESPONDENT

Date of Decision : 25-06-1959

Acts Referred:

Travancore Malayala Brahim Act, 1106 — Section 8

Citation : (1959) KLJ 979

Hon'ble Judges : C.A. Vaidialingam, J

Bench : Single Bench

Advocate : P.P. John, for the Appellant; C.K. Sivasankara Panicker, for the Respondent

Judgement

Vaidialingam, J.—This second appeal has to be allowed for the following reasons. The heirs of the deceased plaintiff are the appellants before me. The suit was for recovery of a sum of Rs. 250/- due to the plaintiff by the husband of the first defendant and the father of defendants 2 to 4 under document dated 24-11-1950 which is Ext. A. According to the plaintiff, the deceased Sankaran Nambudiri Narayanan Nambudiri executed this document and borrowed this amount for purposes binding on the Illom of the defendants. The defence was that the transaction is not binding on the Illom, as it is neither supported by necessity nor by any consideration. One of the attacks on the plaintiff's case was that Ext. A is not a genuine document. The trial court, after a consideration of the material evidence in this case, came to the conclusion that Ext. A is genuine. It was also satisfied that the plaintiff has made reasonable enquiries before advancing the amount to Sankaran Narayanan Nambudiri under Ext. A. In this view, the trial court held that the transaction evidenced by Ext. A is for tarwad necessity and binding on the defendants 1 to 4, and as such, granted a decree as prayed for.

2. On appeal by the first defendant alone, the lower appellate court upheld the finding of the trial court regarding the genuineness of the transaction evidenced

by Ext. A. But relying upon the provisions of sections 7 and 8 of the Travancore Act III/1106, it came to the conclusion that the plaintiff has not established tarwad necessity for this transaction, and in this view, held that the plaintiff is not entitled to get a decree against the illom properties as such.

3. It is against this decree that the heirs of the deceased plaintiff have come up on appeal. In the appeal before me, Mr. P. P. John, Learned Counsel for the appellant, has contended that the statement contained in the judgment of the lower appellate court, regarding the evidence given by his client, is not correct. He has also contended that he has prima facie let in evidence to show that he made reasonable enquiries before advancing this amount to the deceased Sankaran Narayanan Nambudiri and was also satisfied that it was being borrowed by the Nambudiri for Illom necessity. He also stressed the point that no counter-evidence was tendered or let in by the defendants rebutting the evidence given by the plaintiff.

4. On the other hand, the Learned Counsel appearing for the first defendant has contended that the plaintiff has not made any reasonable enquiry as required u/s 8, Travancore Act III/1106.

5. Before I consider the mistake in the evidence pointed out by Mr. John, it is desirable, at this stage, to refer, to the two sections of the Malayala Brahmin Regulation, namely, Act III/1106.

6. Section 7 is to the effect that no debt contracted by the karnavan or other managing member shall bind the Illom, unless it be for Illom necessity.

7. Section 8, leaving off unnecessary particulars, is to the effect that, where a Karnavan incurs a debt alleging the existence of Illom necessity, such necessity shall, as between the members of the Illom who have not assented to the debt and the creditor, be presumed to have existed, if the creditor, after using reasonable care to ascertain the existence of such necessity, has acted in good faith.

8. What is laid down in section 8 is that, when the creditor makes reasonable enquiries regarding the existence of a necessity and has acted in good faith, it shall be presumed that there was a necessity. Therefore, it follows that if the plaintiff has let in evidence to prima facie satisfy the court that he made enquiries about the existence of necessity and has also acted in good faith, in the absence of any counter-evidence on this point, the court is bound to proceed on the basis that there was a necessity existing at the time of the loan. Keeping these principles in mind, I will advert to the actual evidence adduced in this case.

9. P. W. 3, who is the plaintiff, has given evidence to the effect that Ext. A was executed by Narayanan Nambudiri and he came twice or thrice for asking the plaintiff to advance money for purposes of certain ceremonies of the Illom. Finally the witness agreed to advance the amount and in pursuance of that, he actually advanced the amount and also got Ext. A executed in his favour.

10. In cross-examination also he has reiterated that he made enquiries of Sankaran Narayanan Nambudiri before he made this payment and he also says that he was assured by the karnavan that the amounts were necessary for ceremonies in the Illom and he also says that he was satisfied with that representation. No doubt, one point against the plaintiff may be pointed out, namely, that the document, Ext. A itself does not mention about the purpose of the loan. It would have been very desirable if the purpose had been mentioned at that time. But in the absence of any recital in the document, I have to fall back upon only the oral evidence. When the evidence tendered by the plaintiff was to the above effect, the learned Additional District Judge has in his judgment observed that there is nothing to show that the plaintiff made any bona fide enquiries as to the existence of any Illom necessity. There is also the further statement that the plaintiff himself would swear that he has not made any enquiries regarding the necessity. These statements, as I have shown earlier, are not warranted by the actual evidence of the plaintiff. He has let in prima facie evidence to show that he made reasonable enquiries about the existence of a necessity and to that extent, he has satisfied the provisions of section 8 of Travancore Act III/1106. There was no counter-evidence let in by the defendants. In this view, the decree and judgment of the learned District Judge are set aside and those of the trial court restored with costs throughout. No leave.