

(1944) 08 MAD CK 0022
In the Madras High Court

Chundur Venkatasubbamma alias Ranganayakamma	APPELLANT
Vs	
Targu Subbamma alias Ammanamma	RESPONDENT

Date of Decision : 11-08-1944

Acts Referred:

Citation : AIR 1945 Mad 17 : (1944) 57 LW 544

Hon'ble Judges : Chandrasekhara Aiyar, J

Bench : Division Bench

Judgement

Chandrasekhara Aiyar, J.—In this second appeal, preferred by the defendant against the decree of the District Judge of Nellore, the contention raised on her behalf is that the Judge was wrong in holding that there was any fiduciary relationship between her and the plaintiff which rendered her liable to account to the plaintiff not only for her share of the rents of the house actually received but also for what she might, and ought to have received. Reliance was placed by the learned District Judge on Peer Mohideen Rowther Vs. Asia Bivi and Others, as authority for his view. That decision, however, does not lay down that one co-owner of property jointly belonging to himself and another, the entire income of which he collects, is in the position of a trustee as regards the co-owner not in possession. In that case, there were special facts proved on which Venkatasubba Rao J. held that defendant 1 occupied a fiduciary position as regards the minor plaintiff. The learned Judge refers to the fact that the minor after his father's death was living under the protection of defendant 1 who obtained a succession certificate acting as his guardian and who also got certain releases on behalf of the minor. He says:

In the light of the facts proved, I must hold that the learned District Munsif has correctly held that the conduct of defendant 1 created, u/s 90, Trusts Act, such fiduciary relationship as entitled Nagoor Meeran to treat his brother as being in the position of a trustee for him.

2. There are no such facts in the present case. All that we have is that the plaintiff and the defendant were co-owners of the building which was rented out

from time to time as a shop. It was Veil-settled law that one co-owner is not a trustee for the other merely because he is in enjoyment of the joint property and collects the entire rents and profits himself: see *Kennedy v. De Trafford* (1897) 1897 A.C. 180 discussed in *Ramaswami Ayer v. Subramania Ayer* AIR 1923 Mad. 147.

3. If it is borne in mind that there was no fiduciary relation between the two parties, the decision of the Judge as regards the second and the third periods of the tenancy can be seen to be wrong. There is evidence that the defendant did not receive anything more than what she said she received during the second period and that in the third period it remained vacant. She cannot be made liable on the footing that she ought to have received more or secure a tenant. As regards the fourth period when one G. Venkatasubbayya is said to have been a tenant on a rent of Rs. 20-8-0 per mensem, the District Judge observes that as

the respondent has omitted to examine the tenant, produce the lease deed or adduce any evidence that the rent actually paid was what she says it was

she must account to the appellant for a reasonable rent. It is pointed out that there was evidence adduced by the defendant's agent that Rs. 20-8-0 was the only rent received from Venkatasubbayya. What the Judge apparently means is that he was not satisfied with this evidence, especially when the tenant was not examined and the lease deed which must be in existence, was not produced. For this period she will be liable at the rate of Rs. 23-8-0 per mensem, which is the rent that prevailed during the second period.

4. In the absence of any relationship as trustee and beneficiary, actual or constructive, there is no liability for payment of interest. But Mr. Raghava Rao urged on the authority of *I.L.B. Abdul Wajid v. Oosman Abdul Rubb* AIR 1943 Mad. 254 that interest can be directed to be paid Under Sections 94, 95 and 23, Trusts Act. The defendant comes no doubt within the scope of Section 94 as she had possession of the property not having the whole beneficial interest therein; but from this it does not follow necessarily that there was any breach of trust committed by her as contemplated by Section 23, in which event alone interest will become payable. The defendant will get credit in the decree to be made for the sums of Rs. 127-5-9 referred to in para. 10 of the plaint and the two sums specified in Exs. 4 and 4 (b) which she paid for and on behalf of the plaintiff in pursuance of attachments and orders of Court. Half of Rs. 69-10-9, the expenditure referred to in para. 6 of the judgment of the District Munsif, will also have to go out of the amount of the decree. The decree of the lower Court will be modified accordingly, parties paying and receiving proportionate costs right through. Leave is refused. There is no substance in the memorandum of cross-objections, on the grounds of the decision in the second appeal covering the points taken by the respondent. It is dismissed with costs.