

(1926) 08 MAD CK 0048
In the Madras High Court

Golla Kondamma and Others

APPELLANT

Vs

Golla Chinna Subba Reddi and Others

RESPONDENT

Date of Decision : 02-08-1926

Acts Referred:

Citation : AIR 1927 Mad 160

Hon'ble Judges : Devadoss, J;Devadoos, J

Bench : Division Bench

Judgement

Devadoss, J

1. The plaintiffs brought the suit for contribution against the defendants. Both the Courts have dismissed the plaintiffs' suit on the ground that they

are not entitled to contribution from the defendants. The plaintiffs have preferred this second appeal.

2. Pedda Subbareddi (1st plaintiff's husband), 1st defendant and one Golla Venkatasubba Reddi were brothers. In 1897 they divided their

immovable properties, but did not divide their outstandings and some gold mohurs. Venkatasubba-reddi brought O. S. No. 29 of 1913 on the file

of the District Court of Cuddapah to recover his one-third share of the outstandings and gold mohurs against Pedda Subbareddi and Defendants

Nos. 1 to 4. The District Court found that Rs. 7,118-14-8 was due to Venkatasubba Reddi and passed a decree against the legal representative

of Pedda Subbareddi for the whole amount and made the 2nd defendant, 1st defendant herein, jointly liable with them for Rs. 2,333-5-4 with

interest thereon at 6 per cent. The plaintiffs herein claimed from the 1st defendant the amount in respect of which he was made jointly liable with

them with costs and interest. Both the lower Courts found that there was no

equity in favour of the plaintiffs and that Pedda Subbareddi was in possession of the outstandings of the family as the managing member and that he alone was accountable for the outstandings. The contention for the appellants is that the 1st defendant herein did not put forward in O. S. No. 29 of 1913 that he was in any way cheated by Pedda Subbareddi and that he got half of the outstandings available in 1913 and he does not now allege that he was in any way cheated by Pedda Subbareddi and, therefore, he ought to contribute his share of the amount for which he was made jointly liable along with Pedda Subbareddi's legal representatives.

3. The main argument of Mr. Krishnaswami Iyer is that there was a partition of the outstandings in 1913 between Pedda Subbareddi and the 1st

defendant and he is not now entitled to go behind that partition arrangement unless he could show that there was fraud on the part of Pedda

Subbareddi. From the findings of the learned District Judge in O. S. No. 29 of 1913 it is clear that the family outstandings amounted to Rs. 21,000

in 1904. In 1913 the outstandings amounted only to Rs. 14,000 and the 1st defendant got only half of that, namely, Rs. 7,000. Pedda Subbareddi,

who was the managing member of the family, was left in charge of the collection of the outstandings from 1904. The question is whether in the

circumstances the plaintiffs, who are the legal representatives of Pedda Subbareddi, can in equity claim from the 1st defendant contribution in

respect of the amount he was made jointly liable with them. The right to contribution is an equitable one and the person against whom relief is

sought is entitled to show that he is not liable for contribution. As observed by the learned Judges in *Sive Panda v. Jujuti Panda* [1902] 25 Mad.

599:

Without impugning the propriety of the judgment, it will, of course, be open to the party from whom contribution is sought to plead and establish

that as between the joint debtors, the plaintiff is solely liable for the debtor or that he is not equally liable with the plaintiff.

4. The mere fact that there is a joint decree against two persons is not by itself sufficient to enable one party to claim contribution from the other in

a subsequent suit: vide *Asman Singh v. Ajnas Koer* 2 C. L. Rule 406 and *Serajool Huq v. Roy Luchmееput Singh Bahadoor* 20 W. R. 242.

5. In this case the 1st defendant was only a junior member of a Hindu family

which became divided in status in 1897. The managing member was in possession of the outstandings and gold mohurs. In 1913 there was a partition of outstandings between the 1st defendant and the managing member. The mere fact that he took a small share of the outstandings is not by itself sufficient to make out that he was in any way responsible for making out that the outstandings amounted only to Rs. 14,000 in 1913. When we find that the outstandings amounted to Rs. 21,000 in 1904, it is difficult to understand how it could have dwindled down to Rs. 14,000 in 1913. It is not suggested by the plaintiffs that the 1st defendant got more than Rs. 7,000 in the partition between him and Pedda Subbareddi in 1913. It may be that the 1st defendant was made to believe that the outstandings were only Rs. 14,000 in 1913, and was induced to take half of it. Pedda Subbareddi having been in possession of the family outstandings and having dealt with them and having got renewals of the debt bonds, the onus is upon the plaintiffs to make out that he accounted for everything that came into his possession. In the absence of such evidence the plaintiffs cannot succeed.

6. It is not suggested that the 1st defendant took part in the management of the family affairs, nor is it suggested that he was aware of the real state of things from 1904 to 1913. No doubt, the presumption is that he would have taken half of what was available in 1913 and it is upon that Mr.

Krishnaswami Iyer strongly relies for the position that the outstandings could not have amounted to more than Rs. 14,000 in 1913. But the fact that

the 1st defendant accepted Rs. 7,000 in 1913 as his share is not by itself conclusive proof that Pedda Subbareddi had not any more funds in his

hands belonging to the family. First defendant being only a junior member of the family, not in management of the family affairs, the onus is not upon

him to prove what the amount of the outstandings in 1913 was. The observations of the learned Chief Justice in *Suput Singh v. Imrit Tewari* [1880]

Cal. 720 apply to this case:

The Judge in the Court below was bound to enquire what share they each took in the transaction, because, according to circumstances, one or

more of them might be excused altogether or or in part from contributing, as for instance (to use an illustration put by Sir Barnes Peacock) one of

them might have acted as servant and by the command of the others; or the

others might have been the only persons benefited by the wrongful act, in which case those who were alone benefited, or who ordered the servant to do the act, would not be entitled to contribution.

7. The judgment of the learned District Judge in O. S. No. 29 of 1923 throws light on this question. After a careful consideration of the evidence in

the case he came to the conclusion that Pedda Subbareddi's legal representatives were liable for the whole amount and he made the 2nd

defendant only jointly liable in respect of a portion thereof. When the whole amount has been recovered from the plaintiffs, for which they were

made liable under the decree, it is difficult to see how they could claim contribution in respect of a certain amount for which the present 1st

defendant was made jointly liable with them. The reason why the District Judge made the 1st defendant jointly liable for a small sum was that he

got Rs. 7,000 in 1913 and that he should be accountable for one-third of that amount jointly with Pedda Subbareddi. The decree should have

been that the whole amount was recoverable from Pedda Subbareddi's legal representatives and in case any portion of this amount was not

recovered from them the 1st defendant herein should be liable to the extent of Rs. 2,333-5-4. If the decree had been in these terms, this suit for

contribution would not have arisen.

8. Another contention urged by Mr. Krishnaswami Ayyar is that as the 1st defendant has not gone into the box or adduced any further evidence, it

is not open to him to contend that he is not liable for contribution. There are sufficient materials in the documents filed in the case to show that the

1st defendant is not liable for contribution. As I have already observed, in the light of the facts disclosed by the evidence, the onus is on the

plaintiffs to make out that they are entitled to contribution. As the facts on record clearly make out that the 1st defendant is not liable for

contribution the plaintiffs ought to have adduced evidence, if they wanted to substantiate their case against the defendant. It is difficult to understand

how they could claim the whole amount for which they were made jointly liable with the 1st defendant.

9. In the result the appeal fails and is dismissed with costs.