
(1912) 09 MAD CK 0016
In the Madras High Court

Gopala Iyengar

APPELLANT

Vs

Venkatakrishna Iyengar and Others

RESPONDENT

Date of Decision : 23-09-1912

Acts Referred:

Provincial Small Cause Courts Act, 1887 — Section 25

Citation : 17 Ind. Cas. 748

Hon'ble Judges : Sadasiva Aiyar, J

Bench : Single Bench

Judgement

Sadasiva Aiyar, J.—The defendant is the petitioner in the revision. He executed a promissory-note in favour of one Venkatavaratha Iyengar

(defendant's son-in-law) for Rs. 200 on 26th September 1908. Venkatavaratha Iyengar died in May 1909, leaving a widow and two paternal

uncles (plaintiffs Nos. 1 and 2 in this suit). He was 30 years old at his death. Then his widow (defendant's daughter) brought Original Suit No. 292

of 1909, against her husband's paternal uncles (plaintiffs NOS. 1 and 2) for maintenance, evidently on the basis that her husband and his paternal

uncles were undivided in interest and that she was entitled to maintenance as the widow of an undivided co-parcener in a joint Hindu family owning

joint family property. Though the present plaintiffs Nos. 1 and 2 (defendants therein) at first contested her claim on the ground that Venkatavaratha

Iyengar and themselves did not own any joint family property (See Exhibit D), the present plaintiff afterwards consented to give defendant's

daughter (the plaintiff in Original Suit No. 292 of 1909) maintenance as the widow of a person who was a member of a joint family property, the

joint family members having consisted of at least himself and the deceased Venkatavaratha Iyengar.

2. The present suit was next brought by the plaintiffs Nos. 1 and 2 and by the 2nd plaintiff's sons (plaintiffs Nos. 3 and 4) for recovery of the

promissory-note debt due by the defendant, treating the promissory-note amount as joint family funds which had belonged to the plaintiffs Nos. 1

and 2 and their deceased nephew, Venkatavaratha Iyengar and the plaintiffs Nos. 3 and 4 and which amount, the plaintiffs (as surviving co-

parceners) were entitled for recover. Paragraph No. 8 of the plaint expressly says: ""As the suit debt was paid (advanced) from the family property

and as the suit promissory-note was executed in the name of the family member viz., the said Venkatavaratha Iyengar, succession certificate is not

necessary.

3. The defendant, in his written statement (which he has not chosen to print for this Court's perusal), seems to have pleaded:

(a) that the promissory-note was altered after he had executed and delivered it to his son-in-law by the insertion of the figures as to rate of interest.

(b) that he had re-paid Rs. 125 to his son-in-law by performing some ceremonies at an expense of Rs. 125 at the Son-in-law's request,

(c) that the Rs. 200 lent under Exhibit C was his son-in-law's self-acquisition and that, therefore, the plaintiffs were not entitled to sue thereon.

From the written statement, as read out to me by the petitioner's learned Vakil, I was unable to conclude that the defendant contended that the 1st

plaintiff and the deceased Venkatavaratha Iyengar did not form a joint Hindu family and all that it seemed to contend on this point was that the

money advanced on the promissory-note was the deceased's self-acquisition.

4. The learned Subordinate Judge found:

(a) that the promissory-note, before it was delivered to the 1st plaintiff by the defendant, contained the figures as to rate of interest and there was

no subsequent alteration,

(b) that the defendant did not re-pay Rs. 125 to his son-in-law, though the defendant might have spent some money voluntarily in the interests of

his own daughter in some incantations, and

(c) that Venkatavaratha Iyengar left no self-acquired property. I cannot go behind these findings of fact in revision.

5. The learned Vakil for the petitioner, however, strenuously contended that the 1st plaintiff's evidence shows (a) that the 2nd plaintiff has been

living apart from the 1st plaintiff and the deceased Venkatavaratha Iyengar (and the latter's predeceased father), all along making separate self-

acquisitions, there having existed no nucleus of ancestral property belonging to the three brothers (1st and 2nd plaintiffs and Venkatavaratha

Iyengar's father),

(b) that the plaintiffs Nos. 2 to 4, therefore, could not sue as surviving members of a joint family to which Venkatavaratha Iyengar belonged,

(c) that if Venkatavaratha Iyengar was the 1st plaintiff's benamidar, the 1st plaintiff cannot sue on the promissory-note and

(d) that if the money was the first plaintiff's self-acquisition, Venkatavaratha Iyengar must be deemed to have been the 1st plaintiff's benamidar.

6. If the defendant is entitled to raise the Question that the plaintiffs and Venkatavaratha Iyengar did not form a Joint Hindu family, I should be

inclined to hold that there was some force in the above contentions. But I think that in the lower Court, the petitioner, while relying on the

contention that the promissory-note money was Venkatavaratha Iyengar's own, did not raise the question that even if it was not his own, he and

the plaintiffs did not form a joint family and he must be deemed to have been merely the first plaintiff's benamidar. The first plaintiff's evidence

shows that the first plaintiff who had no child of his own treated Venkatavaratha Iyengar as the son of his own loins, and that he lived with

Venkatavaratha Iyengar treating all his (1st plaintiff's) property as jointly owned by himself and Venkatavaratha Iyengar. It was on that footing that

he agreed to give maintenance to Venkatavaratha Iyengar's widow. It may be that according to the dictum of Sir Bashyam Iyengar, J., in

Sudarsanam Maistri v. Narasimhulu Maistri 11 M.L.J. 335 the members of the branches of two alone out of several brothers cannot form a joint

Hindu family with their joint earnings as joint family property with mutual rights of survivorship. Even this dictum has to be qualified by the decision

of the Privy Council in Venkayamma Garu v. Venkatrama Nayamma Bahadur Garu 25 M.k 678 that daughter's sons, who are un-divided

brothers as regards their paternal property inherit their maternal grandfather's property also as joint family property, though as regards the said

paternal property they might have other undivided co-parceners (as paternal uncles or step-brothers), who have no right in their maternal

grandfather's property held jointly by themselves alone.

7. But I am satisfied from the evidence in this case that the promissory-note for Rs. 200 was obtained in. Venkatavaratha Iyengar's name for the

benefit of the 1st plaintiff and Venkatavaratha Iyengar jointly as a family partnership though not as a joint family corporation under the Hindu Law.

One member of the said partnership having died, the other member (1st plaintiff) was, as surviving partner, entitled to collect the money due on it

especially after he had satisfied the claims of his partner's widow and to obtain a decree thereon against the obligor for realizing the partnership

assets. The defendant is, in my opinion, further not entitled to raise a question at the arguments in the High Court on revision which he did not raise

or argue in the lower Court. No one of the fifteen grounds mentioned in the revision petition put in even in this Court directly raises the question

argued before me that the 1st plaintiff and the late Venkatavaratha Iyengar did not form a joint Hindu family.

8. I am further of opinion that even if Venkatavaratha Iyengar was merely the 1st plaintiff's benamidar, the decree passed by the lower Court did

substantial justice as between him and the defendant. The constitution of the plaintiffs Nos. 2 to 4 by the lower Court's decree as joint decree-

holders with the 1st plaintiff is not objected to by the 1st plaintiff himself. The power of interference u/s 25 of the Provincial Small Cause Courts

Act (IX of 1887) is a discretionary power, not to be used unless there has been a failure of justice. *Poona City Municipality v. Ramji Raghunath* 21

B.k 250. I, therefore, decline to interfere and dismiss the revision petition with costs.