

(1899) 10 MAD CK 0007
In the Madras High Court

Hanumantu Mallesam Naidu and Others	APPELLANT
Vs	
Jugala Panda and Others	RESPONDENT

Date of Decision : 17-10-1899

Acts Referred:

Citation : (1900) 10 MLJ 34

Judgement

1. The question referred in this case is " whether a creditor in the position of the plaintiff has a further " right to sue the son for his father's debt on the death of the father, apart from the right to sue him in the father's life-time for such debt."
2. The plaintiffs recovered a decree for moneys borrowed from them for family purposes by two persons--Balakrishnama Chowdari and Appala Naidu,--in an action against those two brothers and an undivided brother of Appala Naidu in 1882. Balakrishnama Chowdari and Appala Naidu, who had borrowed the money died in 1893, and the plaintiffs, having recovered no part of their decree in 1895 sued the present five defendants for the full amount of the decree and interest. The first two present defendants are the undivided brothers of the first defendant Balakrishnama Chowdari in the suit of 1882, and have succeeded as such to the property of Balakrishnama Chdwdari by right of survivorship. The third, fourth and fifth defendants are the sons of Appala Naidu.
3. The defendants set up the plea of limitation. Hence this reference which relates only to the defendants 3 to 5.
4. It was decided by the Full Bench in Ramasami Nadan v. Ulaganatha Goundan I.L.R(1898) . M. 49 that a plaintiff can sue the sons with the father in the father's lifetime for a debt incurred for family purposes and get a decree against them, making their shares in the family property liable for the debt.
5. It was contended before us that there were two causes of action, one during the father's lifetime and another arising on the father's death. Natasayyan v. Ponnusami I.L.R(1892) . M. 99 and Ramayya v. Venkataratnam I.L.R(1898) . M. 122. The argument appears to be that though the decree would in neither case

be a personal decree against the sons, whether the suit was brought in the father's lifetime or after his death, there was nevertheless a difference in the relief obtainable, viz., that in the former case an alienation made by the son before decree of his share or interest would not be affected by the decree, whereas in the latter case if the son alienated any part of the property after the father's death but before decree obtained against him, he would be liable to satisfy the decree to the full extent of all the property which came to him irrespective of any alienation he might have made. Numerous cases were cited in support of this contention (all of which, however, were cited and considered in *Ramasami Nadan v. Ulaganatha Goiundan* I.L.R.(1898) M. 49.

6. We are unable to follow the argument. The cause of action is the same and the decree recoverable is the same, though the actual relief obtainable in the result may be different owing to circumstances which may have occurred in the meanwhile and before decree that alone cannot give a fresh cause of action.

7. We think the question referred is covered by the Full Bench ruling in *Ramasami Nadan v. Ulaganatha Goundan* I.L.R(1898) . M. 49 In that case two actions were brought against a father and his two sons for a debt upon a bond executed by the father for the family debt in 1893 (160 of 1893 and 324 of 1893; and" a decree was given against the father alone, the two sons being dismissed from the suit. In 1896, the plaintiff brought an action after the father's death against the two sons (the defendants in the suit). In making the reference to the Full Bench the Court after stating the above facts proceed as follows: "If the decision in *Natasayyan v. Ponnusami* ILR 16 M. 99 " is right, there seems to be no doubt that the present suit is " maintainable, for it was there held that the claim to enforce " the obligation of sons under Hindu Law gives a cause of action " arising only on the death of the father, and that case was " approved, certainly not disapproved, in *Ramayya v. Venkataratnam*. It seems to us extremely doubtful whether this decision can be supported, and the point is one of general importance.... It is certainly desirable that all the questions " between the creditor and his debtor and the debtor's sons " should be raised and determined in one suit. " The precise question we wish to refer is--" Whether the plaintiff could, in the suits 160 and 324 of " 1893, have prosecuted the claim against the sons of Tirumalai " and have obtained a decree, making their shares in the family " property liable for Tirumalai's debt"?

8. This question is unanimously answered in the affirmative by the Full Bench.

9. It is true that the question in that case was one of *res judicata* and not limitation, but we do not see that that can make any difference. The Court decided that the cause of action arose in the father's lifetime, and if it arose then and could have been enforced by action, then unless the death of the father gives a fresh cause of action;the time for the purposes of limitation obviously begins to run in the father's lifetime at the time when it commenced to run against the father. Throughout the case, moreover, and particularly in the judgments of the Officiating Chief Justice and Subrahmania Aiyar, J., the question

discussed and determined is whether the cause of action arose during the father's lifetime or after his death only, and the object of the reference was to determine whether that class of cases which held that the cause of action arose only on the death of the father could be sustained having regard to the decision that the son's liability existed at an earlier date, viz., during the father's lifetime. If there were two causes of action, one commencing during the father's lifetime and another at the father's death, it would have been equally important to raise the contention in that case as in the present, but it is observable that such a contention is nowhere suggested.

10. We are of opinion that there are not two causes of action and, therefore, answer the question referred that a creditor in the position of the plaintiff has not a further right to sue the son for his father's debt on the death of the father, apart from the right to sue him in the father's lifetime for such debt.

11. The appeal coming on for final hearing after the expression of the opinion of the Full Bench, before their Lordships (Subrahmanya Aiyar and Davies, JJ.) the Court delivered the following:

12. With reference to the ruling of the Full Bench on the reference made by us, the suit must be held to be barred by limitation. The decree of the lower Court is reversed and the suit dismissed. In the circumstances, each party will bear his own costs in this and in the lower Court.