
(1920) 02 MAD CK 0032
In the Madras High Court

K. Raghavendra Rao

APPELLANT

Vs

Lakshmindrathirtha Swamiar by Guardian Rajagopalacharya

RESPONDENT

Date of Decision : 26-02-1920

Acts Referred:

Citation : (1920) ILR (Mad) 795

Hon'ble Judges : Spencer, J;Sadasiva Ayyar, J

Bench : Division Bench

Judgement

Sadasiva Ayyar, J.—The defendant is the appellant. The suit was brought for the recovery of Rs. 1,500, and interest due thereon, being loans of money advanced to the head of the Shirur muttam, one of the eight Udipi muttams. The swami to whom the loans were made is dead and the suit was brought against his successor, the allegation in the plaint being that the debts were incurred for the benefit and necessities of the mutt. The plaint prayed that a decree should be passed directing the defendant to pay the sum due to the plaintiff out of the estate of the God Vittalar of the defendant's muttam. The District Munsif found that, of the 76 items making up Rs. 1,500, the third item was clearly proved to have been borrowed for the necessities of the muttam. As regards the other items making up Rs. 1,000, they were borrowed from him for the ordinary expenses of the muttam, but the creditor had not shown that the means then in the hands of the madhathipatbi were not sufficient to meet those expenses. He, therefore, gave a decree as regards Rs. 500 against the defendant as the representative of the muttam, to be recovered from the rents and profits of the muttam, but as regards the remaining Rs. 1,000 and interest thereon, he directed the defendant to pay it out of the assets of the predecessor in his hands such assets, according to the District Munsif, consisting of the income which accrued due from the mutt properties during the lifetime of the defendant's predecessor but not realized by that predecessor during his lifetime. The District Munsif in forming such an opinion was guided by the view of the law as it was understood in this Court prior to Ram Parkash Das v. Anand Das I.L.R., (1016) Cal., 707 and Arunachellam Chetty v. Venkatachalapathi Guruswamigal I.L.R.,

(1920) Mad., 258 , that view being that the head of a mutt is the private and absolute owner of the income of the mutt accruing during his lifetime.

2. The learned District Judge on appeal was inclined to hold that the sum of Rs. 1,000, made up of the items other than the third item, did not stand on a lower footing than the third item itself and that the District Munsif would have been "justified in holding" that necessity had been proved for borrowing these sums also. As, however, the plaintiff had not filed any memorandum of objections in the District Court, the learned District Judge contented himself with confirming the District Munsif's decision.

3. In this Second Appeal several points were argued. Two of them were: (1) that in the absence of any charge created by a trustee on the trust properties for loans obtained by him the creditor cannot obtain a decree making the trust properties liable, (2) that the finding that there was necessity to borrow either the third item or the other items was erroneous. (The other points argued by the appellant's vakil need not be noticed as they do not arise if he fails on the second point, as he does, in my opinion.)

4. As I understand the District Judge's judgment, he did not, in arriving at his finding on the second point, lose sight of the consideration mentioned in *Srimath Deivasikamani Pandara Sannadhi alias Nataraja Desikar Vs. E.K. Karutha Ravuthan (died) and Others*, , viz., that it was not sufficient for the creditor to prove that the moneys were borrowed for the purposes of the mutt, but that it must also be found that there was an existing necessity for then incurring the debts, that is, that the necessary expenses could not have been met out of the mutt funds then available to the trustee. The learned District Judge has considered the evidence in the case, which shows that the defendant's predecessor was a prudent and honest man, and given weight to the fact that the defendant was withholding the temple accounts; and I cannot say that his finding of fact can be successfully attacked in Second Appeal.

5. Then the only question remaining for consideration is whether in a suit to recover simple money debts incurred by the sanyasi head of an institution, the trust itself can be made liable and, in considering this question, it is, of course, immaterial whether the suit is brought during the lifetime of the trustee who incurred it or against his successor. If his position was wholly analogous to that of an executor, or an administrator, or the lay trustee of a charitable or religious institution, the answer must be in the negative. See *Swaminatha Aiyar Vs. Srinivasa Aiyar and Others*, *Chidambaram Pillai v. Veerappa Chettiar* (1917) 6 L.W., 640 and *Parvathi Ammal v. Namagiri Ammal* (1917) 6 L.W., 722 . The principle underlying these decisions is that such a trustee, or other person in the position of a trustee, has got his personal credit to pledge, and the presumption should be that when he incurred a debt without charging the trust properties, the creditor lent the money on such personal credit and could look to that credit alone and to the principle of subrogation for recovery of his loan. I think the same principle would apply even to an ordinary trustee of a temple who is not a

sanyasi. But as regards sanyasi trustees, a distinction has been suggested in *Shankar Bharati Svami v. Venkapa Naik* (1917) 6 L.W., 722 , I shall quote the following sentences from page 425:

The case was said to be similar to that of an executor contracting a loan for the purposes of the estate by English Law--see *Farhall v. Farhall* (1871) 7 Ch. App., 123; or that of the manager of a charitable institution incurring a liability for the purposes of the institution--*Strickland v. Symons* (1884) 26 Ch. D., 245. It is sufficient for the present case to say that those decisions are, in our opinion, inapplicable to the case of the swami of a mutt, who presumably has no private property, and must, therefore, be presumed to be pledging the credit of the mutt when he borrows money for the purposes of the mutt. That being so, the bond was binding on the savasthan if the loan was for the purposes of the mutt, or the plaintiff had bona fide reason to suppose it was intended for such purposes.

6. Again in *Srimath Deivasikamani Pandara Sannadhi alias Nataraja Desikar Vs. E.K. Karutha Ravuthan* (died) and Others, , though the ultimate decision was in favour of the successor of the mutt who was the defendant in that case, the law laid down recognizes that the loans incurred by the head of the mutt for necessary purposes of the mutt can be treated as pledging the credit of the mutts and as justifying a decree against the mutt. I find from the back of the printed papers in that case that *Shankar Bharati Svami v. Venkapa Naik* I.L.R. (1885) , 9 Bom., 422 was cited before the learned Judges, and though the loans in question in that case were obtained by the head of the mutt through merely signing acknowledgments of indebtedness in the plaintiff's account books, the judgment proceeds on the footing that he thereby pledged the credit of the mutt and not any personal credit of his. I am clear that a Hindu sanyasi has no personal credit whatever of a monetary or proprietary character, and that it is a contradiction in terms to state that any loan was made to a sanyasi on his personal credit. I would therefore hold that *Swaminatha Aiyar v. Srinivasa Aiyar* (1), and the other cases already referred to, do not apply when the question of the liability of the mutt or other institution for the debt incurred by a sanyasi as head of the institution comes into question.

7. In the result I would dismiss the Second Appeal with costs.

Spencer, J.

8. I agree with my learned brother in thinking that cases where the head of a mutt borrows money for purposes binding on the mutt, without showing any indication that he intends to make himself personally liable, are distinguishable from cases of trustees borrowing money for purposes of their trusts upon promissory notes. In all the cases relied upon by the appellant's learned vakil--*Swaminatha Aiyar Vs. Srinivasa Aiyar* and Others, and *Chidambaram Pillai v. Veerappa Chettiar* (1917) 6 L.W., 640 and *Parvathi Ammal v. Namagiri Ammal* (1917) 6 L.W., 722 --there were promissory notes executed by the trustees or executors concerned, and in the case of such promissory notes there is always a

presumption that the promisor intended to make himself personally liable [see *Palaniappa Chettiar v. Shunmugam Chettiar* I.L.R.,(1918) Mad., 815], and this is especially so when the trust which he represents is an inanimate object which has no personal liability of itself. To the cases quoted by my learned brother I would add *Srimath Deivasikamani Pandarasannidhi v. Noor Mahomed Bauthan* I.L.R., (1908) Mad., 47. All these are cases in which the head of a mutt, either directly or by implication, pledged the credit of the mutt in incurring debts for purposes necessary for the maintenance of the institution. In such cases there is no presumption that the head of the mutt (mahant, swamiyar or whatever other title he may possess) intended to make himself personally liable. From this point of view, the decrees of the Courts below were right and the Second Appeal should be dismissed with costs.