

(1920) 12 MAD CK 0003
In the Madras High Court

Kani Venkatareddi and Others	APPELLANT
Vs	
Chelluri Sathyanarayanamoorthi and Others	RESPONDENT

Date of Decision : 01-12-1920

Acts Referred:

Citation : AIR 1921 Mad 470 : (1921) 13 LW 516 : (1921) 40 MLJ 473

Hon'ble Judges : Oldfield, J;Abdur Rahim, J

Bench : Full Bench

Judgement

Abdur Rahim, J.—Here the father of the defendants 2 to 4 at the time when they were living as members of the joint family was incurring debts, and it was thought advisable in the interests of defendants 2 to 4 who were minors at the time that there should be a partition. Accordingly a partition was effected. The two promissory notes sued upon were executed before the partition. The question for decision arises as to whether the properties which the defendants 2 to 4 received on partition are liable for those debts. In my opinion the matter is really concluded by a recent decision of this Court in *Peda Venkanna v. Srinivasa Deekshatulu* ILR (1917) M. 136 where the previous authorities on the subject were referred to and discussed. The learned Judges held that after division of the family properties, the creditors of the father suing upon a debt which was incurred by the father before partition but which was not a charge upon the family property the son's share of the family property as allotted to him in the partition would not be liable for those debts. Mr. Varadajajulu Naidu, the learned vakil for the respondents, suggested a distinction in regard to a case where the son is sought to be made liable for the antecedent debts of his father not incurred for illegal or immoral purposes, after the

father's death. With respect to that alone he says that there is any real question of pious obligation. But during the life-time of the father, the decisions lay down that the father is entitled to dispose of the joint family property including his son's share in order to discharge the debts incurred by him provided they are not incurred for any illegal or immoral purposes. This is not really based on the pious obligation of the son to discharge the father's debt but that it is the right of the father himself to deal with the property for such debts. Whether this is a sound hypothesis or not, the decision in *Peda Venkanna v. Srinivasa Deekshatulu* ILR (1917) Mad. 136 does draw a distinction between a case where the creditor seeks to proceed against the son's share before partition and a case in which partition had been effected before any action was taken by the creditor. The learned Vakil for the appellants has referred us to the cases in *Ramachandra Padayachi v. Kondayya Chetty* I.L.R.(1901) Mad. 555 *Kameswaramma v. Venkatasubba Rao* I.L.R.(1914) Mad. 1120 and *Kulada Prasad Pandey v. Haripada Chatterjee* I.L.R.(1912) Cal. 407. But all the Madras and some other decisions as well were considered in the recent case decided by the learned Chief Justice and Mr. Justice Kumaraswami Sastri.

2. Then it was argued that the partition was not a bona fide one because the father had been incurring debts and it was for that reason that the partition was effected by persons interested in the minor's behalf. I do not think that this fact would necessarily make the partition other than bona fide. What I understand by a partition being not bona fide is where it was primarily intended to defeat creditors that is that the partition was arrived at not so much with a view to protect the interests of the minor sons against the reckless conduct of the father but with some definite object of defeating the father's creditors, or in the words the partition was merely a cloak for keeping the property out of reach of the creditors, the real object being that the father would continue to share in the enjoyment of the property along with the sons without his creditors being able to have recourse to it for the purpose of realising their debts. The facts of this case do not justify any such conclusion.

3. Complaint was also made to us as regards the lower court not having exhausted all the processes of law in order to compel the attendance of a

witness whom the defendants wanted to examine. But that witness was wanted only to prove that the debts were incurred in the course of a

business which the father of the defendants 2 to 4 carried on with certain Nalam people. But admittedly the business was not a family or ancestral

business and therefore any debt incurred by the father in the course of that business would not be treated as a debt incurred for a proper family

purpose and as such binding on the properties which belonged to the family. The appeal fails and must be dismissed with costs.

Oldfield, J.

4. I agree with my learned brother's Judgment but on the first point dealt with by him, I do not wish to say more than that Peda Venkanna v.

Sreenivasa Deekshatulu I.L.R.(1917) Mad. 136 in my opinion entails his conclusion and that I have been shown no reason for not following that

decision.