

(1936) 09 MAD CK 0007
In the Madras High Court

Kavuri Anjayya

APPELLANT

Vs

Alapati Ankamma and Others

RESPONDENT

Date of Decision : 07-09-1936

Acts Referred:

Citation : AIR 1937 Mad 99 : 166 Ind. Cas. 866 : (1936) 44 LW 836

Hon'ble Judges : Horwill, J

Bench : Division Bench

Judgement

Horwill, J.—The plaintiff was the creditor of the deceased undivided father of defendant 1. He has brought this suit for an administration of

such part of the mother's estate as is liable for his father's debts. The trial Court held that such a suit lay. In appeal the Subordinate Judge of

Tenali, interpreting Section 218, Succession Act, held that the suit was not maintainable. Two questions have been discussed in second appeal.

One is whether, in view of the fact that defendant 1 was undivided from his father, an administration suit would be maintainable, and, secondly,

even if it were, would the plaintiff, against the interest of a number of other creditors, be able to maintain the suit.

2. With regard to the first point, there can be no doubt that although, for the purpose of the execution of decrees, decrees already passed against a

deceased father can be executed against the son by virtue of Section 53, Civil P. C, yet defendant 1 is not the legal representative of the deceased

debtor. Nevertheless, unless the debts have been incurred for illegal or immoral purposes, the obligations of defendant 1 are precisely those of an

heir ; for defendant 1 is liable for his father's debts, not otherwise being immoral or illegal, to the extent of the assets of the joint family property

that has come into his hands. Although therefore administration suits are primarily intended for the administration of the assets of a deceased person

in the hands of an heir or administrator or executor ; yet the very reasons that would make it equitable and desirable to enable a creditor to file an

administration suit would make it equitable and desirable that a creditor should be allowed to bring an administration suit against an undivided son

of the debtor. The learned Munsif was therefore right in holding that such a suit was maintainable. The learned Subordinate Judge has not

considered this question at all ; but has allowed the appeal and dismissed the suit, because of his interpretation of Sections 211 and 218,

Succession Act, which have no application to the matter in hand.

3. It has been pointed out that many of the defendants are against an administration suit, and for the very obvious reason that they have already

obtained decrees and are actually executing them ; so that if the plaintiff is non-suited, they will be able to realise their decrees much more fully than

would be possible if the assets were fairly divided among the creditors. I do not think however that the interested objections of certain defendants

is a sufficient ground for not permitting the plaintiff to pursue his remedies in an administration suit. In 14 Halsbury 442 (Article 843) it is pointed

out that a creditor, merely on his own behalf, can bring an administration suit. Although the present suit differs from the ordinary administration of

an insolvent's or a deceased man's estate ; yet the same principles of equity will apply. I therefore set aside the decree of the lower appellate

Court and restore that of the District Munsif. Respondents 1 to 4 and 6 to 18 will pay the costs of the appellant in this Court and in the lower

appellate Court. (Leave to appeal refused).