

(1926) 11 MAD CK 0019
In the Madras High Court

Koduru Venku Reddi and Another

APPELLANT

Vs

Magunta Venku Reddi and Others

RESPONDENT

Date of Decision : 12-11-1926

Acts Referred:

Citation : AIR 1927 Mad 471 : (1927) 25 LW 784 : (1927) 52 MLJ 387

Hon'ble Judges : Murray Coutts Trotter, C.J.; Krishnan, J; Curgenvin, J

Bench : Full Bench

Judgement

Murray Coutts Trotter, C.J.—I have had the advantage of perusing the judgments about to be delivered by my learned brothers. I agree

with them and have nothing to add.

Krishnan, J.

2. The question referred in this case to the Full Bench is ""where a father or a managing member of a joint Hindu family contracts a simple debt and

then there is a partition among the members of the family, can the creditor proceed against the property allotted to the other members for such a

debt?"" When the appellant opened his case in the Full Bench it was found that the question formulated did not properly arise and it was decided

that it need not be considered but that the whole second appeal should be treated as before the Full Bench for disposal. We have thus heard

arguments in the second appeal.

3. The second appeal arises in a suit brought by a Hindu son against his father and his two younger brothers, defendants 1 to 3, for a partition of

their joint family property and the delivery over to him of his share. The 4th defendant was joined as an illatom son-in-law, but his claim was

disallowed by the trial Court and he is not before us. 5th and 6th defendants are the purchasers of the 2nd defendant's share in the family property

when this suit was pending before the District Munsif and they were added as parties by an order of Court. They are the appellants before us.

4. The only point argued in the second appeal relates to a debt incurred by the father, the 1st defendant, on a promissory note executed by him on

a date prior to the suit to a third party. That creditor had brought a suit on his note while this suit was pending and had obtained a decree against

the father personally and against the joint family property; the father and all the sons were parties to that suit as also defendants 5 and 6. These

latter were exonerated as they could not be made liable on the promissory note which they had nothing to do with.

5. In ascertaining the net assets available for partition the Lower Courts have held the debt abovementioned to be a debt payable out of the family

property and have made the 2nd defendant's share liable for a proportionate share of the debt and declared the 5th and 6th defendants entitled as

purchasers only to such a reduced share. They contend in second appeal that they should get the whole share without the liability for the debt.

6. It is not denied that the debt was a proper debt of the father, being neither immoral nor illegal. It is a debt which on account of pious obligation

of the Hindu son to pay his father's just debts out of the joint family estate, was payable from the estate. The debt had become a decree debt

during the pendency of this suit, by which the joint family estate was expressly made liable. It is first argued in second appeal that as in the suit on

the promissory note in which defendants 5 and 6 were parties they were exonerated, the debt should be held to be not chargeable on the 2nd

defendant's share in their hands. As pointed out by the learned Subordinate Judge they were exonerated because they could not be made liable on

the note as they had nothing to do with it. Nevertheless a ""decree was passed against the joint family estate. These defendants are not therefore

entitled to rely on the decree to say that that estate should not be charged in their hands with the liability for the debt. The purchaser of an

undivided share of a Hindu coparcener, it has been held, gets only an equity to enforce partition and takes the share when partitioned subject to all

the liabilities on it in the hands of his vendor. Clearly therefore the 5th and 6th defendants can get the 2nd defendant's share only subject to the

liability for the debt, if it is subject to that liability in 2nd defendant's hands. Furthermore the parties here were co-defendants in the suit on the note

and there was no contest and no decision between them on any point and consequently no question of res judicata arises and defendants 5 and 6

cannot rely on the judgment against the plaintiff.

7. The learned vakil then raised a novel point and argued that in a partition suit between a Hindu father and sons the father must be left to pay all

the debts incurred by him even if they are just debts out of his own share and that the shares of the sons are not liable for them. He contends that

as soon as the partition suit is brought there is a severance of status between the father and the sons and the shares of the sons are not liable for the

father's debts thereafter. This argument may be sound with reference to the debts incurred by the father after the partition suit has been brought;

but as regards debts previously incurred, it is clearly erroneous. The fallacy is in failing to note that what is decided in a partition suit is the rights

and liabilities of parties on the date of the plaint. The decree refers back to the date of suit; unless indeed the partition suit is based on an

antecedent severance of status when the Court will have to decide the rights and liabilities as on that date and pass a decree accordingly. In either

case the date to which the decree refers will be the date when the severance took place. As on that day the father's power to sell the joint

property for his just debts is subsisting the Courts have to recognise in their decree the existence of such debts as are payable out of the joint estate

and make the necessary provision for their liquidation before directing partition by metes and bounds. For purposes of partition, an account has to

be taken of the debts and liabilities binding on the estate. In the case of a managing member of a joint family, all debts which he has incurred for

proper legal necessity of the family he is entitled to have paid out of the joint property before the shares are allotted to the several coparceners; and

in the case of a father he can ask" all his debts which are neither immoral nor illegal to be so paid out of the joint estate of himself and his sons

before partition whether such debts be shown to be for legal necessity or not. That view has been long recognised and the practice of our Courts

has been in conformity with it. No authority has been cited to the contrary by the learned vakil for the appellant and I see no reason to depart from

it.

8. The only two points urged in second appeal failing, it must be dismissed with costs of respondents 1 and 4.

Curgenven, J.

9. I agree that this Second Appeal must be dismissed with costs. It is immaterial that the appellants were exonerated in the suit upon the

promissory note. We have to consider the family assets and liabilities as they stood on 21st November 1926, when the plaintiff filed his suit for

partition. At that date, among the debts was this debt of the father's, not contracted for any illegal or immoral purpose. No authority has been

produced for the position that, upon a partition, the sons do not share liability with the father for such a debt. Such a doctrine would be in conflict

with the indisputable principle that the family property is liable for a father's untainted debts. In the partition, therefore, the share of the 2nd

defendant would have to be ascertained with reference to this debt as well as to other debts binding upon the family members; and it follows that

the share of the appellants, who have succeeded by purchase to his rights and liabilities, must be ascertained in the same manner.