

(1927) 03 MAD CK 0090
In the Madras High Court

Kudkanjee Timmarsa Pai

APPELLANT

Vs

Kanjarpane Subba Rao and Others

RESPONDENT

Date of Decision : 29-03-1927

Acts Referred:

Citation : AIR 1928 Mad 256 : 108 Ind. Cas. 404

Hon'ble Judges : Srinivasa Aiyangar, J

Bench : Division Bench

Judgement

Srinivasa Aiyangar, J.—I am very sorry to have come to the conclusion in this second appeal that it should be dismissed. Plaintiff was a subscriber to a kuri chit. He instituted the suit against two sets of defendants, defendants 1 to 4, whose predecessor was himself a subscriber to the kuri chit, and who, made default in the payment of an instalment, and defendants 5 to 9 whose predecessor was the manager of this kuri chit. The predecessor of defendants 1 to 4 when he bid for and obtained the proceeds of a sale at an auction executed a security bond in favour of the manager. That document was registered and by that some immovable property belonging to him was charged with the payment of the amount of any subscription which might have to be paid by him. The plaintiff's case was that under the kuri chit whenever a subscriber made default in the payment of a subscription payable by him the person who as the highest bidder purchases the chit will be entitled to sue for the recovery of his subscription. No question arises her(c) with regard to that, because it is submitted that as on a simple contract the remedy is barred by the law of limitation. He has, therefore, to rely upon the security. The lower appellate Court has found that even this remedy has become barred by the law of limitation.

2. I am unable to agree with the lower appellate Court in that conclusion, but it seems to me that, having regard to the view I have taken with regard to the other question in the case, it is unnecessary for me to express any definite opinion on this point.

3. The other question is whether the plaintiff is entitled to enforce the security

under the deed of charge or mortgage executed in favour of the manager. The case was understood apparently by the plaintiff and treated by both the lower Courts as though it were one of principal and agent and as if the manager was the agent of the plaintiff. It seems to me that such a notion is opposed to all elementary ideas of the law of principal and agent. The plaintiff was not at the time when the security bond was executed a successful bidder at the sale. He was not in existence in that capacity. It could not then be known who would be such successful bidders. It is impossible that there could be in law constituted an agent of a principal not in existence, not yet ascertained. Again there is also another and what may almost seem to be a more fatal objection to the application of this doctrine of principal and agent. The plaintiff alone has instituted this suit. On the theory of which the argument was founded we must suppose that all persons other than the person who was executing the security bond must be regarded as principals. They have not joined in this action and I do not see how one principal alone can institute a suit against the agent.

4. However, it seems to me unnecessary to discuss this aspect of the case at great length because the facts require only to be glanced at in order to show that the true view to take is to regard this security as taken by the manager as a trustee for all persons who are then or may thereafter become interested in the security. The security is no doubt by name to the manager. He is entitled to enforce it himself because it is given to him, but he is not to have the beneficial interest of the enforcement of the security. It is for the benefit of others. Those others have to be ascertained and determined according to the circumstances. I am, therefore, clear in my mind that the manager with respect to this transaction of security must be regarded in law only as a trustee. If he should be regarded then as a trustee this suit is clearly untenable because the suit is not for the enforcement of a trust. It cannot really be regarded as a suit against the trustee or in respect of the trust or for the administration of the trust. The plaintiff seems to have conceived the idea, that because he is the beneficiary in respect of the security, or in other words, the security must be regarded as having been taken amongst others for the benefit of himself amongst others, he would be entitled to sue himself. Such a conception is entirely opposed to the law of trusts. If a trustee who is bound to collect the funds for the benefit of beneficiaries fails to do so, he commits breach of trust and the proper procedure is to have the defaulting trustee removed and have another trustee appointed or to sue for the administration of the trust by the Court.

5. It is unfortunate that the plaintiff should have been so ill advised and should have so entirely misconceived his remedy. Mr. Adiga on behalf of the appellant made almost a pathetic appeal to me to allow his client, the plaintiff, to amend the plaint at this stage. Having regard to the nature of the defence I should certainly have felt disposed to allow him to do so if I could have persuaded myself to regard the amendment applied for as being of a simple nature, but unfortunately it is not. The whole cast and frame of the suit would have to be altered and I apprehend that every paragraph in the plaint would have to be

changed, numerous persons who are not parties to the suit would have to be joined, the nature of the reliefs applied for would have to be entirely altered, and I do not feel justified that I should at the present stage make any such order, however much I may feel inclined to do so. In the result this second appeal must be dismissed, but in the circumstances I award no costs.