
(1928) 04 MAD CK 0004
In the Madras High Court

Lakshmiah

APPELLANT

Vs

Official Assignee of Madras

RESPONDENT

Date of Decision : 17-04-1928

Acts Referred:

Citation : AIR 1930 Mad 776

Hon'ble Judges : Madhavan Nair, J

Bench : Division Bench

Judgement

Madhavan Nair, J.—The question for decision in this appeal is whether the mortgage executed by one Narayanaswami in favour of one

Chinnarappa Reddi is binding on the appellant so as to affect his interest in the property of the joint family of which he is a member.

Narayanaswami, the mortgagor, was adjudicated as an insolvent in December 1920 for debts incurred inter alia in a groundnut business. He had

two brothers: Subbiah who died in 1909, and Virupakshappa who died in 1917. The father of these three brothers was Kamiseti Subbiah who

died in 1906. Subbiah left a son called Subbiah, and Virupakshappa left a son called Lakshmiah. Radhakrishna is the son of the insolvent

Narayanaswami. The following table shows the relationship of the members of the insolvent's family which is an undivided one.

Kamiseti Subbiah

_____ | _____

| | |

Subbiah (d. 1909) Virupakshappa Narayanaswami

1909. (d. 1917) mortgaged

| | in 1920.

Subbiah. Lakshmiah. |

Radhakrishna.

2. Subbiah, the son of the insolvent's deceased brother Subbiah, is now a major; Lakshmiah and Radhakrishna are both minors. The ancestor of

the family, Kamiseti Subbiah, carried on money-lending business. Virupakshappa, when he became the manager, started "She groundnut trade by

becoming a partner with another in such a trade about four years before his death, namely in 1913. Narayanaswami continued that trade when he

became the manager of the family on his brother's death, and in the course of carrying on this business executed the mortgage which has become

the subject of these proceedings. After the adjudication of Narayanaswami as an insolvent the Official Assignee filed an application for a

declaration that the mortgage debt Incurred by Narayanaswami is binding upon the interests of Subbiah, Lakshmiah and Radhakrishna, all of

whom opposed the application. The evidence was taken on commission. As the learned Judge points out he had not the advantage of seeing the

witnesses, nor had he the opportunity of examining the account books referred to in the evidence of the witnesses. On a consideration of the

evidence he held that the mortgage executed by Narayanaswami is binding upon Lakshmiah and Radhakrishna but not upon Subbiah. This appeal

has been preferred by Lakshmiah.

3. It is admitted that the trade in connexion with which this debt was incurred was not an ancestral trade. The argument of the Official Assignee is

that, though the trade is not an ancestral one, it was a joint family business carried on in the interests of the joint family and therefore it is binding on

the interests of the appellant though he is a minor. The appellant argues contra and says that in the circumstances of the case the trade cannot be

considered to be a joint family trade, that it was started by his father in his individual capacity and continued in the same capacity by his uncle

Narayanaswami.

4. Various decisions were brought to our notice in support of the contentions urged by the respective sides. But I think the question is essentially

one which should be decided mainly on the evidence in each case. In *Palaniappa Chetty v. The Official Assignee of Madras* [1916] 36 I.C 787

some indication is given as to the principles which should govern the consideration of the evidence relating to the question whether a business

carried on by the head of a Hindu family, the business being started by himself for the first time, is the business of the joint family. Sir Abdur Rahim

Offg. Chief Justice, stated:

In order that a presumption may arise, it must be shown that the other members by participating in the conduct of the business or its profits or by a

long course of acquiescence treated it as a business in which all the coparceners were interested. That is to say there must be evidence forthcoming

to show that such members of the family as were competent to judge for themselves adopted the business as joint concern of the family. If such

conduct is shown on the part of the adult coparceners who may ordinarily be assumed to safeguard the family affairs in which they are all equally

interested, that is sufficient to constitute the trade a joint family business so that the infant members would also become sharers in that concern. In

the case of a family whose ordinary occupation is trade much less proof than in other cases will no doubt be required of the adoption of a business

as a joint family business by the members of the family. Similarly the use of family funds for the purpose of business with the knowledge and

concurrence of the other adult members would ordinarily be strong evidence that the business was joint,

5. In this case the business was started by Virupakshappa four years before his death when he was admittedly the manager of the undivided family.

It is not denied that it was started with joint family funds. The only adult member of the family at that time was Narayanaswami. The business was

carried on at Kandukur, How it was being managed is thus spoken to by Ghulam Basappa, witness 2 for the applicant:

There was a groundnut decorticating machine at Kandukur in 1917. It belonged to Pamidi kasamsetti Virupakshappa. For the machine he used to

buy groundnut.... The insolvent Narayanaswami, brother of Virupakshappa, managed the business at Kandukur, They were undivided.

Narayanaswami used to buy groundnut from me for the said machine. For the groundnut bought from me Narayanaswami gave me the pattis I am

now producing.... The figure Rs. 1,830-1-0 at the bottom of Ex. K-1 represents the amount due to me for the groundnut purchased from me by

Narayanaswami for the machine business.

6. The evidence with regard to how the business was carried on is very scanty; and nothing in addition to the above extract on this point has been

brought to our notice. It is clear from the evidence that the business was carried on by Virupakshappa down to the time of his death, and during

that time Narayanaswami, his brother, managed it; he used to buy groundnuts for the machine and used to give pattis for the purchase which he

made. He apparently never offered any objections to the carrying on of this business by his brother with the family funds. There is no evidence to

show that Narayanaswami was working under Virupakshappa as a paid agent. That he participated in the business and was willing to treat it as a

joint family business is I think a proper inference that can be drawn from the evidence; and, when he himself became the head of the family, in his

turn, as the senior-most member he carried on the business as a matter of course and incurred this mortgage debt in connexion with it. As the

learned Judge says;

He does not appear to have come into the business by means of any arrangement entered into in the Lifetime of Virupakshappa or in any other

way than in his capacity as the senior member of the family,

7. No doubt the business was not an ancestral business, but it was started by the then manager with the joint family funds, and it was carried on

during his life time with the assistance and concurrence of the only adult member who: (1) if he was not agreeable to treating the business as a joint

family business could have offered opposition but did not do so; and (2) who, when he became the manager in his own right as the head of the

family, carried it on himself. No evidence has been brought to our notice to show that this groundnut trade was exclusively the business either of

Virupakshappa or of Narayanaswami. In these circumstances I cannot say that the learned Judge's conclusion that the debt incurred in the course

of the business by Narayanaswami is binding upon the appellant and Radhakrishna is not justified by the evidence in the case. It is true that his

reasoning would make the debt equally binding on Subbiah though he holds that it is not binding on him. But this I think should not be used as an

argument against the binding character of the debt so far as the appellant's interest in the family property is concerned.

8. Before I conclude I shall refer to two decisions, Krishnadhan Banerji v. Sanyasi Charan Mandal [1919] 51 I.C. 597 confirmed by the Privy

Council in Sanyasi Charan Mandal v. Krishnadhan Banerji AIR 1922 P.C. 237 and Sadasiva Mudaliar v. Hajee Fakeer Mahomed Salt AIR 1922

P.C. 397 on which strong reliance was placed by the appellant in support of his argument that a manager of a joint Hindu family is not entitled to

incur debts for carrying on a business recently started by his predecessor so as to affect a minor's interests in the joint family property. Both these

decisions in my view are inapplicable to the present case. The decision in Krishnadhan Banerji v. Sanyasi Charan Mandal [1919] 51 I.C. 597

approved by the Privy Council in Sanyasi Charan Mandal v. Krishnadhan Banerji AIR 1922 P.C. 237 dealt with the powers of a karta of a joint

Hindu family governed by the Dayabhaga law who was appointed a guardian of a minor under Act 8 of 1890. In one portion of the judgment the

learned Judges of the High Court said:

Whatever the powers of a karta may be the powers of a guardian are more limited.

9. The circumstances of the case in Sadasiva Mudaliar v. Hajee Fakeer Mahomed Sait AIR 1922 P.C. 397 are also very different from those in

the present case. In that case as will appear from the head-note, two members of a joint Hindu family consisting of three adults and a minor

executed a letter to the respondent's firm and borrowed money for the purpose of starting and carrying on a brewery business. The other adult

member acted as unpaid agent of the business at Madras and otherwise accepted the benefit of the contract. The minor was not made a party to

the suit and no decree was asked as against his interests in the joint; family property. No doubt the learned Judges of the Privy Council stated in

the course of their judgment:

that the minor brother when he comes of age, can repudiate the contract of 5th January 1916 so far as he and his interest in the joint family

property are concerned and that his interests in the joint family property cannot be affected by this suit.

10. From the circumstances of the case it is clear beyond doubt that the minor's interests in the joint family property could not in any way be

affected by the debt created by the adult members in that case. One of the main

questions argued was whether the third adult member who accepted the benefits under the contract was bound by it. One feature which distinguishes this case from the one before us is that the trade in this case, namely Sadasiva Mudaliar v. Haji Fakeer Mahomed Sait AIR 1922 P.C. 397 was started on borrowed capital. The suit debt was incurred for starting the business and not for carrying it on after it was successfully started and carried on for some time by two successive kartas of the joint family as in the case before us, I do not think that the observation of the Privy Council is to be given effect to irrespective of the special circumstances of the particular case one is dealing with,

11. On a consideration of the evidence I am satisfied that the learned Judge's conclusion as regards the liability of the appellant's interest in the joint family property is right, and the appeal should be dismissed with costs.