
(1906) 03 MAD CK 0010
In the Madras High Court

Manikka Vasaka Desikar Alias Gnana Sambanda Pandara
Sannadhi

APPELLANT

Vs

Balagopalakrishna Chetty

RESPONDENT

Date of Decision : 21-03-1906

Acts Referred:

Citation : (1906) ILR (Mad) 553

Hon'ble Judges : Sankaran Nair, J; Moore, J

Bench : Division Bench

Judgement

1. The plaintiff in Original Suit No. 56 of 1901 sued the Pandara Sannadhi of Dhamapuram athinam for the recovery of a certain sum of money

due on a promissory note executed by him for articles purchased, according to the plaintiff, ""for the necessary use of the said athinam"" and he

prayed for a decree directing payment ""by the defendant and from the funds of his athinam mutt ""A razinamah decree was passed which provided

for the recovery of the amount decreed "" from the properties of Dharmapuram athinam mutt, of which the defendant is trustee."" The defendant

resigned the office of Pandara Sannadhi in favour of the appellant, who has been made a party to the execution proceedings taken by the decree-

holder to execute the decree by attachment and sale of the mutt properties. The appellant raised the contention that the decree cannot be enforced

against the mutt properties. The Subordinate Judge following the decision in Vidyapurna Tirthaswami v. Vidyanidhi Tirthaswami ILR 27 Mad. 435

held that the Pandara Sannadhi had full control over the income of the mutt properties and that it was not open to him by relinquishing his position

to deprive the creditor of his power to recover his debt from the income of the mutt during the lifetime of the Pandara Sannadhi. The District Judge

was of opinion that these questions could not be decided in execution proceedings and that the appellants' only remedy was to set aside the decree by a suit.

2. In *Sudindra v. Budan* ILR 9 Mad. 80 it was held by Hutchins and Parker, JJ., following the Privy Council decision in *Prosunno Kumari Debya*

v. Golab Chand Baboo 14 B.L.R. 450 that a decree passed IV against the trustee of a mutt is binding on his successor upon whom, lies the onus

of coming forward and taking steps to set aside a decree, which as it stands is binding upon the mutt as represented s by him, and that in execution

proceedings he cannot be allowed to dispute the correctness of the decree.

3. The decree which is now sought to be executed was clearly passed against the Pandara Sannadhi as the representative of the mutt and the

decree-holder is, as held in the decision cited, entitled to enforce it against the appellant as the present representative of the mutt, subject to his

right to set it aside for adequate reasons in a properly framed suit.

4. But it is contended before us that the decree is void, because the Pandara Sannadhi did not represent the mutt in a suit brought upon a

promissory note executed by himself, as it was not open to him to question the binding nature of the transaction, and secondly, the decree was

based upon a razinama. It is suggested that it was therefore necessary to make the sishyas or disciple parties to the suit to make the decree binding

on the mutt.

5. The sishyas or disciples are not co-owners; nor have they got suoh interest in the mutt properly as would entitle them to be made defendants in a

suit to recover money or property from a Pandara Sannadhi. In the case in *Sudindra v. Budan* ILR 9 Mad. 80 the settlement of accounts on which

the suit was brought was made with the defendants who were accordingly precluded from contesting its validity, and yet the decree was held

binding so far as the execution proceedings were concerned. The contention that the Pandara Sannadhi was not the representative by reason of his

having executed the promissory note must therefore be disallowed. Nor can the other contention be supported. It would be a unreasonable to hold

that a Pandara Sannadhi is bound to waste must property in litigation when it is in the interests of the mutt to enter into a compromise. The decree

based on the compromise must therefore be held to be binding in these

proceedings. See Chintaman Vithoba v. Chintaman Bajaj ILR 22 Bom. 475.

6. The appeal therefore fails and is dismissed with costs.