(1917) 10 MAD CK 0041

In the Madras High Court

Mankoottil Chathukutti Nair — APPELLANT

Vs

P.P.M. Komappan Nair and Others — RESPONDENT

Date of Decision : 29-10-1917

Acts Referred:
Contract Act, 1872 — Section 25

Citation : 44 Ind. Cas. 572

Hon'ble Judges : Seshagiri Aiyar, J;Napier, J

Bench : Division Bench

Judgement

1. The question for decision is whether a deed of mortgage executed by a Karnavan in payment of a decree debt which was barred by limitation at the date of the mortgage is binding on the junior members of the Tarwad.

2. Mr. Kuttikrishna Menon for the appellant relied on Eracanni Revivarman v. Ittapu Revivarman I Ind. Jur. 10 in support of the proposition that the Karnavan of a Malabar Tarwad occupies a position analogous to that of a Hindu father under the Mitakshara Law. We do not think that the learned Judges intended in that case to draw a distinction between the position of a father and that of a bare manager. The exact status of a Karnavan was considered more elaborately in Achal Ram v. Kazim Husain Khan 15 M.L.J. 197 and in Kunhichekkan v. Lydia Arucanden 14 Ind. Cas. 480 : 11 M.L.T. 232 : (1912) M.W.N. 386 and we agree with the view taken in these two decisions that the Karnavan occupies a position more akin to that of a manager than to that of a Hindu father. The peculiar obligations which a Hindu son incurs in respect of the debt of his father are not those with which a junior member of a Tarwad is chargeable with reference to the Karnavan''s debts.

3. It has been held in Chinnaya Nayudu v. Gurunatham Chetti 5 M. 169 that the manager of a Hindu family is not entitled to revive a barred debt, and this decision has been cited with approval in Narayanasami Chetti v. Samidas Mudali 7 Ind. Jur. 357; Kondappa v. Subba 4 Ind. Dec. 844 and Suryanarayana v. Narendra Thatraz 6 Ind. Dec. 883. As regards Kondappa v. Subba4 Ind. Dec. 844

it is enough to point out that the widow was regarded as being under a pious duty to relieve her husband from the sin of not paying a just debt. In the case of sons, the Hindu Law imposes an obligation to pay their father''s debts not tainted with illegality or immorality. That is the reason of the rule in Norayanasami Chetti v. Samidas Mudali 7 Ind. Jur. 357. We do not think that the view in Dalip Singh v. Kundan Lal 18 Ind. Cas. 726 to the contrary is good law.

4. As regards the English cases, the principle enunciated by Romer, J. in Midgley v. Midgley (1893) 3 Ch. 282 is that the payment of barred debt will not enable the legatees to charge an executor with Devastavit. As pointed out by Mr. Madhavan Nair, this is a very exceptional proposition which should not be extended to Indian conditions. Moreover in England, a debtor is not bound to plead the Statute of Limitations, whereas under the Limitation Act, the Court is bound to dismiss a claim, if it is barred by limitation. One other distinguishing feature is, that an executor is directed to pay all the just debts of a testator, there is no similar obligation on the Karnavan. It is open to argument, however, that if a debt barred by limitation has been actually paid, the Karnavan might not be held liable for having paid it; that would stand on the analogy of an executor or trusted not being liable to be proceeded against for Devastavit under similar circumstances.; See Rowson, In re: Field v. White (1825) 29 Ch.D. 358: 52 L.T. 825. But that is not the present case. Here the holder of the mortgage has obtained only a promise and not payment. That promise has to be enforced'' against the Tarwad and the members are entitled to plead that the promise has not been made for necessary or lawful purposes. That is the principle which Hindu junior members are entitled to invoke as against the manager.

5. Regarding the argument that Section 25 of the Contract Act can be utilized against the Tarwad, the answer suggested by Mr. Madhavan Nair seems reasonable. The mortgage document may be regarded as having consideration; but that is not enough to charge the Tarwad with liability. The consideration must be such as to bind the members, either by showing that the transaction was beneficial or was justifiable.

6. We are, therefore of opinion that the document sued on is not binding on the Tarwad and dismiss the second appeal with costs.

