
(1923) 03 MAD CK 0004
In the Madras High Court

Meenakshi Vethiar Amma

APPELLANT

Vs

Cheriya Parvathi Nethiar and Others

RESPONDENT

Date of Decision : 19-03-1923

Acts Referred:

Trusts Act, 1882 — Section 63

Citation : 74 Ind. Cas. 1012

Hon'ble Judges : Francis Oldfield, J;Devadoss, J

Bench : Division Bench

Judgement

1. In accordance with the opinion of .the, Full Bench we proceed to deal with the merits, The first, ground on which the appeal has been argued is,

that the, case which, the District ,Munsif, and the lower Appellate, Court eventually considered and on which they decided; against the 14th

defendant-appellant was not that relied on by the, plaintiff, in the plaint and that on this account the 14th defendant was greatly prejudiced and

refrained form giving evidence on facts; which weighed materially with the lower, Appellate Court.

2. The plaintiff's case as set out among the charges in paragraph II(C) of the plaint, was that the first defendant joined a kuri on behalf of the tevali,

gave the amount on his prize to and got executed, a panyon deed, Exhibit XVI, by defendants Nos. 11 to 13 in favour; of the 14th defendant his

daughter, instead of getting it in his own name and that the tevali has a right to recover, this amount thus, lent, the, 14th defendant having no right; to

it., The relief asked for in this connection in Paragraph 18 was to declare that ""the amount regarding Exhibit XVI belongs to the tevali, of the

plaintiffs and the first defendant and to direct the 14th defendant to deliver up the said document and other documents relating to it to the 2nd

plaintiff or to any other plaintiff whom the Court thinks proper." That case was met by the 14th defendant in Paragraph 7 of her written statement.

The lower Courts regarded her as putting forward two alternative Cases therein. That may have been the case, though it was not clear that it is so.

For it is possible to read the plaint as alleging that she had private money in Pangi Achan's and Achnta Mettori's kuri, the she left it in the first

defendant's hands and he spent it on the toward that he had replaced what he spent by his prize-money in Raman Nair v. kuri the kuri referred to

by the plaintiff, and that on his repaying it, she invested the amount in Exhibit XVI. On these pleadings the argument is that the plaintiff's case in the

plaint was put forward as being that the money was invested by Exhibit XVI as the first defendant's money throughout, the document being taken

in the name of the 14th defendant benami. This differs materially from the case which the Second of the District Munsifs concerned and the lower

Appellate Court found established, that he money lent under Exhibit XVI was toward, money misappropriated by the first defendant as karnavan

and given by him to the 14th defendant, his connection with the money ceasing when it came into her hands and was used by her and the money

being thus trust money in her hands with notice of its character she is bound to restore it. It is, we think, clear that there was very little attempt by

the parties or their advisers in the lower Courts to put forward and adhere to any very accurate contention. The issue framed on this part of the

case was general in the extreme. It was: "Are the plaintiffs entitled to get any declaration in regard to B Schedule properties?" On that issue a

considerable amount of evidence was adduced on both sides. The First District Munsif concerned, no doubt, found on the material point that the

money was the property of the tarwad. But we have not been able to follow the remainder of his judgment on this part of the case. The Second

District Munsif and the lower Appellate Court have, as already stated, found that the money belonged to the tevali and that it was misappropriated

by the first defendant and was given to the 14th defendant. Having given the matter the best consideration we can, we do not think that any

surprise or misapprehension has been established on the 14th defendant's behalf. The plaint alleged tarwad ownership of the money; but it did not

say distinctly whether Exhibit XVI was taken in the 14th defendant's behalf. The plaint alleged benami money was given to her. It nominated

the general facts to the Court without specification of their exact legal implications. The observe that, whether the plaintiff proved the narrower case of gift By the first defendant of what was but the trust notice or the wider case of benami, the evidence required would be the same and the conclusions from it would-differ billy localize, in the second case referred to; a further and, different inference from the evidence would be necessary. In either case the duty offher defendant give as to the manner in which the money was in her hands, and as to her knowledge of its character must have been equally clear and we cannot hold, that she has been in any way prejudiced in this respect. There is further the fact that although the case before the Second District Munsif and the lower Appellate Court was argued fully the Second District Munsif in his judgment said explicitly that no allegation or argument relating to benami was addressed to him and there is nothing in the lower Appellate Courts judgment to suggest that the case of benami was ever mentioned or that objection was taken to the case of gift of trust money There is for the ho ground of appeal relating t this matter in this Court. In these circumstances, We disallow this object ion and pass to the merits.

3. On the merits t the first point taken is that the first defendant karnavan was not a trustee and that any Application of trust law to his conduct is inadmissible. To support this Eravanni Revivarman v. Litappu Revivarman 1 M. 153 : Ind. Jur. 10 : 1 Ind. Dec. (N.S.) 101 and Mdnkootil Chathukutti Ndir v. Komappan Nair 44 Ind. Cas. 572 : (1828) M.W.N. 144 C: 1828 35 M.L.J. 380 have been relied on. Those decisions, no doubt, say that the kanavan is not a mere trustee. But in the first that was said in connection with the principles pa which the Court Would deal with him when his removal was asked f pr, and in the second the question was as to the power of a person who gave a mortgage in order to pay a barred debt. The point was that the kamavan was not a mere trustee like the officer of a Corporation but his position was fully recognised as that of a manager of an undivided Hindu family. That the kartiavan in the present case has that position is sufficient and justifies the lower Appellate Con it''s conclusion.

4. Next it is said that Section 63 of the Trusts Act on which the lower Appellate Court has relied is not applicable to the 14th defendant. There is

first the explicit finding of the lower Appellate Court that she knew the money was the property of the tevali. Next, it is said that the last clause of

Section 64 excludes the case from Section 63 but the answer is that the money did, not come to her in circulation, but reached her by means of

payment made ostensibly on her behalf to truth to 13th defendants under Exhibit XVI. The reference to money passing in circulation in the section

means and includes, in our opinion, the passing of money in the ordinary course of business by which it might have reached either the defendants or

any other stranger and not the transfer to the 14th defendant by a specific act such as is now in question.

5. The remaining argument is against the finding that the money was the property of the tevall. The lower Appellate Court reached that finding

because it held that the money could be traced to tevali funds and there was evidence to support its conclusion. That finding relates to a question of

fact and is, therefore, binding on us. It is urged that he lower Court disregarded the fact that the first defendant has private funds and that even if he

took the money in the first instance from tevali funds, he might have restored it from his own funds, the suggestion being that no conclusion against

his private ownership of the money could be valid, until a full account of the tevali funds is taken and the fact has been ascertained. We cannot

accept that. As already stated, there was evidence on which the lower Appellate. Court could reach this conclusion. It, was the 14th defendant if

she desired to; rebut that evidence by taking an account or In any other manner to do so. We cannot find that was made any attempt to submit an

account of the funds in her father's possession. In fact, this contention that an account was essential was never: put forward until now.

6. The result, therefore, is that the appeal is dismissed with costs.