

(1937) 09 MAD CK 0024
In the Madras High Court

Mookan Servai

APPELLANT

Vs

Muthayya Servai (deceased) Rakayye L.R. of the deceased

RESPONDENT

Date of Decision : 24-09-1937

Acts Referred:

Citation : AIR 1938 Mad 146 : (1937) 46 LW 851 : (1938) 1 MLJ 63

Hon'ble Judges : Madhavan Nair, J

Bench : Division Bench

Judgement

Madhavan Nair, J.—Plaintiff is the appellant. The defendant, holding a power-of-attorney from his sister Muthathal, executed in favour of

the plaintiff an agreement to give an othi in respect of his sister's property, in consideration of Rs. 240 received by him (defendant) on the date of

the agreement. The defendant not having executed the othi, the plaintiff brought a suit for specific performance against the defendant, or, in the

alternative, for the recovery of the money paid by him to the defendant. It is not now disputed that the defendant received the money.

2. Both the Courts held that the suit for specific performance will not lie. The only question for decision in the second appeal is, whether the

defendant is personally liable to pay the money received by him. On this point the 1st Court held that he was personally liable, but this decision was

reversed by the appellate Court. In the second appeal it is argued that the lower Court's decision is wrong and that it should be held that the

defendant is personally liable and should repay the money received by him.

3. The contract between the parties is contained in Ex. A. The relevant portions of it are as follows:

Varthatnanam letter executed...in favour of Mookan Servai,...by M. Muthayya

Servai, the authorised agent and elder brother of Muthathal,
daughter of Muthuswami Servai...

4. After describing the terms and the land, Muthayya Servai signs it thus:

M. Muthayya Servai in his own handwriting.

5. The question is purely one of law and there are very many decisions bearing on the point. All of them were brought to my notice; but in this

judgment I propose to examine only a few of them which I consider very important. The principle to be applied seems to be clear; where a person

signs a contract in his own name without any qualification, he is prima facie to be deemed, to be contracting personally; and in order to prevent the

liability from attaching to himself it must appear from the document that he did not intend to bind himself as principal. In this case the defendant has

put his signature to Ex. A without any qualification; prima facie, therefore, he is personally liable. It is argued on behalf of the appellant that there is

nothing in the body of the document to detract from the personal liability arising from the fact that the defendant has signed the document without

any qualification. It is said that the description ""authorised agent"" appearing in the first paragraph is only descriptive of the position of the defendant

and does not show that he makes the contract as the agent of Muthathal. One of the important cases relied on in support of this contention was

Norton v. Herron (1825) 1 C. & P. 648 : 171 E.R. 1353. In that case a man describing himself as agent went on to agree to lease a property in

his own name. It was held that he was personally liable. In Paice v. Walker (1870) L.R. 5 Ex. 173, the contract was signed ""Walker and Strange",

without any qualification. In the body of the document the words ""as agents for John Schmidt & Co., of Danzig"" appeared. It was held that the

defendants were personally liable upon the contract and that the words ""as agents for John Schmidt & Co."" did not relieve the defendants from

their personal liability. These two decisions clearly support the contention of the appellant. Other cases relied on by him were Tanner v. Christian

(1855) 119 E.R. 217, Parker v. Winlow (1857) 119 E.R. 1497, Dutton v. Marsh (1871) L.R. 6 Q.B.C. 361, Hough v. Manzanos (1879) L.R. 4

Ex. D. 104 and Hutcheson v. Eaton (1884) L.R. 13 Q.B.D. 861.

6. The respondent's learned Counsel argues that the decision in Pake v. Walker (1870) L.R. 5 Ex. 173 must be considered to have been

practically overruled by the decision in *Gadd v. Houghton* (1876) L.R. 1 Ex. D. 357 and that this decision is a surer guide than any of the decisions

cited by the appellant's Counsel in deciding cases of this description. In *Gadd v. Houghton* (1876) L.R. 1 Ex. D. 357 the signature in the

document was without any qualification, but in the body of the document it appeared that the sale was "on account of James Morand & Co." It

was held that this put the matter beyond any doubt and that the brokers who signed the document were not personally liable upon the contract.

The decision in *Pake v. Walker* (1870) L.R. 5 Ex. 173 was commented upon and distinguished in this decision. In *Hough v. Mansanos* (1879)

L.R. 4 Ex. D. 104, Pollock, B., made the following remark about these two decisions:

In *Paice v. Walker* (1870) L.R. 5 Ex. 173 the words "as agents for" a named foreign principal were held to be a mere description of the

defendants, and not to free them from liability. In *Gadd v. Houghton* (1876) L.R. 1 Ex. D. 357 which was tried before me at Liverpool, the words

were "on account of" a foreign principal. In that case I held that the defendants were not liable, and this judgment though over ruled by the

Exchequer Division, was upheld in the Court of Appeal. James, L.J., based his decision on the difference between the expressions "as agents for

and "on account of" a distinction I confess I cannot appreciate, but which leaves *Paice v. Walker* (1870) L.R. 5 Ex. 173 an authority binding on

me here...

7. The learned Counsel for the respondent argues that the decision in *Gadd v. Houghton* (1876) L.R. 1 Ex. D. 357 must be understood as

overruling the decision in *Paice v. Walker* (1870) L.R. 5 Ex. 173 and that the words "authorised agent" appearing in Ex. A in the present case

exclude the personal liability of the defendant imported by the signature without any qualification. In *Universal Steam Navigation Co. v. James*

McKelvie & Co (1923) A.C. 492, their Lordships of the House of Lords seem to uphold the correctness of the decision in *Gadd v. Houghton*

(1876) L.R. 1 Ex. D. 357. Lord Parmoor says:

The authorities have not been consistent, but I agree that *Gadd v. Houghton* (1876) L.R. 1 Ex. D. 357 should be followed.

8. The case before the House of Lords was a clear one, as the agent in that case

had excluded his personal liability by adding the words ""as agent to the signature itself. In our own Court in Tutika Basavaraju v. Parry & Co. ILR 27 (1903) Mad. 315, Benson and Bhashyam Aiyangar, JJ.,

pointed out that the decision in Paice v. Walker (1870) L.R. 5 Ex. 173 has been practically overruled by the decision in Gadd v. Houghton (1876)

L.R. 1 Ex. D. 357. They state thus:

But the defendants in the present case having signed as ""managing agents"" they cannot be held personally liable even according to that decision

Paice v. Walker (1870) L.R. 5 Ex. 173 - which has, however, been practically overruled by the decision in Gadd v. Houghton (1876) L.R. 1 Ex.

D. 357.

9. On the strength of the decision in Gadd v. Houghton ILR (1876) Cal. 71, the learned Counsel for the respondent says that the description

authorised agent of Muthathal"" should be understood to exclude the personal liability of Muthia Servai. The learned Counsel also referred to the

following decisions of the Indian Courts in the course of his arguments: Soopromonian Setty v. Heilgers ILR (1879) Cal. 71, Mackinnon,

Mackenzie & Co. v. Lang, Moir & Co. I.L.R.(1881) Bom. 584, Shyam Sundar Chakravarty Vs. Titaghar Paper Mills Co. Ltd., and Ganpat

Mahadu Jadhav Vs. Forbes, Forbes Campbell and Co. Ltd., It is not necessary to discuss them.

10. How is the contract Ex. A to be interpreted in the light of the above decisions? There is no doubt, as I said at the beginning, about the principle

that should be applied. The question is, what was the real intention of the parties? Is the personal liability imported by the mere signature without

any qualification, intended to be excluded by the terms of the document? If I follow the decision in Gadd v. Houghton (1876) L.R. 1 Ex. D. 357, in

preference to Paice v. Walker (1870) L.R. 5 Ex. 173, as I think, I should, then the description ""authorised agent of Muthathal"" should be held to

exclude the personal liability of the defendant.

11. There are other circumstances also appearing in the document to support the view that the parties did not intend to bind the defendant

personally. These circumstances are mentioned in paragraph 8 of the appellate judgment:

The defendant admittedly had no right to the land. The contract itself describes

the property as belonging to the sister. The consideration was required to be applied for payment towards a decree which directed the sister to make it. This also is found expressly stated in the agreement. In the plaint it is distinctly alleged, without any equivocation, that the defendant as the agent of his sister contracted to mortgage the sister's land to the plaintiff : Vide paragraph 3.... Unless the defendant executed the othi on behalf of his sister and as her agent, the plaintiff could derive no right to the enjoyment of the property.

12. I think the statement in the plaint explains what the plaintiff himself thought about the liability of the defendant. It is true that the defendant describes himself as the authorised agent and also as the elder brother of Muthathal. I agree with the learned Judge in holding that the description "elder brother" ""does not appear to militate against the view that in agreeing to give a mortgage of his sister's property for money which he received for the purpose of paying for a decree under which the sister had to pay money he acted only as the agent of that sister and not in his personal capacity"". In view of the decision in Gadd v. Houghton (1876) L.R. 1 Ex. D. 357 and the circumstances of the case, which I cannot overlook in interpreting the document on this point, I agree with the decision of the lower Court, that the defendant is not personally liable on the contract Ex. A. The second appeal fails and is dismissed with costs.