

(1934) 02 MAD CK 0014
In the Madras High Court

Muhamad Aliyar Rowther and Others	APPELLANT
Vs	
Gnana Ammal and Others	RESPONDENT

Date of Decision : 05-02-1934

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 26, 28

Citation : AIR 1934 Mad 327 : 150 Ind. Cas. 91 : (1934) 39 LW 551 : (1934) 66 MLJ 671

Hon'ble Judges : Sundaram Chetty, J

Bench : Division Bench

Judgement

Sundaram Chetty, J.—This is an appeal against the judgment of the Subordinate Judge of Trichinopoly, preferred by the plaintiffs, and arises

out of a suit brought by them for the recovery of Rs. 8,217-0-5 due on the promissory note (Ex. A), dated 27th July, 1923 and executed by

defendants 2 and 3 for Rs. 5,800. The 1st defendant is the father of defendants 2 and 3, whose younger brother is the 4th defendant. Defendants 5

to 9 are the daughters of the 1st defendant. Defendants are all Indian Christians, and according to the plaintiffs' case in paragraph 3 of the plaint,

the 1st defendant and his sons have been living as members of one family. It is alleged that till about nine years ago all of them were managing the

family affairs, but on account of the 1st defendant's old age the 2nd and 3rd defendants alone have been managing the affairs of the joint family for

nine years before suit. The 4th defendant is said to be doing work for the family under the orders of defendants 2 and 3. The suit promissory note

(Ex. A) was executed in consideration of the debts due on the prior promissory notes (Exs. D, C and E). While basing the suit on the promissory

note (Ex. A), the plaintiffs seek to make the defendants 1 and 4 also liable

thereunder, on the ground that they have been living as members of a joint family of which defendants 2 and 3 are the managing members, the suit debt having been borrowed for the family benefit, and also on the further ground that the suit promissory note was executed by defendants 2 and 3 as agents of defendants 1 and 4 with their knowledge, consent and express authority. The learned Subordinate Judge, after a due consideration of all the standpoints from which the liability of defendants 1 and 4 to 9 was sought to be made out, held that their liability has not been established and accordingly passed a decree against the executants alone, viz., defendants 2 and 3.

2. To a family of Indian Christians consisting of a father and sons and also other female members, the incidents of a Hindu joint family recognised by the Hindu Law have no application. This is the view taken in a decision of our High Court reported in *Tellis v. Saldanha* I.L.R.(1886) Mad. 69.

The learned Judges are of opinion that coparcenership and the right of survivorship are incidents peculiar to Hindu Law, and that law, so far as it affected Native Christians (who were converts from Hinduism to Christianity), was repealed by the Succession Act. The right of the managing

member of a joint family to contract debts or to alienate joint family property so as to bind the other members of the family in case of pressing

necessity or manifest benefit to the family, is one of the rights recognised by Hindu Law, and such a rule of Hindu Law cannot be applied to a

family of non-Hindus, though the right already vested under Hindu Law in a member of a joint Hindu family before his conversion to another

religion cannot be taken away, in view of the statutory enactment, viz., the Caste Disabilities Removal Act (XXI of 1850), nor can such a right be

enlarged by reason of the conversion. The view expressed in *Tellis v. Saldanha* ILR (1886) Mad. 69, that by reason of the Succession Act, the

incidents recognised by Hindu Law as appertaining to a Hindu joint family cannot apply to the members of a Christian family converted from the

Hindu religion, has been dissented from in a decision of the Bombay High Court in *Francis Ghosal v. Gabri Ghosal* I.L.R.(1906) Bom. 25. The

Indian Succession Act, according to the opinion of the learned Judges in the Bombay case, regulated only the rules of law applicable to intestate

and testamentary succession and did not affect the other rights and incidents

appertaining to a joint family. Their Lordships of the Privy Council have stated in the well-known case of *Abraham v. Abraham* (1863) 9 M.I.A. 195, that upon the conversion of a Hindu to Christianity the Hindu Law ceases to have any continuing obligatory force upon the convert and he may either renounce the old law by which he was bound or he may abide by the old law notwithstanding he has renounced the old religion. Thus it becomes a question of fact in each case whether after conversion the joint family elected to abide by the rules of Hindu Law applicable to a Hindu joint family, in spite of the fact that the rules of law applicable to intestate and testamentary succession should only be the rules recognised in the Indian Succession Act. In the Bombay case, the question whether notwithstanding the conversion to Christianity the family elected to continue as an undivided Hindu family with reference to the acquisition, improvement and enjoyment of property in coparcenership, was treated to be a question of fact which should be decided upon the evidence. That an original member of a Hindu family after becoming a convert to Christianity may elect to retain his interest in the family property on the old footing is stated with approval by the Privy Council in *Jogi Reddi v. Chinnabbi Reddi* I.L.R.(1928)Mad. 83 : 56 M.L.J. 165 . After referring to the divergence of opinion between the High Court of Madras and the High Court of Bombay, the following observation has been made in a decision of the Calcutta High Court in *Kulada Prasad Pandey v. Haripada Chatterjee* ILR (1912) Cal. 407 :

If all the members of the family had become Christians, the position, might possibly have been supported that, notwithstanding conversion, they adhered to the old law, and that consequently the rights of coparcenership were not affected by their renunciation of the old religion.

3. In the present case, we may observe that there is no specific allegation in the plaint that even after conversion to Christianity the family continued to observe the incidents of coparcenership, survivorship and managership as in the case of a Hindu joint family. All that is stated in paragraph 3 is, that though Christians, the 1st defendant and his sons have been living jointly as, members of one family not as members of a Hindu joint family. It is not known when the members of this family became converts to Christianity, nor is it known whether all of them are descendants of an ancestor

who became a Christian convert. There being no allegation or proof that this family continued to adopt the incidents of a Hindu joint family,

defendants 2 and 3 cannot be placed in the position of a de jure or de facto manager of a Hindu joint family.

4. If the defendants' family cannot be treated as a Hindu joint family, on what basis can the plaintiffs seek to enforce the liability for the suit debt on

the defendants other than defendants 2 and 3 who are the executants of the suit promissory note ? The mere fact that a number of Indian Christians

with ties of relationship are living together in a house and have a common mess would not confer on such a group of persons the rights and

obligations recognised by Hindu Law in respect of a joint Hindu family, nor can we treat this family as a partnership in the legal sense, as some

members thereof have been carrying on some trade. Mr. Srinivasa Aiyangar, the learned Advocate for the appellants, fairly conceded these

infirmities, but however argued that the members of this family by reason of their joint living and joint enjoyment of the properties and joint trade

may be deemed to be a quasi-partnership, at least for the purpose of holding the debts borrowed for such trade by the actual managers as binding

on the other members. It is difficult to conceive how such a liability can be enforced on any legal principle, except on the ground of express or

implied agency.

5. According to the frame of the plaint, the suit is one on the promissory"" note (Ex. A). It is executed by defendants 2 and 3 in their individual

capacity and there is nothing in the promissory note, itself to, indicate that they executed it as managers of any family or as agents of defendants 1

and 4; Even assuming that defendants 2 and 3 are the managers of the family and the other members derived the benefit of this promissory note

debt, it is clear that those whose names are not disclosed in the promissory note itself as principals cannot be made liable. There is the clear

pronouncement by the Privy Council in Sadasuk Janki Das v. Sir Kishan Pershad (1918) L.R. 46 IndAp 33 : ILR 46 Cal. 663 : 36 M.L.J 429

that in an action on a promissory note against a person whose name properly appears as party to the instrument, it is not open either by way of

claim or defence to show that the signatory was in reality acting for an undisclosed principal. The sections in the Indian Contract Act relating to the

liability of an undisclosed principal do not override Sections 26 to 28 of the Negotiable Instruments Act: vide also Subba Narayana Vathiyar v.

Rarnasanii Aiyar I.L.R.(1906) Mad. 88 : 16 M.L.J. 508 . In an instructive judgment delivered by a single Judge of the Bombay High Court, the

principles of law relating to this question have been well" discussed: vide Manchershah Ardesar Vs. Govind Ganesh Joshi, . We have therefore no

hesitation in holding that in the present suit which is based on the promissory note (Ex. A), defendants 1 and 4 or defendants 5 to 9 cannot be

made liable.

6. This position has been fairly conceded by the learned Advocate for the appellants, but he however pressed for acceptance the principle of the

ruling in Duggempudi Nagamma v. Peda Venkatareddi (1920) 12 L.W. 147 and asked the Court to treat the plaint as having been amended, so as

to make it one enforcing a claim in the alternative, based on the original consideration for the promissory note (Ex. A). For the purpose of deciding

the case on this basis, we have to consider briefly the effect of the evidence adduced in this case. It is significant that the plaint does not even allege

the trade to be a joint family trade, defendants 5 to 9 are not even stated to be members of the family. Without adequate proof, it cannot be taken

that a trade carried on by defendants 2 and 3 is a trade on behalf of the family or one the benefit of which has been derived by the other members

of the family, even in the case of a joint Hindu family. A fortiori, the onus of proof is even greater in the present case. The oral evidence is not only

meagre, but thoroughly unreliable.

7. [His Lordship discussed the oral evidence and concluded as follows:]

8. In the face of the aforesaid facts, of what avail is the promissory note (Ex. D) to the plaintiffs in this suit for the purpose of enforcing 1st

defendant's liability thereunder? That promissory note is dated 5th June, 1917 and the present suit was filed on 24th June, 1929, after an interval

of more than 12 years. Unless the plaintiffs prove that the claim based on Ex. D was not barred on the date of the suit no relief could be given

against the 1st defendant who was a joint executant of this promissory note along with defendants 2 and 3. There are some endorsements of

payment on Ex. D purporting to have been signed by defendants 1 and 2, but there is absolutely no proof of the truth of these endorsements, nor

do the plaintiffs allege in the plaint that the claim based on Ex. D is not barred by reason of these endorsements of payment. Even assuming these endorsements to be true, they take us only up to 6th November, 1920. Unless the acknowledgment contained in the promissory note (Ex. A), which is dated 27th July, 1923, and the payment dated 11th June, 1926, endorsed on Ex. A, are shown to have been made by defendants 2 and 3 as agents of the 1st defendant, the claim against the 1st defendant based on Ex. D would be barred. As we have already shown, such proof is wanting. The mere fact that the 1st defendant was one of several contractors in respect of Ex. D is not sufficient to render him chargeable by reason of the acknowledgment or payment made by defendants 2 and 3 alone (vide Section 21 of the Limitation Act). No decree can therefore be passed against the 1st defendant even in respect of the debt due under Ex. D.

9. In the result the appeal fails and is dismissed with costs.