
(1936) 11 MAD CK 0022
In the Madras High Court

Muthusami Servai and Another

APPELLANT

Vs

N.K. Mytheen Pichai Rowther and Another

RESPONDENT

Date of Decision : 27-11-1936

Acts Referred:

Citation : AIR 1937 Mad 344 : (1937) 45 LW 244 : (1937) 1 MLJ 231

Hon'ble Judges : Horwill, J

Bench : Division Bench

Judgement

Horwill, J.—The first defendant and the father of defendants 2 and 3 received subscriptions from the plaintiff for the conducting of a lottery,

presumably advertised and conducted in the usual way. There can be no doubt, after Sesha Aiyar v. Krishna Aiyar (1935) 70 M.L.J. 36 : ILR 59

Mad. 562 that the father of defendants 2 and 3 would have been liable to refund to the plaintiff his subscriptions. The only question that arises in

this petition is whether the defendants 2 and 3 are liable for this sum out of the joint family property that has come into their hands. The District

Munsiff of Sivaganga has held that they are. Hence this Civil Revision Petition by defendants 2 and 3.

2. The argument of the learned District Munsiff is in brief that the plaintiff's claim has no reference to an illegal contract and that as the father of

defendants 2 and 3 was under a civil liability to return the money to the plaintiff, defendants 2 and 3 are also liable for that debt. It seems to me that

both these statements of law are wrong. The contract between the plaintiff and the father of defendants 2 and 3 was an illegal one and it was in

pursuance of that illegal contract that the father of defendants 2 and 3 came into possession of the money. It is true that the return of the money

would not be in furtherance of the illegal contract; but that is not the point. The criterion is whether the money was taken for an illegal purpose.

Clearly it was.

3. Ordinarily, a person who has paid money for the furthering of an illegal object cannot recover that money in a Civil Court; but an exception is

made where a contract has been made illegal for the protection of a certain class of persons. In such a case a member of that class is considered

not to be in *pari delicto* with the organiser of the illegal organisation and on that ground is allowed to sue. A subscriber to a *kuri* has not however

that advantage as against the sons of a stake-holder. On the contrary, the subscriber is a party to an illegal contract while the sons of a stake-

holder are innocent persons. Even on this ground therefore the plaintiff would have to fail.

4. Some support to the learned District Munsiff's finding that the test of the son's liability is whether the father would be civilly liable for the debt is

given by *Venugopal Naidu and Others Vs. A. Ramanadhan Chetty and Another*, . It is clearly wrong however. Supposing the father commits theft,

he would undoubtedly be liable in a Civil Court for the stolen goods; but the sons would not be liable because the property was received illegally

and the debt incurred was an illegal one. The passages in *Venugopal Naidu and Others Vs. A. Ramanadhan Chetty and Another*, which give rise

to this too broad statement of the law are expressly disapproved of in another case quoted by the learned District Munsif, *Garuda Sanyasayya Vs.*

Nerella Murthenna and Others, . The other cases cited in the lower Court lend no support to the argument approved by the learned District

Munsif. Both in *Venugopal Naidu and Others Vs. A. Ramanadhan Chetty and Another*, and *Venkatakrishtnayya v. Byragi* (1925) 50 M.L.J. 353,

sons were held liable for such sums as their fathers had received as trustees and not properly accounted for. The two principles to be applied to

test the liability of the sons are correctly set out by Venkatasubba Rao, J., in *Muthammal v. Sivakami Ammal* (1925) 21 L.W. 606. They are:

(1) If the debt is in its inception not immoral subsequent dishonesty of the father does not exempt the son.

(2) It is not every impropriety or every lapse from right conduct that stamps the debt as immoral. The son can claim immunity only, when the

father's conduct is utterly repugnant to good morals, or is grossly unjust, or flagrantly dishonest.

5. Defendants 2 and 3 are not therefore liable for their father's debt to the plaintiff from out of the joint family property that came into their hands

upon their father's death. This petition is therefore allowed and the decree of the lower Court modified. Under the circumstances there will be no

order as to costs in this Court. In the trial Court the 2nd and 3rd defendants will bear their own costs; but will not be liable for the costs of the

plaintiff.