

(1929) 05 MAD CK 0014
In the Madras High Court

(Muttavi) Venkatacharyulu and Another

APPELLANT

Vs

(Vemavarapu) Ramkrishna Rao

RESPONDENT

Date of Decision : 02-05-1929

Acts Referred:

Citation : AIR 1930 Mad 439

Hon'ble Judges : Pandalai, J

Bench : Division Bench

Judgement

Pandalai, J.—This second appeal is by defendants, 2 and 3 father and son, against the decree of the lower appellate Court by which it varied the decree of the Court of first instance and dismissed the plaintiff's suit so far as defendant"(respondent 1) Sri Venkatesa Swami Devasthanam was concerned and gave a decree instead against these appellants. The suit was brought upon a promissory note executed to the plaintiff respondent, 2 a cousin of the appellants for Rs. 700, dated 16th November 1917. The suit was brought against the Devasthanam mentioned above, and against the present appellants, the first of whom executed the promissory note and the second of whom was impleaded as the son of the debtor. The plaintiff's case was that appellant 1 was the archaka and manager of the Devasthanam and had borrowed this sum as such for purposes binding on the Devasthanam and therefore, a decree was prayed in the first instance against the Devasthanam and, in the alternative, if it was found that the Devasthanam was not liable, against these appellants. The District Munsiff found that the debt was borrowed for and on behalf of the Devasthanam and for purposes binding upon it and gave a decree against the Devasthanam dismissing the suit as against the appellants. Defendant 1 (respondent 1) appeared. The learned Subordinate Judge after going into the evidence found that the loan was not proved to have been incurred for purposes binding on Devasthanam and dismissed the suit as against it. He, therefore, gave the plaintiff the alternative relief claimed and passed a decree against the appellants.

2. In second appeal two points have been urged: (1) that the decision of the

lower appellate Court exonerating the Devasthanam is incorrect, and (2) that the decree against the appellant is incorrect because the note sued upon was executed by appellant 1 so as to exclude his personal liability and as agent on behalf of the Devasthanam. I can see nothing in the judgment of the Subordinate Judge on the question as to the binding character of the debt upon the Devasthanam which is open to objection in this Court. The appellant's learned advocate complained that the Subordinate Judge had misstated the nature of the evidence to be given by the plaintiff in a suit of this kind. What the Subordinate Judge has said is that:

the authorities noted in margin clearly show that in lending moneys to managers of religious institution, it is not enough, that the purposes are necessary, but they must also show that they made enquiries and satisfied themselves that on the occasion on which they made the advance, the loan was justified by the state of the institution's finance.

3. As far as I know, this is correct and the appellants' advocate has not shown how it is incorrect. Take, for instance, this very case. The present loan is said to have had its origin in a debt so long ago as 1902 incurred from one Lakshmamma. That was transferred to one Elliah, who held the loan till about 1913 and during that period took three renewals. Then the loan transferred to one Ammayya and from him to this plaintiff in 1917. Now the appellant's argument is that it is enough for his plaintiff in this case to show that in 1902 Lakshmamma's debt was binding upon the Devasthanam and that the subsequent borrowing to pay off the previous loan which had its origin in Lakshmamma's debt must, therefore, be also binding upon the Devasthanam. That is incorrect. It is necessary at every time that the debt was either renewed or transferred to a new person, to show not merely that in its origin there was a nucleus of binding debt but that at the subsequent time it was necessary to borrow to pay off the old debt. If that were not so, the door to fraud would be wide open. There is, I think, nothing in this point and nothing else has been urged to show that the finding of the Subordinate Judge on that question can be assailed.

4. The next question is whether the decree against the appellants passed in the alternative can be supported. It was urged that the promissory note Ex. A was signed by appellant 1 on behalf of Sri Venkatesa Swamivaru and that the signature being in that form excluded the personal liability of the appellants. The English translation of Ex. A as printed, no doubt, translates the Telugu word (tharapuna) as on behalf of"; but it is contended for the respondent that the word does not necessarily mean "on behalf of" in the legal sense but merely "of or "on" the side of. The word "taraf" is an Arabic word which according to Brown's Dictionary means side," "quarter", "district". It is also colloquially used in Telugu to mean "on behalf of" as in the expression "Vathi Tharapuna" witness on the side of or on behalf of the plaintiff. That being so, I cannot conclude merely from the use of the expression tharapuna in the signature that

appellant's 1 personal liability was excluded.

5. But assuming that the signature does convey the legal meaning that the signatory was signing not on his own behalf but on behalf of someone else, the case for the appellants would not be improved because appellant 1 having borrowed the money from respondent 2 (plaintiff) purporting to act as agent of the Devasthanam and the plaintiff having advanced the money on that faith, when it turns out that appellant 1 had no authority and was not entitled to borrow on behalf of the Devasthanam, S 235 Contract Act immediately came into play and he is bound to recoup the loss to which he has put the plaintiff. In this view of the case it is unnecessary to consider whether the objection to personal liability raised by the appellant's advocate should be allowed to be taken in this Court as it was not expressly taken in the grounds of appeal. The second appeal fails and is dismissed with costs, one set to each of respondents 1 and 2.