

(1929) 05 MAD CK 0012
In the Madras High Court

Muttevi Venkatacharyulu and Another	APPELLANT
Vs	
Vemavarapu Ramakrishna Rao	RESPONDENT

Date of Decision : 02-05-1929

Acts Referred:

Contract Act, 1872 — Section 235

Citation : 121 Ind. Cas. 153

Hon'ble Judges : Krishnan Pandalai, J

Bench : Single Bench

Judgement

Krishnan Pandalai, J.—This second appeal is by the 2nd and 3rd defendants, 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 the 1st defendant (1st respondent) 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 2nd respondent), 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 the 1st appellant 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 Munsif 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. The 1st defendant (1st respondent) appealed. The learned Subordinate Judge after going into the evidence found that the loan was not proved to have been incurred for purposes binding on the 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 the 1st appellant 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 appellants' 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 the margin clearly show that in lending monies 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." 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 Lakshamma, That was trans-ferred to one Elliah who held the loan till about 1913 and during that period took three renewals. Then the loan was transferred to one Ammayya and from him to this plaintiff in 1917. Now the appellant's argument is that it is enough for the plaintiff in this case to show that in 1902 Lakshamma's debt was binding upon the Devasthanam and that the subsequent borrowing to pay off the previous loan which had its origin in Lakshamma'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.

3. 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 the 1st appellant 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 the 1st appellant's personal liability was excluded.

4. But assuming that the signature does convey the legal meaning that the

signatory was signing not on his own behalf but on behalf of some one else, the case for the appellants would not be improved because 1st appellant having borrowed the money from the 2nd respondent (plaintiff) purporting to act as agent of the Devasthanam and the plaintiff having advanced the money on that faith, when it turns out that the 1st appellant had no authority and was not entitled to borrow on behalf of the Devasthanam, Section 235 of the 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 the 1st and 2nd respondents.