

(1932) 01 MAD CK 0025
In the Madras High Court

M.V.K. Venkataraman and Others

APPELLANT

Vs

S. Sivagurunatha Chettiar and Others

RESPONDENT

Date of Decision : 05-01-1932

Acts Referred:

Citation : AIR 1933 Mad 639

Hon'ble Judges : Venkatasubba Rao, J;Curgenven, J

Bench : Full Bench

Judgement

Venkatasubba Rao, J.—The two suits out of which these appeals arise relate to certain transactions entered into by the trustees for the time being of the Velur Devasthanam. A few facts concerning that institution and its trustees may be conveniently set forth at the outset. The Velur Devasthanam is a well-known and wealthy Siva Temple at Vaideeswarankoil and its affairs are managed by the Matathipathi of the Dharmapuram mutt; in other words, the head of that mutt is the ex officio trustee of the Devasthanam. The first Matathipathi with whom we are concerned is Sivagnana I who assumed that office in the year 1890. He continued to be the Matathipathi till 1903 when he relinquished his right in favour of Manickavachaga I. It must be mentioned that in 1900 Sivagnana I had appointed Manickavachaga I as Junior Pandarasannadhi and between 1900 and 1903 there were quarrels which led to proceedings in Court between these two persons. Finally, as I have said, in 1903 Sivagnana I relinquished his rights and Manickavachaga I became thereafter his successor. The latter's trusteeship thus commenced in the year 1903; but Sivagnana 1, some time later, tried to reassert his rights with the result, that a suit was filed. With that suit we are not concerned and it is sufficient to state that Sivagnana I died in 1906. Manickavachaga I continued to be the Matathipathi till his death in 1914. He was succeeded by Sivagnana 2, who, it may be noted, had been Kattalai Thambiran from 1903. From his accession in 1914 he continued to be the Matathipathi till 1918 when he died. These are the three trustees to whose acts reference will have to be made in the course of this judgment.

2. I may with advantage also refer to what is called a scheme suit filed in connexion with this Devasthanam. In 1911, a suit was filed (O.S. No. 10 of 1911) against the then trustee Manickavachaga I for his removal, for appointment of new trustees and for the framing of a scheme. In that, certain transactions entered into by the trustee, including those which form the subject-matter of the present two suits, were impeached. The findings arrived at in that action as has been conceded, do not concern us. The Sub-Court in O.S. No. 10 of 1911 passed a decree appointing the present plaintiffs 1 and 2 and Sivagnana 2 (Manickavachaga I having in the meantime died), the trustees of the temple. Against that decree, an appeal was filed to the High Court. In the meantime, the present two suits (O.S. Nos. 8 and 9 of 1924) were filed by plaintiffs 1 and 2. The High Court decided the appeal from the scheme suit decree in 1919. They directed that the Pandarasannadhi should be the sole trustee and removed the other two trustees appointed by the sub-Court. The present two suits were, as I have said, filed by the other two trustees, alone and the Pandarasannadhi, the third trustee, was impleaded as one of the defendants, the reason being that he supported and justified the acts challenged in the suits. When the High Court in the scheme suit made him the sole trustee his position in regard to these two actions became somewhat anomalous. They were ostensibly filed in the interests of the institution, but he figured in them as the defendant and not as the plaintiff. Apparently, when this was brought to the notice of the High Court, the plaintiff 4 was appointed the Receiver to conduct these two suits. They were filed in 1917 and during the 14 years that have now elapsed, four Pandarasannadhis have died and the trustee now on the record is the 5th in succession from Manickavachaga 1, the original trustee-defendant.

3. The objects of the two suits is mainly to get rid of certain decrees passed against the Devasthanam. Appeal No. 361 of 1925 relates to transactions of the Devasthanam with A.P.R.S. Somasundaram Chetty and his father Subramaniam Chetty. I shall refer to these creditors as A.P.R.S. for the sake of convenience. O.S. No. 8 of 1924, out of which this appeal arises, has been brought on behalf of the temple to set aside the decree in O.S. 48 of 1909, obtained by A.P.R.S. against the temple. The transaction which was the subject of O.S. No. 48 of 1909 is connected with certain earlier transactions, which must first be set forth. In 1900, certain jewels of the temple were attached for the arrears of kist payable in respect of the temple lands. A.P.R.S. at the request of the then trustees paid the kist amounts due, namely Rs. 114,41-5-7 and got the jewels released from attachment. In consideration of this payment, these jewels were pledged by the temple to A.P.R.S. and a document was executed evidencing the pledge dated 29th May 1900 (Ex. 14). The learned Judge has found, and I agree with him, that it has been proved beyond doubt, that this transaction is binding on the temple. On 17th April 1901 three transactions came into existence.

(1) The pledge of 1900 was renewed for Rs. 11,527. The document of pledge is not forthcoming, but that is immaterial. (2) A promissory note for Rs. 12,800 was executed by the temple in favour of A.P.R. Section (Ex. 3). The consideration

is made up of three items: (a) Rs. 6,133 8-0, being the amount found due in respect of an earlier promissory note dated 8th June 1900 (Ex. 2); (b) Rs. 1,666-8-0 being the aggregate of two sums Rs. 500 lent on 17th August 1900, and Rs. 1,000 on 16th September 1900, together with interest; and (c) Rs. 5,000 paid to the temple in cash. The total of these three sums is Rs. 12,800 for which Ex. 3 was executed.

(3) To provide for the discharge of the sums due under the aforesaid two transactions, the temple executed a lease in favour of A.P.R. Section (K-2). It recites that the total amount due under the document of pledge and the promissory note is Rs. 24,327. A rent is fixed for the land leased and it is stipulated that after certain deductions the balance of the rent is to be adjusted, first against the interest due under the promissory note, next against the interest due under the pledge document, then the principal under the promissory note and lastly the principal under the pledge. All these three transactions, as I have said, were entered into on the same date, 17th April 1901. On 5th April 1904, A.P.R.S., complaining that his possession under the lease K-2 was disturbed, filed O.S. No. 24 of 1904 claiming against the temple Rs. 6,000 as damages. The parties entered into a settlement and at their request the suit was dismissed on 9th July 1904 as settled out of Court.

4. The transactions now reach a further stage. I have just said that A.P.R.S. filed O.S. No. 24 of 1904 on 5th April 1904. On the 9th of the same month, a settlement was arrived at (presumably the one to which I have just referred) between the temple and A.P.R.S. The accounts of all the transactions outstanding till then were settled on that date, and it was found that Rs. 26,000 was due by the temple to A.P.R.S. This was split up into two sums and made the subject of two separate documents. One was a pledge of jewels for Rs. 10,000 (Ex. 14-A, dated 9th April 1904), the other was a mortgage bond for Rs. 16,000 (Ex. 1, also of the same date). The evidence given in the case and accepted by the lower Court shows that in respect of the jewel pledge of 1901, a sum of Rs. 13,587 was found due of which Rs. 10,000 was included, as I have said, in Ex. 14-A. The remaining Rs. 3,587 went to make up along with the sum due on the promissory note of 1901 the sum of Rs. 1,600 which was made the subject of Ex. 1. It is unnecessary to pursue here the history of Ex. 14-A, for that was later on discharged, as I shall show when dealing with the connected appeal. We are concerned now with the mortgage bond for Rs. 16,000. A.P.R.S. filed O.S. No. 48 of 1909 to enforce that mortgage and it was compromised by the temple trustee having agreed to pay Rs. 18,300. For that amount a compromise decree was passed and toward it, various sums amounting to about Rs. 17,500 were paid from time to time by the temple to A.P.R.S. The present suit (O.S. No. 8 of 1924) has been brought for a declaration that the compromise decree in O.S. No. 48 of 1909 is not binding on the temple and for the recovery of the sums paid to A.P.R.S. under that decree, namely, Rs. 17,500 together with interest thereon. The lower Court has found that the mortgage (Ex. 1) is partially binding on the temple, that is to the extent of Rs. 3,587 already referred to and interest thereon

but that it is not binding as regards the rest of the consideration. Accordingly it has been found that the decree in O.S. No. 48 of 1909 is similarly binding only to that limited extent; as regards the balance of the amount, the decree has been set aside and A.P.R.S. has been directed to pay back to the temple the total of the excess sums received.

5. In short the finding of the lower Court amounts to this, that whereas the pledge of 17th April 1901 is binding on the temple the promissory note of the same date is not. It is the latter part of the finding that the appellants (the representatives of A.P.R.S.) challenge. We must therefore examine in detail the transaction evidenced by the promissory note for Rs. 12,800 dated 17th April 1901 (Ex. 3). As I have said, this amount is made up of three items of consideration, the first of which is that covered by the promissory note. Ex. 2, dated 8th June 1900. (After discussing the evidence his Lordship held that Ex. 2 was binding on the temple and proceeded). I shall now deal with the second item of consideration for Ex. 3, Rs. 1,666-8 0, the total of the two sums of Rs. 500 lent on 17th August and Rs. 1,000 on 16th September 1900. (After considering the evidence, his Lordship held that these debt were also binding on the temple and proceeded). I must now deal with the third item of consideration for Ex. 3, namely, Rs. 5,000. According to the recital in it, that sum was borrowed for three purposes: (a) for the expenses of the Privy Council Appeal; (b) for paying off the Sircar kist; (c) for discharging the decree debt due to Annamalai Chettiar. (After discussing the evidence and circumstances, his Lordship held that Ex. 3 was also binding on the temple and proceeded). From what I have stated it follows that the temple is bound by the transaction to which this appeal relates; but of the three appellants before us, the first and the second have died and their legal representatives have not been brought on record. So far as they are concerned, the appeal abates and must be dismissed. The lower Court's decision is set aside to the extent to which it affects the third appellant. The suit is dismissed as against him with costs throughout. A memorandum of objections has been filed against that part of the lower Court's decree which is against the temple, but it has not been seriously pressed there being no substance in it and is dismissed with costs.

6. I have so far shown that the lower Court's decision in O.S. No. 8 of 1924 cannot be supported. I shall now pass on to the connected appeal (Appeal No. 360 of 1925) arising out of O.S. No. 9 of 1924. The object of that action is to get rid of the decree passed against the temple in O.S. No. 44 of 1915 as modified by the High Court in Appeal No. 119 of 1916. O.S. No. 9 refers to four sets of jewel, those set out in Schs. A, B, C, and D to the plaint. The complaint is that these jewels were wrongfully pledged by the temple with one Krishniah Chetty, otherwise known as Krishnier, by which Dame I shall refer to him in this judgment. The latter in the alleged exercised of his rights as pledgee sold away the jewels in Sch. D and filed O.S. No. 42 of 1915 claiming the amount due in respect of the jewels in Schs. A, B, and C. In that suit, the trial Court passed a decree in his favour, for about Rs. 26,000 but the High Court raised the sum to

Rs. 44,000. A declaration is sought that decree is not binding upon the temple. As regards the jewels in Sch. D, the prayer is, that they may be either directed to be returned or a decree may be passed for their value.

7. The learned Subordinate Judge has disallowed the claim in respect of jewels in Schs. A and C; but has declared that the decree in O.S. No. 42 of 1915 is not binding on the temple to the extent of the pledge of the B schedule jewels; as to the pledge of D schedule jewels he has also declared that it is not binding and passed a decree for their value. Krishnier, the creditor, attacks in this appeal the finding of the lower Court as to the jewels in Schs. B and D. Although therefore with the A schedule jewels we have no concern, I may, as the judgment of the lower Court repeatedly refers to this transaction, state that it arose out of the pledge of 9th April 1904, for Rs. 10,000 in favour of A.P.R.S., which in its turn is traceable to the earlier pledge in his favour, dated 29th day of May 1900 (Exs. 14-A and 14 respectively already referred to). The temple borrowed from Krishnier on 31st August 1904, Rs. 8,000 and that sum having been paid to A.P.R.S., the jewels were transferred to Krishnier, which he thereafter held on pledge. These are the jewels set forth in Sch. A and as the pledge of those jewels has been held to be binding, we are not concerned with it in the appeal; nor are we concerned, as I have said, with the jewels in Sch. C. I remark that there is no cross-appeal by the temple as regards these two sets of jewels.

8. Of the jewels in the remaining two Schedules turning first to the pledge of the D schedule jewels, the evidence bearing on it may be briefly summarised. (After summarising the evidence bearing on pledge of D Schedule jewels and also B Schedule jewels, the judgment proceeded). I have not the slightest hesitation in holding that the temple is bound by this transaction. The lower Court's decision in this appeal is also reversed except to the extent that as indicated above the amount due to Krishnier shall carry simple and not compound interest. As the appellants have practically succeeded, they shall have their costs throughout.

9. I shall now show that the conclusions at which I have arrived are in conformity with the principles to be extracted from the authorities bearing on the subject in *Prosunno Kumari Debaya v. Gulab Chand Baboo* (1874) 2 IA 145 the Judicial Committee points out that the power of the shebait of an idol's estate to incur debts is analogous to that of the manager of an infant heir. What the extent of the latter's power is, appears from the judgment in *Hanooman Prasad v. Babooee Munraj Koonwaree* (1872) 6 MI A 393. Their Lordships point out, that the power can only be exercised in case of need or for the benefit of the estate. The actual pressure on the estate, the danger to be averted or the benefit to be conferred upon it in the particular instance is the thing to be regarded. The creditor is thus not concerned with the more remote causes that led to the necessity, but it is the actual immediate need of the estate that is the true criterion. As the Privy Council points out, the test is, is the debt in the particular instance one that a prudent owner would incur in order to benefit the estate? If the answer is in the affirmative a bona fide lender is not affected by the

precedent mismanagement of the manager. The lender of course cannot support a charge grounded on a necessity, which his own wrong has helped to cause. Unless therefore, he is shown to have acted mala fide, the lender will not be affected though it be proved that with better management the necessity in question would not have arisen. In *Ramsumaran Prasad v. Shyam Kumari* AIR 1922 PC 356 it is pointed out by their Lordships that the word "necessity", when used in this connexion has a somewhat special, almost technical, meaning. Necessity does not mean actual compulsion, but the kind of pressure which the law recognizes as serious and sufficient. Incidentally this case refutes the theory that a compromise of a pending suit by a limited owner stands on no better footing than an alienation pure and simple. A compromise, their Lordships observe, made bona fide for the benefit of the estate and not for the personal advantage of the limited owner will bind the estate quite as much as a decree on contest.

10. But this is a point which as I have already said need not be pursued. Once again turning to the question as to what constitutes necessity, we find the point very lucidly dealt with in *Niladri Sahu v. Chaturbhuj Das* AIR 1926 PC 112. In that case the money lent by the appellant was used to satisfy the loans incurred for the services of the idol and to carry out a certain building project. The Courts in India held that the constructing of the buildings could not be regarded as necessities of the mutt. Then they went on to hold, all the money of the mutt having been absorbed in the buildings erected, the shortage of funds for keeping up the religious worship, could also not come under the head of legal necessity. The Judicial Committee, disagreeing with this view, found as a fact, that the expenses incurred under both categories were justifiable. Having recorded this finding, they proceed to declare the law on the point in no uncertain terms. After citing *Prosunno Kumari Delaya's* case (1874) 2 IA 145 for the proposition that the power to incur debts must be measured by an existing necessity, they point out that it is the immediate, not the remote cause, the *causa causans* of the borrowing that has to be considered. Let it be granted that the remote cause of the mutt's need was the profligate expenditure of the shebait, that is, his getting into debt by the building project. But it is not such remote cause that matters, but the existing necessity, the immediate cause of the borrowing. Judged by this test, the debt was held to be binding on the trust. AIR 1927 131 (Privy Council) is another case, where the same principle is recognized and affirmed by the Judicial Committee. So much where actual necessity can be proved; but it is a settled rule, that if the lender makes proper inquiries and acts honestly, he is protected although it turns out that in point of fact there was no real necessity: *Hanooman Prasad's* case (1872) 6 MI A 393. In the light of these principles let me just glance at the transactions which I have already dealt with in detail. The first two items of consideration for Ex. 3 (the promissory note in favour A.P.R.S.) were borrowed for keeping up the daily worship of the temple.

11. That was an actual and existing necessity. Granting that the shortage of money was due to bad management (which clearly had not been made out), that

being the remote and not the immediate cause, would make no difference. Granting again that necessity, in fact, has not been proved (which is not the case), even then, the creditor would be protected, as after reasonable inquiry he was satisfied that there was compelling necessity and acted honestly. Item 3 of consideration for Ex. 3 stands more or less on a similar footing. The incurring of legal expenses for establishing a valuable right and the paying off of the revenue due to the Government, are necessities recognized by the law. So also is the satisfying of a decree passed against the temple for money borrowed. In regard to each of the three items of consideration for Ex. 3. I have found first, that there was necessity, secondly, that the lender made due inquiries and acted honestly and thirdly, that the money lent was properly applied (that having been conceded). Then passing on to Krishnier, the creditor in the second suit, first, as regards the pledge of Sch. D jewels, the amount was raised for paying off a grocer who had supplied commodities. That the money was actually paid to the grocer cannot, as I have said, be disputed; nor can it be doubted that the creditor acted upon a representation made to him that the money was required for that purpose.

12. It has been feebly contended that it is outside a trustee's power to make purchases on credit. Why would a trustee be put in this respect on a different footing from any other person? It seems opposed to good sense to deny him the ordinary right which every prudent manager of his own property enjoys. It has not been shown that in this particular case the trustee in buying the provisions on credit exercised his discretion wrongly. Apart from the reason of the thing, there is some authority for the view that the conduct of a trustee in purchasing provisions on credit is not necessarily wrongful: *T.S. Venkatabalagurumurthi Chettiar Vs. T.A. Balakrishna Odayar and Others*, .

13. Now, passing on to the pledge of Sch. B jewels, the facts connected with that transaction require a further principle to be noticed. As I have shown, the loan raised on that pledge merged in a decree of Court. That decree was obtained against the successor of the trustee who actually raised the loan. It should be observed (to use the words of the Judicial Committee in a similar case), that the matter does not come before us by way of appeal from the decree sought to be impeached, but upon fresh suit to set it aside. The former decree is entitled to the force due to judgments of competent Courts. The determination of the issue is *res judicata* and in the absence of proof of fraud or collusion, the Court cannot reopen and review the judgment founded upon it: see *Prosunno Kumari Debaya v. Gulab Chand* (1874) 2 IA 145. I have held that the decree was properly obtained and the Judge's reasons for disregarding it are unsound. Assuming that, notwithstanding the decree in O.S. No. 429 of 1915, the original transaction itself can be examined, there is no reason, as I have said, for holding that it is not binding on the temple. The object of raising the loan was, as I have pointed out, to avert a forced sale of the jewels which were directed by a decree of Court to be sold. In such a case, what is the creditor's duty? In *Muddu Thokare v. Kantoo Lal* (1873) 1 IA 321 it was held by the Judicial Committee that a bona

fide purchaser of property put up for sale in pursuance of a decree of Court was protected within the principle of Hunooman Prasad's case (1872) 6 MI A 393. Such a purchaser was surely not bound to go further back beyond the decree to ascertain whether the Court was right in giving the decree, or having given it, in putting up the property for sale. These remarks, it cannot be said, apply with less force to Krishnier, merely because he does not happen to be an execution purchaser but a pledgee whose money was used for averting the threatened sale.

14. In the result, applying the tests laid down in the authorities cited above I must hold that the transactions to which those two appeals relate are binding on the temple. In regard to each of these transactions, what my decision is I have already stated. In Appeal No. 360 of 1925 we make an order under Rule 46, Sub-rule (2), Practitioners' Fee Rules, Appellate Side Rules, that two sets of fees be allowed to the appellants.

Curgenven, J.

15. My learned brother whose judgment I have had the advantage of reading, has dealt so fully with the transactions involved in these appeals, and I am so entirely in agreement with his views, that I can find little to add to what he has said. Following the principles now well-established by decision of the Privy Council, the creditors of the temple whose interests the plaintiffs-represent, must be held to be protected if it appears that immediate necessity existed for contracting the loans, irrespective of the merits of the course of action which gave rise to the necessity. There seems no doubt that, over the period during which the primary debts were incurred, the temple was financially in low water. The accounts for the period 1900-03 are not forthcoming, a circumstance which must tell against the temple rather than against its creditors, but there is evidence that the temple lands suffered in 1900 from floods, and that little income was received from them. From 1893 up to 1902, as the agreement Ex. L shows, litigation had been going on between the temple and a number of the tenants who were asserting occupancy rights. This litigation had cost the temple Rs. 40,000 and a sum of Rs. 60,000 of rent, much of it time-barred, was in arrear. The K series of leases, which originated during this period, were designed to provide for liabilities already incurred. A wasteful dispute was meanwhile proceeding between the two Pandarasannadhis, Sivagnana 1 and Manikavachaga 1, which led to Court proceedings doubtless financed to some extent at least with temple funds. All these circumstances go to support the truth of the evidence, given by several of the defence witnesses, that the income available for ordinary purposes had fallen far short of the unavoidable expenditure. I think that if, in such circumstances, and whether or not they were induced by faults of management or misapplication of funds, the trustee had recourse to borrowing in order to meet current needs, or to avert the loss of temple property, the loans so incurred must be held to be binding.

16. In A.S. No. 361 of 1925 arising out of O.S. No. 8 of 1924, the central transaction with which we are concerned in appeal is the promissory note for Rs.

12,800 (Ex. 3), whereby on 17th April 1901 three antecedent debts were superseded. My learned brother has analyzed these components, and I agree with him in differing from the learned Subordinate Judge as to the effect of the evidence relating to them. The promissory note Ex. 2 was executed jointly by both Sivagnana and Manikavachaga, and the evidence of D. Ws. 3, 4 and 6, together with the recital in the note (misquoted by the Subordinate Judge) is sufficient proof that the debt was incurred for a necessary purpose. I see no reason to disbelieve the statement of defendant 1 (D.W. 4) that he was told by the Pandarasannadhi that if the money was not furnished the temple would be unable to meet the current expenses. There is no ground for disallowing this item. Similar considerations apply to the second item of Rs. 1,666-8-0, composed of two sums of Rs. 500 and Rs. 1,000 respectively, borrowed for nadumuthal expenses. The third item was a sum of Rs. 5,000 borrowed on the date of execution of the promissory note Ex. 3. My learned brother has pointed out the defects in the learned Subordinate Judge's treatment of this item. Half the amount has been accounted for as required in the litigation between the temple and its tenants, which was brought to a close in the following year by Ex. L. I agree that this and the other charges thus provided for must be held to have been for purposes which cannot now be repudiated on behalf of the temple. It is then said that the settlement in 1904 for a total amount of Rs. 26,000 was excessive, having regard to the terms of the lease evidenced by Ex. K-2 which was designed to reduce the indebtedness under Exs. 3 and 14. A sufficient answer seems to be, in the first place, that no reason has been shown why the Pandarasannadhi should have allowed his creditor unduly to exploit his position by exacting unconscionable terms; and, in the second, that in the absence of the temple accounts we have really no materials upon which to form a judgment. It lay upon the plaintiffs to displace the inference that the settlement of 1904 fairly arose out of the antecedent indebtedness, and they have certainly failed to discharge the burden. It follows, in my view, that the compromise decree for Rs. 18,000 cannot be successfully attacked.

17. In A.S. No. 360 of 1925, arising out of O.S. No. 8 of 1924, we are concerned with the pledge of jewels comprising Schs. B and D of the plaint. The former pledge originated in a desire to save these jewels from sale in execution by re-pledging them, and there is evidence that funds were not at the time forthcoming to pay off the decree. It may well be that the interests of the temple would have been best served in the long run by sacrificing the jewels and terminating the debt. But we must look at the transaction not in the light of the subsequent failure to effect redemption but as it would naturally appear to a creditor whose assistance was sought to save a portion of the temple property. There is some difference of opinion as to the sentimental importance of a forced sale of temple jewels, but even taking it that no serious objection on this score existed, it seems to me that the purpose for which the money was required was of a kind binding upon the institution. That being so, it follows that the decree in O.S. No. 42 of 1915, of which Sch. B jewels formed the only portion now in

dispute, cannot be successfully attacked. As regards Sch. D pledge, the sum of Rs. 1,000 thereby raised was immediately required to pay for temple supplies, and it seems to be enough that this money was, so far as appears, devoted to this purpose, and the plaintiffs are not entitled to put the creditor to the proof that, with better management, the bill could have been met from current income. I agree with what my learned brother observes as to the subsequent history of this transaction. I concur in the orders proposed in these appeals.