

(1914) 10 MAD CK 0036
In the Madras High Court

Nallappa Reddi

APPELLANT

Vs

Vridhachala Reddi and Another

RESPONDENT

Date of Decision : 06-10-1914

Acts Referred:

Citation : AIR 1915 Mad 36 : 25 Ind. Cas. 888

Hon'ble Judges : Sundara Aiyar, J;Phillips, J

Bench : Division Bench

Judgement

1. The question raised in this case is one of some importance. The second defendant had agreed, while the plaintiff was a minor, to manage the plaintiff's properties and to hand "over possession to him after his attainment of majority. One of the duties that the second defendant undertook to perform was the payment of interest due on the debts. He did not pay the interest on one of the debts and in consequence the creditor instituted a suit (Original Suit No. 521 of 1897) in the Kulittalai District Munsif's Court. The plaintiff and the second defendant were both parties to that suit, the second defendant being the third defendant there. He contended in that suit that he had paid up the interest, but failed to adduce evidence to prove his contention. The plaintiff subsequently paid the amount to the creditor, and instituted this suit to recover the damages sustained by him in consequence of the second defendant's failure to pay.

2. The lower Appellate Court has held that the second defendant is bound by the finding in Original Suit No. 521 of 1897 and cannot now be permitted to allege or prove that, as a matter of fact, the interest due to the creditor had been discharged by him prior to the previous suit. Mr. Seshagiri Ayyar contends that the rule of res judicata is not applicable to the case as the plaintiff and the second defendant were co-defendants in the previous suit and as it was not necessary to determine the question as between them to give relief to the plaintiff there. We consider it unnecessary to determine whether the case would really come strictly within the rule of res judicata, as we have no doubt that the second defendant must be held to be equitably estopped from raising the

contention that he had really paid the interest due to the creditor. He, as co-defendant in the previous suit, had an opportunity to prove it. It was his duty to do so in order to prevent a decree being passed against the plaintiff here. He failed to do so. He had undertaken to indemnify the plaintiff if, in consequence of the breach of the covenant on his part to pay the interest on debts, the plaintiff was put to any loss. Owing to his failure to adduce evidence a decree was passed against the plaintiff and he was obliged to pay the creditor. It would be monstrous in the circumstances to allow the second defendant now to do that which by his failure to do before he put the plaintiff to loss. The case of the plaintiff, however, might be put even on broader grounds than in the circumstances it is necessary to do. It has been held by both the English and American Courts that, where there is a contract to indemnify, if a decree has been passed against the person entitled to indemnity, the correctness of that decree cannot be impeached, by the person bound to indemnify. The contract of indemnity might, no doubt, strictly be said to require that it should be proved that the indemnity acted in violation, of his duty as well as that his act caused loss to the party entitled to indemnity. But the Courts have held, and we think rightly if we may say so, that the contract is substantially broken when the Court has found in a suit honestly defended by the party entitled to indemnity that there has been a violation of duty by the indemnifier which has entitled a third party to the damages for which the indemnity has been given. It has further been held that, if both the indemnifier and the party entitled to indemnity were parties to the action by the third party, as in this case, or if the indemnifier had notice given to him of the suit against the party entitled to the indemnity, the judgment would be Conclusive against the indemnifier even as an adjudication by Court.

3. Whether the technical doctrine of *res judicata* is applicable or not, there can be no doubt that the second defendant must be held to be estopped from contending that the debt was discharged. It is unnecessary to refer to the authorities at length.

4. The earlier cases are referred to in the judgment of Mellish, L.J., in *Parker v. Lewis* (1873) 8 Ch. App. Cas. 1035 : 29 L.T. 199 : 21 W.R. 928 : 48 L.J. Ch. 281. See also *Mercantile Investment and General Trust Co. v. River Plate Trust, Loan, and Agency Co.* (1894) 1 Ch. 578 : 63 L.J.Ch. 366 : 8 R. 791 : 42 W.R. 365, *Verman on Estoppel and Res Judicata*, pages 171 to 173, and *Bigelow's Law of Estoppel*, pages 131 to 145. Our judgment is also in accordance with the decision of this Court in *Krishnan Nambiar v. Kannan* 21 M. 8. We dismiss the second appeal with costs.