

(1925) 10 MAD CK 0062
In the Madras High Court

Nidavolu Atchutam alias Achutaramayya and Others APPELLANT
Vs

Ratnaji Carrying on Business under the name and Style of RESPONDENT
Ratnajee Bhootaji and Others

Date of Decision : 22-10-1925

Acts Referred:

Citation : AIR 1926 Mad 323 : (1926) ILR (Mad) 211 : 92 Ind. Cas. 977

Hon'ble Judges : Victor Murray Coutts Trotter, C.J.; Viswanatha Sastri, J

Bench : Division Bench

Judgement

Victor Murray Coutts Trotter, C.J.—In this case the father of the appellants embarked on the hardware trade in 1914 and was sued with

them in respect of debts contracted by him in the conduct of that venture. The appellants' Vakil relied on a text of Gautama XII, 41 which runs as

follows:

Money due by a surety for a commercial debt, a fee due to the parents of a bride, debts contracted for spirituous liquor or in gambling and a fine

shall not involve the sons of the debtor"" and the bold contention is put forward that the pious obligation does not extend, therefore, to commercial

debts. I have discussed this subject at length in para. 303 of the 9th Edition of Mayne on Hindu Law and I have very little to add to what I said

there. This Court has held in Thangathamma v. Arunachalam Chettiar (1918) M.W.N. 673 that sons are liable in a case of a surety bond executed

by the father for payment as distinct from obligations as a surety for appearance and for honesty and there are other decisions of the Calcutta and

Patna Courts to the same effect. This, appears to me to be based upon the view that the governing provision in the texts is that which excludes

from the rule debts that are not vyavaharika, an expression taken from Usanas (apud Mitakshara II, 48) and Vyasa (apud Jagannatha I, V, 203).

From 1874. onwards the decisions of the Privy Council have adopted this view and have crystallised the translation as "illegal or immoral". It

appears in *Girdharee Lall v. Kantoo Lall* 3 Sar. P.C.J. 380 (P.C.) and has been repeated in many subsequent cases. If this be correct, it will

follow as I have said that the particular instances given in the Smirities must be treated as a mere expression of opinion on the part of the authors

as to what classes of debts would fall under the general words. A modern Court would, therefore, be free in interpreting the general term to

consider the particular instances given as obsolete under the conditions of today. I am clearly of opinion that commercial debts fall into this

category and that we ought to say that the pious obligation extends to them. It may well be that in the time of Gautama, it was thought that to

engage in trade was degrading, at any rate in the case of the higher castes. No one could pretend that that view would be entertained to-day. For

these reasons I am of opinion that the sons are liable in this case and that the appeals must be dismissed with costs.

2. Of course the whole doctrine of the pious obligation is itself a relic of antiquity based originally on a religious and not a legal conception but it has

been controlled and moulded into shape by a series of decisions which, in my opinion, make it a working rule which in its actual application is

neither inconvenient nor unjust.

A.S. No. 436 of 1922.

Viswanatha Sastri, J.

3. Appeal by defendants Nos. 3 to 5 against the decree of the Court of the Additional Subordinate Judge, Eajamundry, in O.S. No. 25 of 1920.

4. Appellants are the sons of the first defendant, and the second defendant is their maternal uncle. The suit was laid for the recovery of a sum of

money (Rs. 6,898-11-6) due in respect of money dealings between defendants Nos. 1 and 2 and plaintiff. Defendants Nos. 1 and 2 are said to

have carried on in partnership a trade in hardware, for the purpose of which trade money was being borrowed from time to time from plaintiff. It

was also alleged that the first defendant and defendants Nos. 3 to 5 were undivided, and that the trade was being carried on by the first defendant

for the benefit of the family. Defendants Nos. 3 to 5 contended that as they have become divided from their father- (1st defendant) they had

nothing to do with the trade; that the trade was never an ancestral trade nor a joint family trade; and that they were not liable. They also contended

that the settlements of account alleged in the plaint, between plaintiff and defendants Nos. 1 and 2, were false. The Subordinate Judge held that the

settlements of account were true, that the partition set up was brought-about to defraud creditors; and he passed a decree against defendants Nos.

1 and 2, and against the joint family properties in the hands of defendants Nos. 3 to 5.

5. The contentions urged in appeal are:--(1) that the trade not being an ancestral trade, and the first defendant having started, it only in 1914,

appellants could not be held liable for sums said to have been borrowed for the purposes of the trade; (2) that as Rs. 1,926-6 3 and Rs. 695-3-0

were due from third persons, and as the partnership took them over, they (defendants Nos. 3 to 5) were in any event not liable for the sums. The

contention that defendants Nos. 3 (sic) 5 had separated themselves from their father was not pressed before us.

6. Taking the second contention first, the allegation in para. 6 of the plaint is that on January 5, 1918 defendants Nos. 1 and 2 "" made themselves

liable in the sum of Rs. 1,926-6-3 for the share of E. Venkatasubbarayudu in the katha debt due by him and another K. Venkatanarayana Row

and the pre-note debt of the said E. Venkatasubbarayudu in the sum of Rs. 695-3 0"". In the case of a suretyship for payment, it may be taken as

well settled that a Hindu son is liable: See *Sitaramayya v. Venkataramanna* 4 Ind. Dec. 260, *Thangathamma v. Arunachallam Chettiar* (1918)

M.W.N. 673, *Tukarambhat v. Gangasam Mulchand Gujar* 12 Ind. Dec. 301 and *Rasilc Lal Mandal v. Singhaswa Roy* 16 C.W.N. 1103. The

decision in *Narayan v. Venkatacharya* 6 Bom. L.R. 434 relates to the liability of a guardian and has no application to the case before us; The test

of Gautama (Section 41) was referred to by the Vakil for the appellants, but it appears to me that Gautama simply repeats Manu (Section 159)

and that he refers only to a suretyship for appearance. In the case of a suretyship for payment, the text of Yajnavalkya recognises the liability of a

son. This contention, therefore, cannot prevail.

7. Coming to the first contention it was urged that the father ""was not continuing any ancestral trade but was starting a new trade, and that for debts contracted for a new trade, the sons were not liable. That under ancient texts a son was under a legal obligation to pay his father's debts was the opinion held by that eminent Judge(Muthusami Iyer, J.) in Ponnappa Pillai v. Pappuvayyanga 1 Ind. Dec. 839. According to Yajnavalkya if a father be long absent in a distant country or be dead the debt must be re-paid by the son. It is equally well settled that the son was not under any such liability in the case of debts contracted for illegal or immoral purposes. According to Yajnavalkya a son was not bound to pay a debt, even though hereditary if it was contracted for the purpose of drinking, debauchery or gambling. According to Gautama a son was not bound to discharge a debt incurred by his deceased father if due by him to a wine shop or a gambling saloon. ""By the Hindu Law, the freedom of the son from the obligation to discharge the father's debt has respect to the nature of the debt"": See Hunoomanpersaud Panday v. Bobooee Munraj Koonweree 6 M.I.A. 393 . In Suraj Bansi Koer v. Sheo Persad Singh 4 C. L.R. 226 : 2 Shome L.R. 242 : 2 Ind. Dec. 705 their Lordships of the Privy Council refer in the appeal the following dictum of Westropp, C.J., in the case of Udaram Sitaram v. Ranu Panduji 11 B.H.C.R. 70""subject to certain limited exceptions (as for instance, debts contracted for immoral or illegal purposes) the whole of the family undivided estate would be, when in the hands of the sons or grandsons, liable to the debts of the father or grandfather"".

8. In the case before us the trade the father carried on was a trade in hardware, and there was nothing illegal or immoral about it. There is not even any suggestion to this effect in the written statement; and all that is alleged is that the business was neither an ancestral nor family business; that the sons had become divided from their father; and that"" the business was carried on by the-father for his sole benefit. The finding is that the business was carried on for the benefit of the family and that the partition was fraudulent. In Ramkrishna Trimbak v. Narayan Shivora Aras 17 Bom. L.E. 955 it was held that a son cannot escape liability for payment of the debts of his father contracted in fish trade. The decision in Official Assignee of Madras v. Palaniappa Chetty (1918) M.W.N. 721 is the authority for the proposition that where a Hindu father starts for the first time a new trade,

and for the purpose of the trade contracts debts, his sons cannot be held liable for the debts so contracted. In that case the* question arose in

bankruptcy proceedings whether a Hindu son can be adjudicated insolvent in respect of debts incurred in a business newly started by his father

during his minority, and in which he actively participated after attaining majority, and there was no question as to the liability of joint family

properties, for such debts.

9. I would, therefore, dismiss the appeal with costs.

In A. 8. No. 362 of 1923..

10. Appeal by defendants. Nos 2 to 4 against the decree of the Court of the Additional Subordinate Judge of Rajahmundry, in C.S. No. 24 of

1923.

11. Appellants are the sons of the first defendant and the suit was laid for the recovery of a sum of money (Rs. 3,050) due in respect of money

dealings carried on between plaintiff and first defendant. It was alleged that the dealings were for the purpose of financing a trade in hardware

which first defendant was carrying on for the benefit of the undivided family consisting of himself and his sons. Appellants contended that they had

become divided from their father; that the trade was not an ancestral trade and that it was never carried on for their benefit. The Subordinate Judge

held that the dealings were proved that the partition was brought about to defraud creditors; and that the joint family properties were liable.

12. The contention urged in appeal is that the trade not being an ancestral trade and the first defendant having started it only in 1914, appellants

could not be held liable for sums said to have been borrowed for purposes of the trade. The contention that they had separated from their father

was not pressed before us.

13. This appeal was heard with Appeal 436 of 1922, and for reasons given in my judgment in that appeal, I would dismiss the appeal with costs.