
(1925) 11 MAD CK 0025
In the Madras High Court

Nori Venkatakrishnayya

APPELLANT

Vs

Kundurthi Byragi and Others

RESPONDENT

Date of Decision : 30-11-1925

Acts Referred:

Penal Code, 1860 (IPC) — Section 403, 406

Citation : AIR 1926 Mad 535 : 94 Ind. Cas. 634 : (1926) 23 LW 714 : (1926) 50 MLJ 353

Judgement

1. The contention of Mr. Ramadoss in this appeal is that the debt incurred by the father was in the capacity of a trustee and therefore he must have

been considered to have criminally misappropriated the trust funds and that the son's share cannot be made liable for such a debt.

2. There is nothing to show that the 1st defendant misappropriated any amount so as to bring him within the clutches of the Criminal Law and all

that was found against him was that certain sums of money for which he was accountable were not accounted for by him and in a scheme suit he

was ordered to pay the amount which came into his hands. We do not think that will amount to misappropriation or breach of trust within the

meaning of Section 403 or 406 of the Indian Penal Code. If he had been found guilty of breach of trust he would have been removed from his

office of trusteeship. But he has been allowed to continue. Therefore we cannot hold that he was guilty of breach of trust. Even if it is found that he

misappropriated the amount which came into his hands we do not think the sons can escape the liability to pay their father's debt. Mr. Ramadoss

relied strongly upon Durbar Khachar v. Khachar Harsur (1908) 32 Bom. 348 That case was considered by the learned Chief Justice and Mr

Justice Seshagiri Aiyar in Garuda Sanyasayya Vs. Nerella Murthenna and Others,

There they held that ""Under the Hindu Law a person was liable to account for amounts collected by his father and grandfather in their capacity as trustees but subsequently misappropriated by them. The fact that the misappropriation amounts to a criminal offence did not affect his liability."" We are entirely in accord with the principle of this decision.

Therefore we consider that there is nothing in this objection.

3. The next point raised is that the son, the appellant was specifically exonerated by the decree. The decree has not been produced before us.

There is nothing to show that his share of the family property was exonerated. If there was anything in this point it would have been pressed before the learned Judges who remanded the suit for disposal on the merits.

4. No doubt this point was raised in the grounds of appeal but it evidently was not pressed. There are no materials before us for holding that the appellant's share was exonerated by the decree passed in the scheme suit.

5. The next question is one of fact. The contention of the appellant that he was divided from his father was disbelieved by the Lower Court. We

have been taken through the evidence on his side and we find that the evidence is not only unsatisfactory but even if believed does not go to show

that the property attached fell to the share of the appellant on partition. The evidence as to partition is very unsatisfactory and we have no reason to

differ from the finding of the learned Judge which we consider to be correct.

6. The appeal is dismissed with costs.