(1953) 01 KL CK 0022

In the High Court Of Kerala

Case No : A.S. No. 199 of 1123 (T)

P.L.A. Palanippa Chettiar — APPELLANT

Vs

A. and F. Harvey Ltd. — RESPONDENT

Date of Decision : 06-01-1953

Acts Referred:

Citation : (1953) 01 KL CK 0022

Hon'ble Judges : Vithayathil, J;Govinda Pillai, J

Bench : Division Bench

Advocate : T.N. Subramonia Iyer and V.V. Subramonia Iyer, for the Appellant; N.K. Narayana Pillai and P. Sivarama Iyer, for the Respondent

Judgement

Govinda Pillai, J.—The Plaintiff is the Appellant. The suit was to set aside Exs. XI and XIV dated 5-8-1937, two transfers effected by Defendant 2, as the guardian of the Plaintiff, of the shares the Plaintiff had in the Punaloor Paper Mills Ltd., and in the managing agency A.V.N. and Company. The Plaintiff was born on 15-4-1922. On 2-7-1922 his father Venkitachalam Chettiar died, leaving the Plaintiff as his sole heir. The Plaintiff''s mother, Defendant 2, was acting as the guardian of the person and properties of the minor Plaintiff. According to the Plaintiff, at the time of his father''s death, the family possessed considerable properties, both moveable and immovable, besides-jewels and cash. The Plaintiff''s father, was a partner in the Sri Meenakshi Paper Mills Ltd., Punaloor, which was subsequently converted into a limited concern under'' the Companies Act. This institution was in a flourishing condition when he died. These assets fetched a large income and there was no need at any time to borrow money or to sell any of the family properties. The Plaintiff owned 245 preference shares and 5195 ordinary shares, all fully paid up, in the Punaloor Paper Mills Ltd. He had also 11/32 share in the A.V.N. and Co., a partnership concern in which the right of management of the Punaloor Paper Mills vested. This right in the managing agency was hereditary, inalienable and permanent.

The Plaintiffs mother - Defendant 2 - was a young lady, inexperienced and illiterate, who could not and did not understand the real value and worth of the said snares. She was solely relying on one Mr. Nartsimha Iyer who was the manager and partner in the said Mills, and one M. Ar. Ar. Arunachalam Chettiar the other partner, for advice and guidance regarding matters concerning the Mills. Defendant 1 is Messrs. A. and P. Harvey, a firm of merchants carrying on business at Madura. Defendant 1, the said Narsasimba Iyer and Arunachalam Chettiar, and one Tondi Lekshmanan Chettiar a remote cousin of the Plaintiff''s father, entered into a secret arrangement among themselves with a view to make a large profit at the expense of the Plaintiff, made false and fraudulent representations to the Plaintiff''s mother regarding the value and condition of the Punaloor Paper Mills and prevailed upon her to transfer to Defendant 1 all the right, title and interest of the Plaintiff in the shares and in the hereditary right of management m the Punaloor Paper Mills Ltd., for an unconscionably low consideration. These documents are Exts. XI and XIV, the translations of which are Exs. S. and A. The statements in these documents that the Mills could not be profitably continued for want of financial help, that the business had come to a stand still and that great loss would result in the event of the Mills being wound up, were all false and grossly exaggerated, and made with a view to give an air of bona fides to the transaction and to make the inequitable transactions appear proper and fair. The statement that the Plaintiff had debts to the extent of about Rs. 44,000/- was also false. These documents are not legally valid or binding on the Plaintiff and cannot affect the Plaintiff''s right in the said Paper Mills and the managing agency. Defendant 2, who purported to execute the said transfers acting as the guardian of the Plaintiff, did not really act bona fide and for the benefit of the Plaintiff or for necessary purposes binding on him. She did so with a view to make profit for herself at the expense of the estate of the minor Plaintiff and for getting some ready cash which she could appropriate for her own benefit. The said transfers as evidenced by Exs. XI and XIV are grossly unfair and inequitable. Even though the right, title and interest of the Plaintiff in the Punaloor Paper Mills Ltd., and in A.V.N. and Co., were easily worth Rs. 1,64,125/-, they had been conveyed for a consideration of only Rs. 38,682-8-0. This has resulted in a great loss to the Plaintiff''s estate. The present value of the said shares is considerably higher than their face value.

Even granting that money was required for meeting certain needs of the Plaintiff''s estate, it could have been, and ought to have been, raised by other means, either by charging the Immovable properties of the estate or by pledging the shares; but not by selling them out-right for such a low consideration. The transactions are vitiated by mala fides and fraud practised by the parties. Even a cursory enquiry by Defendant 1 would have revealed that the alleged debts were fictitious. The recitals in the documents of the existence of debts payable by the Plaintiff were false, and Defendant 1 was aware of the same. Defendant 1, being a shrewd and experienced businessman was fully aware of the real worth of the said shares and the future prospects of the said concern. Defendant 1 was alliterate and inexperienced, and taking advantage of her eagerness to get rich at the expense of the Plaintiff, Defendant 1 colluded with Narasimha Iyer and the other partner Arunachalam Chettiar and Tondi Lekshmanan Chettiar mentioned above, and managed to exploit their influence with Defendant 2 for prevailing upon the latter to transfer the said shares and the right in the managing agency for a very low consideration. In any event, as the Plaintiff had a hereditary, permanent and inalienable right, to the 11/32 share in the managing agency, Defendant 1 could not acquire any right to the same on account of the transfer. There was no necessity for effecting-the transfers evidenced by Exs. XI and XIV, as there was ample income and cash available in the Plaintiff''s estate.

2. Of the debts recited in the said sale deeds, the first debt of Rs. 14,000/- mentioned in Ex. XIV was alleged to be due to the Plaintiff''s mother Defendant 2. There was no such debt due to Defendant 2 from the Plaintiff''s estate. The second debt of Rs. 5000/- was alleged to be due to one Karuuakara Menon. This was an amount due to Xarunakara Menon as Defendant 2 had received this sum as security for his appointment as the manager of the Plaintiff''s tile factory. The amount thus received was used by her for her own needs. As this amount was not repaid to Karunakara Menon, the latter had filed a suit O.S. 128 of 1122 (this must be 1112) on the file of the Trichur District Court against him (the Plaintiff). This suit was compromised by the Plaintiff. No amount under this head had been paid by Defendant 2 and so this recital is not binding on the Plaintiff. The third debt is a sum of Rs. 2000 said to have been borrowed by Defendant 2 from Sivagami Natesa Nidhi. This was an amount borrowed by the Plaintiff''s mother for her own needs and not for the estate. There was sufficient cash available in the estate and in the Chittur Tile Factory at-the time of the alleged borrowing of this amount. This fourth debt of Rs. 5000/- was also incurred by Defendant 2 in her personal capacity in purchasing for herself a tile factory in Yakra. This was not a debt payable by the Plaintiff. The fifth debt of Rs. 3000/- (it is not Rs. 5000 as mentioned in the plaint) alleged to be due to Kulittalai Bank was, as learnt by the Plaintiff, borrowed by Defendant 2 in her personal capacity, for her own needs, on the security of a house in Tennur over which she (Defendant 2) held a usufructuary mortgage right. This was her personal debt. The sixth and eighth debts were Rs. 5000/- each for litigation expenses and for building purposes. There was no necessity for incurring such debts. As regards the seventh recital which was a debt of Rs. 5000/- to the Devakottai Mercantile Bank, there was no need to borrow any such amount and no .debt was payable by the Plaintiff. Thus none of the debts recited in the documents was binding on the Plaintiff or his estate. The documents Exs. XI and XIV are therefore to be set aside. The Plaintiff, on the above allegations, prayed for the setting aside of these documents, and for a direction to Defendant 1 to retransfer the shares to the Plaintiff. There was an alternative prayer, that if the said reliefs could not be granted, Defendant 1 should be directed to pay the Plaintiff the sum of Rs. 1,64,125/- as damages, with lawful interest on the same from 5-8-1937.

3. Defendant 2 remained ex parte Defendant 1. opposed the Plaintiff''s claim on the following grounds. The transactions evidenced by Exs. XI and XIV had been

concluded in Madura and so the Travancore Courts had no jurisdiction to try the case. Defendant 1 was to prove that the Plaintiff was born on 15-4-1922 and that the suit was within time. Defendant 1 did not admit that the Plaintiff''s family was possessed or considerable properties yielding substantial income. The Punaloor Paper Mills were not working at a profit. The Plaintiff and his parents belonged to the well Known Nattukottai Chetty trading caste, business enterprise being their ''Kulacnara'' therefore, in applying the legal principles to the transactions or such trading caste, thus Kulacnara has to be kept in view. The investments made by the Plaintiff''s father in the Meenakshi Paper Mills, Punaloor, was done in the course of ordinary business conducted by these Chetties. The Mill was working at a heavy loss and so Defendant 2, the Plaintiff''s sister''s husband M. Ar. Ar. Arunachalam Chettiar, and Ors. interested in the Plaintiff, decided that the only way by which the investment could be safeguarded was by transferring the concern, to a limited company, taking shares therein, and getting other persons invest finance so that the concern could be brought to work on a profitable basis. The formation of the Paper Mills Ltd., was a step in the process of realisation of the original investment and the ultimate sale by Defendant 2 was a prudent way of realisation of a business investment in the best manner possible. The Plaintiff''s guardian had therefore every right to enter into the transaction. The contract of managing agency of the Paper Mills was one to tender services of trust and confidence involving for its efficiency, personal qualifications, exercise of personal discretion and requiring great administrative and technical ability. A minor, like the Plaintiff at that time, could have no place therein. There was no investment of the Plaintiff''s funds in that managing agency. It was neither a hereditary concern nor one which was not inalienable. The two major partners found it impossible to carry on the partnership business of the managing agency and decided to dissolve the partnership to advantage. The Plaintiff, even if he was treated as admitted to the benefits of the partnership, is bound by the act of the majority, particularly when the action taken by the majority had the concurrence of the Plaintiff''s mother and natural guardian. The Plaintiff received a benefit of Rs. 8250/- to which he was not as of right entitled. In any event, the sum of Rs. 8250/- paid in lieu of the Plaintiff''s share in the managing agency, was an adequate and fair consideration.

4. The main Director and the major shareholder in the Punaloor Paper Mills was the Plaintiff''s sister''s husband Arunachalam Chettiar. Arunachalam Chettiar and P.S. Narasimha Iyer and Defendant 2 had intimate and full knowledge of the affairs and conditions of the Punaloor Paper Mills Ltd., from its inception. Continuously for a number of years, the Meenakshi Paper Mills Ltd., and subsequently, its successor the Punaloor Paper Mills Ltd., were not working properly or without loss. An extraordinary general body meeting of the share-holders, many of whom were business men of considerable standing, was held at Devakotta on 26-10-1936 to consider the financial condition and the method of bringing the Mills to a profitable working condition. A committee was appointed

by the share-holders to get the condition of the Mills examined by an expert and to suggest ways and means. The position then was that unless and until further considerable capital was put in and extra machinery installed and production increased and the share-holders were assured of an efficient influential management, the Mills would not function economically and without increasing the losses already sustained. It was clear, that failure to adopt remedial measures would result in certain liquidation of the company and that all the directors and the share-holders would sustain considerable loss. Having exhausted all attempts and failed in raising the necessary finance, the said persons decided after mature consideration that they were unable to continue the working or the management of the Mills, and that it had to come to a stand still. The Plaintiff''s sister''s husband, Arunachalam Chettiar, and the other share-holders along with Defendant 2, transferred their shares to the 1st Defendant-company, and Defendant 2 got a very fair and good price for tire shares held by the Plaintiff in the Mills and the managing agency. Defendant 2 was an intelligent lady well conversant with business affairs. There was nothing inequitable or unconscionable in the transactions or the consideration paid. Exhibits XI and XIV were perfectly normal and bona fide transactions, and the statements made therein are, to the best of Defendant l''s information and belief, quite correct. There was no reason to believe that any of the statements made therein are false or untrue. The allegations of mala fides and fraud in the plaint are emphatically denied. The transactions were closed after due enquiries to the near relatives of the Plaintiff and members of the community to which the Plaintiff belongs. Defendant 1 had learnt that there were proceedings for money claims against the Plaintiff. The consideration for the transfers was paid to Defendant 2 after bona fide enquiry. Though the Plaintiff had full knowledge of these facts, he remained quiet till the eve of limitation to put forward this preposterous claim in collusion with Defendant 2. The allegations made are scandalous, with intent to blackmail Defendant 1 who had put in considerable money in the business, had appointed highly paid technical staff, and improved the capacity of the Mills, to render it a profitable concern. The Plaintiff was therefore not entitled to any relief and the suit was pressed to be dismissed with costs.

5. This suit was first filed in the District Court, Quilon. With the consent of parties, it was transferred to the file of the High Court, under its extraordinary original jurisdiction. The case was tried and decided by a single Judge and this appeal is against the decree thus passed. It was found by that Court that the suit was not barred by limitation and that the Travancore Courts had jurisdiction to try the case. It was also found that Exs. XI and XIV were not liable to be cancelled for any of the reasons mentioned in the plaint, that the documents were binding on the Plaintiff, that the transactions evidenced by these documents were not vitiated by misrepresentation and undue influence as alleged by the Plaintiff, that the numerous debts mentioned in the sale deeds were real and binding on the Plaintiff, that Exs. XI and XIV did not strictly evidence the transfer of a portion of the Plaintiff''s estate but only steps taken to realise the

investments made on behalf of the Plaintiff, and that the Plaintiff was not entitled to any relief. The suit was therefore dismissed with costs to Defendant 1.

6. Exhibits XI and XIV are the documents impeached. These were executed by Defendant 2 as guardian of the Plaintiff to Defendant 1 on 5-8-1937. The Malayalam rendering of these documents are respectively Exs. B and A.A.V.N. and Company, a firm in partnership, was the managing agent of the Punaloor Paper Mills Ltd. The partners to the firm were Arunachalam Chettiar son of I Ramanathan Chettiar, the Plaintiff and Mr. P.S. Narasimha Iyer, examined in this case as D.W. 3. The first party owned 10/16 share and the remaining two, 3/16 each in the partnership. Arunachalam Chettiar had transferred 1/5 of his share to one Natesan Chettiar, and was bound by an arbitration award of 1933 to transfer 5/32 of his remaining share to the Plaintiff so that himself and Plaintiff would have 11/32 share each, Natesan Chettiar 4/32 and D.W. 3 the remaining 6/32 share. There was no formal deed of transfer of the 5/32 share to the Plaintiff from Arunachalam Chettiar; but he had transferred the same to Defendant 1 on Defendant 2''s request. The consideration for that was Rs. 3750/-. For the remaining rights of the Plaintiff a sum of Rs. 4500, was fixed. These facts are mentioned in the assignment Ex. XI so that the total consideration for the transfer of the Plaintiff''s share in the Managing Agency was Rs. 8250. Arunachalam Chettiar had also to transfer to the Plaintiff 3548 ordinary shares and 200 preference shares of the Punaloor Paper Mills Ltd. He got his wife P.L.A. Lakshmi Achi in whose name, a good number of shares in the Mills stood, to assign to Defendant 1 the number of shares mentioned above so that the consideration of Rs. 22418 for the same went to Defendant 2. There were 1647 ordinary shares and 45 preference shares in the Plaintiff''s name. These were transferred by Defendant 2 on behalf of the Plaintiff for Rs. 8014-8-0. The total consideration of Rs. 30432-8-0 on account of the transfer of shares of the Paper Mills, and Rs. 8250 on account of the transfer of Plaintiff''s share in the Managing Agency is acknowledged receipt of by executing Ex. XIV. Exhibits XI and XIV mention the circumstances under which these documents were executed. Exhibit XIV mentions thus:

and whereas, meanwhile, the partners have found it impossible to carry on the partnership business and that of Punaloor Paper Mills Ltd. without substantial financial help and the partners above named are unable either by themselves or through Ors. to get the required finances, and the business has thus come practically to a standstill and great loss would result in the event of winding up of Punaloor Paper Mills Ltdv apart from the shares of the Company becoming of little or no value, the managing agency rights will become wholly valueless and whereas other partners viz., M. Ar.Ar. Arunachalam Chettiar and P.S. Narasimha Aiyar found they had no other go but to dissolve the firm and whereas with a view to avoid loss it has been agreed that in the interest of the partnership, the managing agency agreement should be sold to the party of the second part for a sum of Rs. 24,000 in all each party being entitled to his respective share and whereas the party of the second part has also further expressed its desire to purchase the shares held by the partners and other members of Punaloor Paper Mills Ltd. and the party of the first part has become indebted to several persons and also got to meet Court expenses and whereas it has become necessary in the circumstances for the party of the first part to effect a sale of the shares held and the managing agency rights as early as possible in order to save further loss to himself and whereas the partners have by separate deeds of conveyance transferrec1 their rights to the party of the second part and whereas the party of the first part has in respect of 11/32 share in the managing agency agreement received Rs. 4500 and Rs. 3,750 in all Rs. 8,250 being the agreed price and also a sum of Rs. 22,418 being the price of 3548 ordinary shares and 200 preference shares which were got transferred by M. Ar.Ar. Arunachalam Chettiar''s wife P.L.A. Lakshmi Achi at the request of the first party to the second party and a sum of Rs. 8014-8-0 being the price of 1647 ordinary shares and 45 preference shares directly transferred by the party to the first part to the party of the second part and thus in all received Rs. 38,882-8-0 in respect of shares.

7. It is only proper to consider here whether the statements mentioned above are correct, The Punalur Paper Mills Ltd., were first started as a private concern under the style of the ''Meenachi Paper Mills Company'' by three persons Vezikitachalam Chettiar i.e., the Plaintiff''s father, owning one-fourth share, Arunachalam Chettiar and Ramanatha Chettiar. The two latter persons owned 3/8 share each. Arunachalam Chettiar had married Lakshmi Achi and daughter of Venkitachalam Chettiar by his first wife. Defendant'' 2 is Venkitachalam Chettiar''s second wife. Ramanatha Chettiar was adjudged insolvent in I.P. 278 of 1925 by the High Court of Madras. His 3/8 share in the Mills was sold by the Official Assignee of Madras to Arunachalam Chettiar on 20-5-1931. The Plaintiff''s father Venkitachalam Chettiar died in 1922. It was found difficult to carry on this partnership without additional funds and none of the partners was in a position then to raise the same Mr. P.S. Narasimha Iyer D.W. 3 was the manager of the Mills then. A sum of Rs. 6000 was due to him on account of arrears of salary and allowance. It was then decided to float a Joint Stock Company undqr the name of the Punalur Paper Mills Ltd., with a capital of seven lakhs of rupees divided into 4000 preference shares of Rs. 50 each and 30,000 ordinary shares of Rs. 25 each. The assets of the Meenachi Mills were valued at Rs. 4 1/2 lakhs and transferred to the new concern. In lieu of the interest Arunachalam Chettiar and the Plaintiff''s father had in the Paper Mills they were allotted certain fully paid up shares i.e., 1400 fully paid up preference shares and 10,400 fully paid up ordinary shares to Arunachalam Chettiar, and 500 fully paid up preference shares and 3500 fully paid up ordinary shares to the Plaintiff. In lieu of Rs. 8000 due to Mr. Narasimha Iyer, he was allotted 100 fully paid up perference shares and 40 fully paid up ordinary shares. Thus the estimated assets of Rs. 4 1/2 lakhs of the Meenakshi Paper Mills Company were converted into 2000 fully paid up Preference Shares and 14000 fully paid up ordinary shares, in the new Joint Stock Company, the Memorandum and Articles of Association of which are in Ex. XXVII dated 24-1-1107 corresponding to September 1931. Exhibit XVII is the

agreement of 3-10-1931 by which the assets of Meenakshi Paper Mills Company were assigned over to the Punaloor Paper Mills Ltd. The main purpose for this conversion was as seen from Ex. XVII to raise more capital to complete the addition made to the Mills and to further develop and carry on the business on more profitable scale. It is also mentioned therein that this became necessary to settle the claims of Arunachalam Chettiar''s creditors and to meet the pressing demand for payment of the creditors of the Plaintiff''s deceased father. The object therefore was to raise, funds for the working of the company by allotting the remaining shares for rupees two and a half lakhs to the other parties and to discharge the debts of Arunachalam Chettiar and of the Plaintiff''s father by selling the shares allotted to them if that became necessary.

8. The desired object was not attained even after the formation of the Joint Stock Company. Exhibit I, the Balance Sheet of the Company as at 31-12-1933 would show that till then, besides the fully paid up shares allotted under Ex. XVII to the Plaintiff, Arunachalam Chettiar, and D.W. 3, 1036 preference shares were alone subscribed for and the amount thus realised came to only Rs. 51300. Not a single ordinary share was subscribed for by any one. The net loss for that year subject to provision for depreciation was Rs. 14,708-15-5. No further amount was realised in 1934 also by the issue of shares; but in the year which ended on 31-12-1934, there was a profit of Rs. 5099-11-3 (subject to provision for depreciation.) Exhibit II Balance Sheet for that year will show this. In 1935 as seen from Ext. III Balance Sheet the profit was only Rs. 1091-13-0. The profits earned in 1934 and 1935 were not sufficient to meet the loss incurred in 1933. In 1938, as seen from Ex. IV Balance Sheet, the loss for the year subject to provision for depreciation came to Rs. 14,790-12-0. By the end of 1937, the total loss had come to Rs. 60,979-11-4.

9. In the meanwhile, there were attempts to raise funds to work the company on a more profitable basis. At the meeting of the Board of Directors on 21-2-1932, the Managing Agents were, by a resolution, allowed to raise loans from the Quilon Bank Ltd., from time to time to the extent of Rs. 5000 (vide Exs. XXII, p. 10). The fifth resolution passed by the Board of Directors in its meeting on 26-8-1934, authorised the Managing Agency to raise a loan of Rs. 15000 on the security of the Mills as that sum was required to have the necessary stock of manufacturing materials (see Ex. XXXI page 30). At page 35 of Ex. XXII is recorded Anr. resolution authorising the Managing Agents to take a loan from Mr. Manglal D. Desai of Bombay of Rs. 30,000 to purchase materials for the manufacture of paper.

10. The share-holders were also getting restless for ever since the formation of the Joint Stock Company no dividend was declared and it could be seen from the figures given above that it was not possible also to do so. It was sworn to by D.W. 1 that from 1918 to 1942 there was no declaration of dividend. This was a statement brought out in cross-examination and this aspect was not'' pursued further. D.W. 3, Mr. Narasimha Iyer, had stated that since no dividend was

declared till 1937, the share-holders began clamouring about the position. An extraordinary General Meeting of the shareholders was, called to meet on 26-10-1936 and the resolutions I to 4 passed then would show the extent to which this unsatisfactory position had reacted on the share-holders. These resolutions are in Ex, XXI and they are extracted below:

I. Proposed by M. E. By. Al. Vr. P. Pothaperum Chettiar Avl, and seconded by M. E. Ey. Muthu Ar. Kr. Arunachalam Chettiar Avl., it was unanimously resolved that a Committee consisting of the following members be appointed to settle the following matters:

Committee Members. 1. M. B. Ry. S. Em. Ct. Jambulingoin Chettiar Avl. 2. M. B. Ry. O. Em. O. M. A. Letchumanan Chettiar Avl. 3. ,, T. Em. Ts. Thinnappa Chettiar Avl. 4. ,, Al. Sp. PI. Subramanian Chettiar Avl. 5. ? P.S. Narasimha lyer Avl.

II. To arrange in consultation with the present Managing Agents Messrs. A.V.N. & Co., for a better management who could work the Mill under profit.

III. To appoint an expert and in consultation with him go into the following matters and report:

1. To fix up the present valuation of the Mill.

2. To suggest improvements.

3. To fix up working capital required.

IV. If the change in managing agency is not possible to find out a purchaser and get an offer for the sale of Mills.

The action taken by the Board of Directors on the said resolution is given in the meeting of 23-12-1936 thus:

Resolved that, as it is found very necessary ''that the present condition of the Mill should be examined and reported by an Expert, the President Government Research Institute, Dehra Dun, be approached either with the help of Travancore Government or directly, to depute Mr. Bhargava for the detailed investigation and to submit a report regarding the present condition and'' future possibilities of the Mill.

Mr. P.S. Narasimha Iyer should make immediate arrangements to secure Mr. Bhargava''s services for the above purpose. He has been authorised to settle the terms and payment for Mr. Bhargava''s deputation for the above work.

11. The books of the company produced in this case would show that neither the snare holders nor the Directors were in any way able to raise necessary money to get the Mills worked as a commercial and profitable concern. The attempts made on behalf of the company by D. W. 3, about whose honesty, nothing was suggested in the cross-examination, are described by him thus in his deposition.

All of us tried to raise funds for working the Mills. The price of paper was so low, there was keen competition, the machinery in the Mills was-not fully equipped and on account of all these we are not able to get financiers. I may also say that capital was shy at that time for any-industrial concern.

He was then asked that if finance was not coming'' what would have been the prospects of the Mills. His answer was

I would have to close the Mill and the machinery would become scrap as it did once on a former occasion.

12. It was while the finances of the company were in a deplorable condition that Mr. Narasimha Iyer approached the Directors of Defendant 1 company for help. His version of what transpired'' then is as follows:

We were selling brown paper to Harveys in much larger quantity than to other customers and as such I had often the chance of going to Madura to see the managers of the Madura Mills. Mr. Graig Harvey of Harveys came by chance to Madura from England. He being an industrialist I thought of putting up this proposition before him. The proposition of buying the Mills or financing the mills and working it up, primarily with the object of getting the maximum value to the benefit of the share-holders who on my advice have put in money into the mills and also to secure sufficient finance to get the mill more fully equipped, and to produce the best grade of paper for which the raw material that is available in Travancore is best suited. I tried to get, Indian Financiers but I failed. Mr. Harvey came to Travancore once, and I took the opportunity of inviting him to the Mills at Punalur. He came to the mills only as a purchaser or customer of our paper, and I had not the boldness to approach him at that time to ask him to purchase the mills or give us more finance. After this visit, he was staying in Madura for some time, and he was good enough to increase the paper order to us considerably. In my subsequent visit to Madura, I told him our difficulties but he said, except in textiles, he was not interested. But seeing the difficulties we were undergoing,'' he said he would ask his directors at Madura to go into the matter more fully with me and send up a report. On account of our financial difficulties we were getting anxious and not having had any letter I reminded Sir James Doak about this and finally received a letter from Sir James Doak asking me to meet the directors including himself at a conference to be held at Tuticorin. In that meeting 1 explained fully the position of the mills and subsequent to this meeting I met Sir James Doak and I was told that if I could get them the whole concern at a fair rate I will he asked to start purchasing shares from various people probably about 300 in number. As Mr. Arunachalam Chettiar and Pichamma Achi (Defendant 2) had the largest amount of financial interest I went and told Mr. Arunachalam Chettiar about this. He with the help of Thondi Lekshmanan Chettiar also approached Defendant 2 to make an offer to Harveys in order to get the best price for them. That was first made, I think, by Mr. Arunachalam Chettiar. I rendered all help possible to Arunachalam Chettiar, and my other friends who were small share-holders, in transferring the Mill to Harvey''s hands, as I thought thtvt nobody else could put in more finance and more organisation. In 1933 or 1937, there were no prospective purchasers of the shares other than Harveys. I may also say that I approached Indian Financie, but their offer was much lower than those of Harveys.

13. The balance sheets of the Company from 1937, i.e. the year in which Defendant 1 acquired snares in the Punalur Paper Mills Company and their Managing Agency, to the end of 1041 are Exts v. to IX. in W3-J, the amount under "other .finance" shown against liabilities was Rs. 446-6-2. In spite of wide powers given to the Board of directors, the company were not able to borrow any amount towards working capital. By the end of 1037, 1938, 1939, 1940 and 1941, the figure under the above head rose respectively to Rs. 21403-4AS.2 pies. Us. 86001-8As-11 pies Rs. 294702-15AS-6 pies Rs. 6,31265-7As-6pies and Rs. 431131-13As-lpie. It was only in 1943 that the company, after meeting All losses of the previous year and giving due deduction on account of depreciation, were able to declare a dividend. Ext. IX the Balance Sheet for 19-11 would show that it was only in that year that depreciation for the years 1932 to 1936 had been ascertained and deducted. This came to Rs. 128,127-4As 5pies. Though in 1941, there was a net profit of Rs. l,11,601-11As-9 pies, that had to be set off against the loss carried forward, leaving still a debit of Rs. 15778-2as-8ps, under the profit and Loss account.

14. Thus the position of the Paper Mills in August 1937 was that it was impossible to work the same without additional finance. It had been seen that the additional finance secured by Defendant 1 had been over Rs. six lakhs in 1940. Arunachalam Chettiar and the Plaintiff had control of a major portion of the shares in 1937. It was not possible to make any advance out of the Plaintiff''s estate under the control of Defendant 2. The Plaintiff had a tile factory and a Rice Mill in Palghat. One Karunakara Menon had been appointed as the manager therefore on a monthly salary of Rs. 55/-. This manager was unable to run the factory as he was not put in possession of sufficient funds, and so the same had to be closed from 1937. The manager had also given this Plaintiff''s guardian, registered notice to that effect on 8-1-1937 and then he filed a suit in the District Court, Trichur for his pay and the return of the security amount deposited by him. Ext P is copy of the plaint in that case. This case was compromised after the Plaintiff came of age and Ext G is copy of the compromise decree.

15. Such being the position of the parties in 1937, the question is whether it was proper for the Plaintiff''s guardian to dispose of the shares and get a fair and reasonable price for the same. If she had not disposed of the set shares, the Paper Mills Company would have gone to-ruins, resulting in the sale of the machinery as scrap as sworn to by D. W. 3. The shares in the Mills and the Managing Agency constituted movable property and it would be open to the guardian to dispose of the same in 1937 if she got a fair and reasonable price before those shares deteriorated further. The powers of the natural guardian of a minor member of a joint Hindu family, and of the manager are similar. When a movable property belonging to the joint Hindu family deteriorates in value or is

about to become useless or lost, the manager will have the right to dispose of the same. There it is not really an alienation of the family property, but in essence the realisation of an asset due to the family. In such proved cases, the question of legal necessity for the transaction will not strictly arise.

16. - ''Nagindas Maneklal v. Mahomed Yusuf AIR 1922 Bom 122 (A) was a case where the adult coparceners of a joint Hindu family contracted to sell to the Plaintiff a house belonging to the family which was not in good condition and which did not fetch any rent. The financial position of the family was good and it was not necessary to sell the house. ''In the suit filed by the Plaintiff for specific performance of the contract, the minor members objected on the grounds that there was no necessity for sale and that the contract could not affect their interest. It was held that as ail the adult members very properly decided to dispose of the house which was in a dilapidated condition and which the Municipal Committee wanted to pull down, the minor coparcerners wexy bound by the agreement, that the term necessity must not be strictly construed, and that the benefit of the family may under certain circumstances mean a necessity for the transaction. Shah J., who wrote the leading judgment, referred to the word "Kudumbarth" used by Vignanesvara in his cornmontary on Mithakshara, to indicate that alienations of family properties must be for the said purpose.

While doubting whether Vijnanesvara himself could have intended to curtail the scope of this word while explaining it, it was pointed out that expressions of the nature indicated above were to be interpreted with due regard to the conditions of modern life. Fawcett J., who agreed with Shah J., had stated that the Privy Council decisions in t - ''Hunoomanpersad Panday v. Babooee Mundraj 6 Moo Ind App 393 (PC) (B) and -''Girdharee Lafl v. Kantoo Lall'' 1 Ind App 321 (PC) (C) were also in support, of the position taken by Shah J. The, observations of their Lordships in - 6 Moo Ind App 393 (B) pertinent for purposes of this case are at pages 423 and 424. They are quoted in exten so here for portions of the same will have to be referred to while dealing with Anr. aspect of this case. The passage runs thus:

The power of the Manager for an infant heir to charge an estate not his own, is, under the Hindu Law, a limited and qualified power. It can only be exercised rightly in a case of need, or for the 1 benefit of the estate. But where, in the particular instance, the charge is one that a prudent owner would make, in order to benefit the estate, the ''bona fide'' lender is not affected by the precedent mismanagement of the estate. The actual pressure on the estate, the danger to be adverted, or the benefit to be conferred upon it, in the particular instance, is the thing to be regarded. But of course, if that danger, arises or has arisen from any misconduct to which the lender is or has been a party, he cannot take advantage of his own wrong, to support a charge in his own favour against the heir, grounded Jon a necessity which his wrong has helped to cause. Therefore, the lender in this case, unless he is shown to have acted ''mala fide'', will not be affected, though it be shown that, with better management the estate might have been kept free from debt.

Their Lordships think that the lender is bound to inquire into the necessities for the loan, and to satisfy himself as well as he can, with reference to the parties with whom he is dealing, that the Manager is acting in the particular instance for the benefit of the estate. But they think that if he does so inquire, and acts honestly, the real existence of an alleged sufficient and reasonably credited necessity is not a condition precedent to the validity of his charge, and they do not think that under such circumstances, he is bound to see to the application of the money. It is obvious that money to be secured on any estate is likely to be obtained on easier terms than a loan which rests on mere personal security, and that, therefore, the mere creation of a charge securing a proper debt cannot be viewed as improvident management; the purposes for which a loan is wanted are often future, as respects the actual application, and a lender can rarely have, unless he enters on the management, the means of controlling and rightly directing the actual application. Their Lordships do not think that a ''bona fide'' creditor should suffer when he has acted honestly and with due caution, but is himself deceived.

This decision was followed by a later Full Bench the same Court in - ''Hemraj v. Nathu'', AIR 35 Bom 295 (D). For other decisions bearing on this question are - Jagat Narain and Another Vs. Mathura Das and Others ; - Amraj Singh and Others Vs. Shambhu Singh and Others , - Sellappa Chettiar and Others Vs. Suppan Chettiar and Others, and -- AIR 1927 121 (Privy Council) The - Jagat Narain and Another Vs. Mathura Das and Others considered the question whether the debt by the manager to be binding on the family should be incurred in a defensive transaction. It was held that if the transaction was to the benefit of the estate and was such as a prudent owner would have carried out with the knowledge that was available to him at the time, it was not to be set aside and that the debt to be binding need not necessarily be incurred in a defensive transaction. The majority view in - Amraj Singh and Others Vs. Shambhu Singh and Others sup-pored the - ''AIR 1928 All 454 (E)''. The - AIR 1937 Mad 498 case (G)'' had also adopted the view that if the alienation really benefited the estate, then it is binding on the family.

Therefore in transactions like the one before us the managing member, or the natural guardian of the sole minor member of a family will have an amount of discretion in entering into transactions so as to bind the family or the minor, provided that it was intended to benefit the family or the minor, and provided that the manager or guardian acted with prudence. Thus the four decisions dealt with above would support the steps taken by Defendant 2 on behalf of the Plaintiff in executing Exts. XI and XIV transfers to Defendant 1 provided however that the price fetched was fair and reasonable. This aspect will be considered separately.

17. In the case of Hindu families which are engaged in trade, the managing members have wider powers than those of the manager of a non-trading family.

Referring to decided cases it was observed at pages 308, 389 and 390 of "Mayne''s Treatise on Hindu Law and Usage" - 11th Edition-

There is no deviation from the fundamental principle that what is done must be for the benefit or necessities of the family, but acts such, as the incurring of debts and drawing of negotiable instruments are necessities to a trading family, while they would not be to a non-trading family. Credit is the very essence of trade and the existence of business creates the necessity for borrowing and purchasing on credit. The power of a manager therefore to carry on the family trade necessarily implies a power to pledge the property and credit of the family for the ordinary purposes of that trade. And money borrowed for the purposes of an ancestral business is ''per se'' a good justification for alienation of family property. Even where the debts are in fact incurred merely for the personal purposes of the manager, they will bind the family if they are within the ostensible authority of the manager as conducting the family business. So it is that those who deal with him and to whom he incurs debts are not put upon enquiry as to whether the debts were incurred for the benefit or necessities of the family, so long as they are incidental to the family business; for the karta of a Hindu joint family which carries on a family business has implied authority to borrow money for its purposes.

Similarly, where a minor becomes sole owner of an ancestral business and goods are supplied to his ''de facto'' guardian in the usual course of business, and which are necessary for carrying on that business, the minor is bound to make good the price of the goods out of his estate. Questions about the benefit to the estate and about the enquiries by the creditor are not relevant.

In - AIR 1927 121 (Privy Council) the managing member of a trading family sold some Immovable properties for Rs. 43,500 to discharge the debts. The mother of the minor members had also joined in the sale deed. The minors represented by a next friend brought the suit to set aside the sale. The District Judge held that the price Rs. 43,500/- was shown to have been a very favourable one, that it had been paid in full & that the sale was justified by necessity as the family debts amounted to Rs. 38,400. On appeal, the Lahore Court held that at the time of alienation the debt had not exceeded Rs. 22,000-or Rs. 23,000, that the sale was not without legal necessity and that the suit should have been decreed in favour of the Plaintiff. On appeal to the Privy Council, their Lordships held that though the onus was on the Defendant to show that the sale was justified, it must be borne in mind that in this case Defendant 1, Lachhman Das (the manager of the family and one of the Vendees) and the minor Plaintiffs were the members of a joint family who had succeeded to what is known as a joint family business - that is to say, a business carried on by joint family funds for the benefit of the joint family, that the properties of the joint family, both moveable and immovable, including the shares of the minor members of the family, are liable for debts incurred in carrying for the business and that it is within the powers of the managing member in a proper case to sell immovable as well as movable property for the purpose of discharging such debts or enabling the business to be carried on. If the discretion which is expected of a prudent person, is exercised by the manager or the natural guardian of the sole minor member of a joint Hindu family, in dealing with the property of a family trading concern, the, I transaction will be upheld. Their Lordships in the same case had further laid down thus ''at page 123:

Where there is a joint family business the mar nager, as already pointed out, has authority to raise money not only for the payment of debt, but also for the purpose of carrying on the business. The learned Judges of the High Court were of opinion that, as in this case, the business had recently resulted in loss, the managing member was not justified in putting more money into it, and that in any case he should have raised money by mortgage instead of by sale. As regards the latter question, it is not clear that borrowing, probably at a high rate of interest, would have been more beneficial than sale. In any case, this was a question for the manager to decide. It was equally a question for. the manager whether it would be better to raise more money or to close down the business and it would, in their Lordships'' opinion, be unreasonable to require a lender or purchaser to go into questions of this kind, as to which he would rarely be in a position to form a sound opinion.

18. The Plaintiff is a member of the Nattukotta Chetty community which is engaged in trading. The members of that community do not make any distinction between their family property and their trade assets. It was therefore held by the Madras High Court in - ''Chidambaram Chetti v. Ramaswami Chettiyar'', AIR 1915 Mad 506 (2) (I) that m the absence of evidence to the contrary their family properties should be treated as trade assets. This was followed by the same Court in - Chartered Bank of India, Australia. & China v. Velliappa Chetty'', AIR 1915 Mad 748 (1)(J). The Plaintiff''s father had interest in several concerns at the time of his death. The interest in the Meenakshi Paper Mills was after his death converted into shares in a Joint Stock Concern by the Plaintiff''s mother. In lieu of that interest, the Plaintiff had been allotted 500 fully paid up preference shares and 3500 fully paid up ordinary shares. Of these at the time of Ext XIV, there were only 45 preference shares and 1647 ordinary shares in the Plaintiff''s name. The remaining shares had already been transferred by the 2nd Defendant on behalf of the Plaintiff. The Plaintiff does not question any of these transfers. The Plaintiff''s natural guardian, thought it proper to realise as much as she could, when it was found that the company could not be worked as a profitable concern without additional funds, and that none of the existing share-holders was in a position to render any help in the matter. This is therefore a case which would be governed by the principles laid down in - ''Nagindas Maneklal v. Mohamed Yusuf Mitchella'', AIR 1922 Bom 122 (A) and - AIR 1927 121 (Privy Council) The alienations of the shares under Exts. XI and XIV have to be upheld provided the price realised was fair and reasonable.

19. The agreement between the Punaloor Paper Mills Ltd., and the Managing

Agency A.V.N. and Company is Ext. XV dated 3-10-1931. The partners nears of the Managing Agency were three major-share holders of the Paper Mills Company. The remuneration of the Managing Agency was Rs. 3600 a year and one pie on every pound of paper manufactured. There was on the same day an other indenture between the partners of the Managing Agency. It is Ext. XVI and under Clause 12, Mr. P.S. Narasimha Iyer was to be the Manager of the Company and that he was to be paid a salary at the rate of Rs. 3600 per annum, being the allowance payable to the Managing Agents as per Ext. XV and the Memorandum of Articles of Association of the Company. So what the partners of the Managing Agency would get was one pie on every pound of paper manufactured.

20. It was the case of the Plaintiff that the Managing Agency was an hereditary office and hence it was not alienable. It is true that there is a provision in Ext. XV that the partnership formed under Ext. XVI shall be heritable. It does not mean that it is not alienable. Arunachalam Chettiar and Narasimha Iyer, two of the three partners had transferred their interest to the 1st Defendant, and the third party, i.e., the Plaintiff''s, mother also followed suit. There was a provision in Ext. XV itself for the company to remove the managing agents without assigning any reason, and for the compensation the agency would be entitled to get in that event. Clause 18 runs thus:

In the event of the said Company being wound up on any ground other than the loss of 2/3 of its paid up capital or on the said Firm losing their office of the Managing Agents of the said company for any reason other than their being found guilty of fraud or misconduct in the management and discharge of their duties the said firm shall be entitled to receive and shall receive out of the said company or its assets as compensation for the loss of such appointment as Managing Agents of the said Company as aforesaid a sum of money equal to the amount earned by the said firm during the 5 years preceding the winding up of the said Company or removal of the said Firm.

21. Thus the utmost that the Managing Agency could get is a sum of money equal to what the partnership firm earned during the five preceding years. What the Agency actually got was one pie for every pound of paper manufactured, for Rs. 3600 would go to the manager appointed. The Balance Sheets Exts. I to IV for 1933 to 1936 are available. The amounts earned by the Managing Agency are as follows:

Rs. As. Ps.

Rs. As. Ps.

Rs. As. Ps.

Rs. As. Ps.

1933 2763-2-3 paid + 1756-1-9 due = 4519-4-0 - ? Ext. I

1934 3806-9-7 Do + (3287-5-1-

1756-1-9) Do. = 5337-12-11 - ? Ext. II

1935 3657-8-10 Do. + (3995-6-0-

3287-5-1) Do. = 4365-9-9 - ? Ext. III

1936 3230-0-0 Do. + (5522-8-3-

3995-6-0) Do. = 4756-13-3 - ? Ext. IV

Total ? 18979-7-11

Adding on fourth of this on account of probable commission for 1932 ... 4744-14-0

23724-5-11

This would be the amount payable as compensation to A.V.N. and Company if that firm is removed from office. The Plaintiff''s share in the Agency as mentioned already was 11/32. His share of compensation would therefore approximately be Rs. 8156. Under Ext. XI, a sum of Rs. 8250 had; been paid for this and so it is clear that a fair price had been paid for the Plaintiff''s share in the; Managing Agency.

22. On behalf of the Plaintiff, 245 preference shares (200 by Lakshmi Achi and 45 by the Plaintiff''s mother) and 5195 ordinary shares (3548 by Lakshmi Achi and 1647 by the Plaintiff''s mother) were transferred to the 1st Defendant for a total consideration, of Rs. 30432-8as. The Memorandum and Articles of Association, Ext. XXVII of the Punaloor Paper Mills Company gave the preference share-holders several advantages and first choice to get the share capital in case of winding up. So the preference shares were paid their full face value at Rs. 50 a share. The Plaintiff and Arunachalam Chettiar were alone paid at this rate. The register for application for transfer of shares has been produced in this case. It is Ext. XXVIII. Prom this, an extract of the shares transferred to the 1st Defendant by several of the share-holders had been prepared, and filed in this case as Ext. XX. It was prepared over the signature of Mr. Essex who was the Power-of-Attorney-holder of the 1st Defendant. It is proved by D. W. 1, the Head Clerk of the Paper Mills. It shows that for preference shares obtained'' from other parties, only Ks. 30 to 45 per share had been paid. An analysis of Ext. XX would show that between 2-7-1937 and 19-4-1939, 25 preference shares for Rs. 30 each, 133 for Rs. 33 each, 45 for Rs. 35'' each, 90 for Rs. 33 each, 132 for Rs. 37 1/2 each, 10 for Rs. 40 each .and 1156 for Rs. 45 each were purchased by the 1st Defendant besides those got from the Plaintiff and Arunachalam Chettiar and his wife for Rs. 50 each. This would show that it was a good price that was paid for the transfer of the preference shares that stood in the Plaintiff''s name.

23. The price paid for 5195 ordinary shares was Rs. 18182 1/2 and this works out at Rs. 3 1/2 per share. The face value of each ordinary share was Rs. 25. The depreciation of machinery, building etc., till 31-12-1932 was estimated at Rs. 10613-6-9 pies (Vide Ex. IV), from 1932 to 1936 at Rs. 1,28,127-4-5 (Vide Ex.

IX) and for 1937 at Rs. 24573-10-2 (Vide Ex. V). Besides this, a good portion of the value of the assets should be applied on account of preference shares and. the balance would alone be avail able for the ordinary shares. It is very significant mote that even a single ordinary share was subscribed for by third parties. This would show that it had no market and that it was considered to be valueless.

After the 1st Defendant took over the management there was slight appreciation in the value of ordinary shares. Between 6-8-1937 and 24-5-1938, the 1st Defendant is seen to have paid between Rs. 4 and 4,-4As. for each ordinary share, 164 ordinary shares on 2-7-1933, 1068 shares on 3-12-1933, 40 shares on 19-4-1939 were, purchased by the 1st Defendant/ for Rs. 5 each. This is what can be seen from Ex. XX. Ex. XX (a) shows that the Plaintiff''s wife transferred 100 shares on 3-12-1938 for Rs. 500. Arunachalam Chettiar, his wife Lekshmi Achi and the Plaintiff were paid only at the rate of Rs. 3 1/2 . In view of the condition of the company then, and the advantage these parties had by transferring their interest in the Managing Agency and the preference shares, it cannot be said that the price paid to them for the ordinary shares was in any way unfair. There is no dispute as to the Dassing of consideration to the 2nd Defendant under Exts. XI and XIV. The amount was paid by two cheques, the counterfoils of which are Exts. XXIV and XIV (a) A receipt Ex. XXV was also taken from the 2nd Defendant with the attestation of her Accountant one Rama Iyengar who was now conducting this case for the Plaintiff. The passing of consideration is fully proved. The amount paid for the transfer of the shares under Exs. XI and XIV was also fair and reasonable. Thus on the principles considered above, Exts. XI and XIV transactions are binding on the Plaintiff and hence they are not liable to be set aside.

24. Viewing the transactions from Anr. stand point i.e., by treating them as alienations of the minor''s ancestral property by his natural guardian, it has to be considered whether they are binding on the Plaintiff. The shares transferred under Exts XI and XIV belonged to the Plaintiff''s family and the nucleus for the same was inherited by him from his father. The mother, 2nd Defendant, only acted as the guardian of the Plaintiff in effecting the transfers. It is now well settled by the decision in - '' 6 Moo Ind App 393 (PC) (B) and by a number of decisions subsequently that the natural guardian of a Hindu minor has power in the management of his estate to mortgage or sell any part thereof ''in. a case of necessity'' or ''for the benefit of the estate. If the alienee does not prove any legal necessity or that he made reasonable enquiries, the sale is invalid (Vide - Mallappa Gurupadapa Belvaldavar Vs. Anant Balkrishna Najrayanpeit, As pointed out in the '' 6 Moo. I.A. 393 (P.C.) (B)'' the lender is bound to enquire into the necessities for the loan, and to satisfy himself as well as he can, with reference to the parties with whom he is dealing, that the, manager is acting in the particular instance for the benefit of the estate. If he does so inquire, and acts honestly the real existence of an alleged, sufficient and reasonably credited necessity is not a condition precedent to the validity of his charge. He is also not

bound to see to the application of the money. The circumstances under which the shares in question were transferred were dealt with already. These alienations are fully supported by consideration. The amount realised by the alienation was also fair & reasonable. One of" the reasons given for converting the partnership in the concern, Meenakshi Paper Mills, into a Joint Stock Company is given thus in Ex. XVII:

And whereas the liabilities of the deceased father of the second of the vendors still remain undischarged and the creditors are pressing for payment.

The second of the vendors is the Plaintiff and the debts of his father who died in 1922 still remained unpaid when Ex. XVII was executed in 1932. There were debts binding on the Plaintiff that remained to be paid. The Plaintiff had not produced his accounts, though called upon to do so by the 1st Defendant, and so there are now no means to estimate the extent of the debts. The Plaintiff while examined as P. W. 1 had admitted that there were, five decrees aggregating to Rs. 65000 against him apparently for the debts of his father. Over and above this, he had admitted that the Imperial Bank of India had filed a suit against him for Rs. 50,000. The Bank obtained a decree and got his family house sold in execution in 1937. That was purchased by his half sister Lakshmi Achi, wife of Arunachalam Chettiar. Plaintiff would say that she gifted the same to his wife. It is sufficient to mention that the Plaintiff''s estate was heavily involved in 1937 at the time of Exts. XI and XIV. It is also stated in. Ex. XIV that the party of the first part, that is the Plaintiff represented by his mother the 2nd Defendant, has become indebted to several persons and also got to meet Court expenses and that it has become necessary in the circumstances to effect a sale of the shares in order to save further loss to him. A list of debts to the extent of Rs. 44,000 is given as a schedule to Ex. XIV. The amount obtained by the assignments of the shares came only to Rs. 38682-8-0 and the catalogue of debts was given to show that this sum was necessary. The Plaintiff would say that of the debts mentioned only the second one for Rs. 5000 was binding on him and that the 2nd Defendant had not discharged the same.

25. The 1st Defendant is a respectable firm and it had no necessity to take any undue advantage of the Plaintiff or his estate. That firm had made enquiries of the condition of the Plaintiff''s family through persons intimately connected with that family. If the Plaintiff had only produced his family accounts the correctness or otherwise of the statements made in Ex. XIV could have been easily ascertained and verified. On 24-5-1121, the Defendant filed a petition to direct the Plaintiff to produce his family accounts. He did not do so; nor did he give any explanation for the non-production of the accounts till he was examined as P. W. 1 on 29-6-1121. On the first day of his examination, he had stated that his father had shops in Kulithalai, Thennoor, Madras and Puthumpadi, that accounts were written by the accountants in strong well bound books, that ail these accounts were written in the house in which he was living then, that about three months ''after he attained majority (this was on 15-4-1940) his mother began to

reside away from him, that all the accounts were, kept in the house where he was laying with his mother, that when she left that house she took away all the accounts books with her, that he had not looked into any of these books, that he wanted to refer to the account'' books relating to his estate, that his mother did not hand over them to him when demanded, that his mother told him that none of the account books could be handed over to him and that when he objected to the removal of the account books his mother refused to listen to him. The chief examination was not completed on 29-0-1121. When the chief examination was continued on 1-7-1121, he stated that his estate accounts relating to the period of his minority were not with him, that he knows that such accounts exist, that his information was that they were with those who managed his estate, that some were filed in Courts, that Arunachalam Chettiar, Kalhiresan Chettiar, Ramanatha Chettiar, Subramonia Iyer & his mother were the persons who managed his estate and that all of them were given notice after he attained majority to hand over the accounts to him. Ex. Y series were produced to show that some notices were sent by him in February 1942. The suit was filed in 1944 and it was admitted by the Plaintiff that he was contemplating to file this suit even two years before it was actually instituted. Apparently therefore he was creating evidence to indicate that he was not in possession of the accounts. That was the suggestion of the defence while the Plaintiff was cross-examined. Of the five persons mentioned above one is his mother, Anr. his father-in-law and third his half sister''s husband. He was not in strained relationship with any of these persons. He had on the first day stated that all the accounts were written in well-bound books in the house where he was residing and that they were all carried away by his mother. But he had admitted that after he attained majority, he had filed six or seven suits'' for money due to his estate under promissory notes. These notes and several letters were obtained by him from a box in his house. The mother who wanted to maltreat his son by removing all the heavy account books would not have left behind these promissory notes. When he wanted to prove the date of his birth, he produced without any difficulty the accounts of 1922 in the Munsiff''s Court of Dindigul on 16-12-1943. He obtained an attested copy of a portion of the same and produced that in the case as Ex. E. His explanation, for non-production of the accounts is neither convincing nor acceptable.

26. The Plaintiff''s mother was looking after the estate and there is absolutely no reasonable suggestion of any strained relationship between him and his mother. Attempts were made to examine her as a witness. She had been included in the witness list of both sides. The Plaintiff had been, ordered to take out a commission for her examination. The Defendant in the witness list had prayed for a direction to her to produce the accounts. On 16-7-1120 when the Plaintiff had to deposit the commission batta, a sum of Rs. 40 was offered to be deposited with a petition for issue of a postal summons to Defendant 2 directing her to appear in Court for examination. This was allowed and summons was sent by post. She then engaged an advocate "and applied on ground of illness on three

occasions for time for her appearance for examination. She did not appear in Court and a warrant of commission for her examination was sent with a request to the Court at Devakottai to summon her. The summons was returned unserved and the commissioners returned the warrant without examining her. It was also represented by the learned Advocates on both sides that she died subsequently. Any how she was also fighting shy to enter the witness box. In order to suggest that himself and his mother were not quite friendly, the Plaintiff had sworn that, apart from this case, ho had instituted-three or four cases to set aside the alienations by his mother and that he would give the number of these cases on the date of the next hearing. The Court had also passed an order directing him "to produce at next posting date the numbers of the suits mentioned above." He had also stated that in some other case he had filed an affidavit that the accounts were not with him and that he would give the number of that suit also. He did not furnish any such information. On 22-12-1121 the Plaintiff filed a memo stating thus:

I have stated in my deposition as P. W. 1 that I have challenged my mother''s documents in the Trichy Court. And I have been asked to produce a list of these cases. What I had in my mind, were the suits filed by me for moneys which Defendant 2 failed by her neglect, to seek to realise. Those suits are the following, (i) S.C. 693 of 1943. (ii) S.C. 600 of 1943, (iii) S.C. 694 of 1943, (iv) S.C. 695 of 1943............... I have also been asked to furnish the number of the case in which I have filed an affidavit to, the effect that I have no accounts. I have written to my lawyer at Tanjore where the case is pending and the same will be furnished so soon as information from the lawyer is received.

There the matter stopped and no further information was furnished by the Plaintiff.

27. The Plaintiff''s mother died while the suit was pending trial. So he must have come into possession of all the accounts even if there is an atom of truth, in what he said that the mother carried away all the bulky accounts leaving behind the promissory notes to enable him to file the suit. He could have at least produced these accounts in appeal. The circumstances mentioned above would show that the Plaintiff is in possession and control of the accounts and that he is; wilfully suppressing the same, for if they are produced that will go against his case. The parties to a suit should bring before the Court their best evidence; and when it is not produced the Court tt is justified in concluding that it would, if brought into Court, not support the case of the party omitting to produce it - ''Murugesam Pillai v. M.D. ''Gnana Sambhanda Pandara Sannidhi'', AIR 1917 PC 6 (M). In that case a creditor filed a suit to enforce a mortgage in his favour by a Mutt. It was contested by the then head of the Mutt. It was observed by the Judicial Committee of the Privy Council that though the onus was on the lender to show that the loan was made for the purpose of the Mutt and was a necessary expense of the institution itself an inference was to be drawn against the Mutt because of the non-production of the accounts in which it was the habit of the

head or manager to make entries with much detail and elaboration forming a current record of the financial side of the history of the institution. This principle was applied in - ''Guru-swami Nadar v. Gopalaswami Odayar'', AIR 1919 Mad 444 (N). There the members of a Devasthanom Committee, sued the members of a joint Hindu trading family to recover money borrowed from the Plaintiffs by the managing member of the family, and the Defendants failed to produce their account books though summoned by the Plaintiffs. It was held that assuming that the onus of proving the binding nature of the debt lay on the Plaintiffs even in the case of a trade carried on as a joint family business, it was shifted to the Defendants on account of the presumption arising against them by their omission to produce their accounts called for by the Plaintiffs, a presumption which arises against them whether the Plaintiffs have any evidence or not. These two decisions were followed by the Nagpur High Court in - AIR 1947 129 (Nagpur) where it was laid down that no party should be allowed to take advantage of an abstract doctrine as to the burden of proof and conceal from the Court the evidence in its own possession which would assist the Court in arriving at a correct decision. In - ''Ramanathan Chettiar v. Viswanathan Chettiar'', AIR 1941 PC 43 (P), the suit was for return of money said to have been advanced to a joint Hindu trading family. The creditor had called upon the members to produce their accounts. The manager had filed an affidavit that the accounts had been given, to two Panchayatdars both of whom were dead and that he did not know in whose possession the accounts were. Another member filed an affidavit that he was not in possession of the accounts. The Plaintiff left the matter there and did not proceed further to secure the production of the accounts. It was held that the evidence acquiesced in by the Plaintiff negatived any deliberate with-holding of account books on the part of either Defendant and that no adverse inference could, be drawn from the non-production of the account books. It was further held that in order to get a decree against the family the lender must either show that there was necessity for the loan or that he made reasonable enquiry as to the necessity for the loan, and that the facts represented to him were such as, if true, would have justified the loan. In the present case, it has been shown that the account books are purposely kept away from Court by the Plaintiff. He who pleaded that he was not in possession of any of the accounts had at least produced the account books of 1922 in the Dindigal Court. In the circumstances of this case the Court would be justified in drawing the inference that all the debts mentioned in Ex. XIV are binding on the estate inherited by the Plaintiff and that the account books, if produced, would have conclusively shown the same. Being so, Exs. XL and XIV can be taken to be transactions binding on the Plaintiff.

28. Apart from the presumption allowed to be drawn by the non-production of the account books, there is some evidence to show that the necessities recited are really binding on the Plaintiff. Ex. XIV makes mention of eight items of which six are said to be debts binding on the family. The other two mention necessities for which moneys were required for the use of the family. The first item is a sum

of Rs. 14,000. This is said to be the amount due to Defendant 2 as per jewels account with interest. The Plaintiff has given his reasons in para. 7(f) of the plaint why none of the debts-mentioned is binding on him. Regarding this item his contention was that no such debt was due to Defendant 2 and that this recital was "falsely made" to enable her to get cash for her own benefit. The Plaintiff had admitted that it had been mentioned to him that his mother had jewels. He would add that he had not seen these jewels and that he was also not aware whether she had jewels. The Plaintiff''s father died three months after the Plaintiff''s birth in 1922. It was not usual in those days for Hindu widows to wear jewels and naturally therefore the Plaintiff could not have seen Defendant 2 wearing the jewels. D. W. 3 Mr. Narasimha Iyer, had been asked about the debts mentioned in Ex. XIV (same as Ex. A). He said as follows:

I have got personal knowledge of one or two of the purposes mentioned in Ex. A. One is the purpose of building a house for the stay of Defendant 2 and Plaintiff (This is the 8th item in Ex. XIV). The other purpose is the jewellery which Defendant 2 had given to her husband for the payment of the latter''s debts. I cannot say in what year she gave her jewellery to her husband. I know nothing more about it. Defendant 2 told me that she gave her jewellery to her husband.

So Defendant 2 had told him of her jewels which were used to liquidate her husband''s debts. Defendant 2 did not allow herself to be examined in the case. She is also dead. That she had jewels and that some of them had been pledged for Rs. 5000 with a bank is seen from the decision in - The Chettinad Mercantile Bank Ltd. Vs. PL.A. Pichammai Achi and Another, . There was a suit between Defendant 2 and the Chettinad Mercantile Bank Ltd., about one of the cheques received by the former towards consideration for Ex. XIV. She had directed the Bank to cash the cheque for Rs. 18,682-7-0 and to pay Rs. 5000 odd out of the same to Anr. Bank in respect of some pledge of jewels made on her behalf by the first bank. This is seen from the statement of facts given in column 2 at page 448 of that report. It was therefore evident that a portion of the consideration had been used to redeem a loan taken by her on pledging her jewels. The Plaintiff was the only son of Defendant 2. She was only acting in Plaintiff''s interest all along. There is not even a single transaction by her, except the present one, questioned by the Plaintiff. She was managing his affairs for about 18 years. When money was due from Arunachalam Chetti, her step daughter''s husband, she filed the suit and had it settled by arbitration. She thus secured 200 preference and 3548 ordinary shares in the Punaloor Paper Mills for the Plaintiff. She had to dispose of 455 preference and 1853 ordinary shares to pay off her husband''s debts. None of these is questioned by the Plaintiff. In these circumstances her representation to D. w. 3 of her having dealt with her own jewels to discharge her husband''s debts can be accepted as true. If the Plaintiff had only produced the accounts this would have been clearly made, out. It is held that there was really this debt due from the Plaintiff''s estate to Defendant 2.

29. Tne second item is a sum of Rs. 5000 - an amount of deposit to be returned

to Chettoor Manager Karunakara Menon. It is mentioned in the plaint that this was received by Defendant 2 as security for Karunakara Menon''s appointment as manager of the Plaintiff''s tile factory and used by her for her own needs. It is also admitted in the plaint that Mr. Karunakara Menon filed O.S. 128 of 1112 in the Trichur District Court against the Plaintiff represented by his mother, that after the Plaintiff attained majority he compromised the dispute and that Defendant 2 had not paid this sum. Ex. P is copy of the plaint in the suit filed by Karunakara Menon. Ex. G is the compromise decree in the case. So when Ex. A or Ex. XIV was executed there was this liability binding on the Plaintiff.

The third item is a sum of Rs. 2000 due to Sivakami Nidhi under a decree. The Plaintiff in the plaint admits this debt. It is stated that this debt was borrowed by the Plaintiffs mother for her own needs and not for the estate. It is further added that there was sufficient cash available in the estate and in the Chettur Tile Factory at the time of the alleged borrowing of this amount and that there was no need to borrow any amount. This latter explanation given would indicate that the sum from the Nidhi was borrowed for some purpose binding on the Plaintiff.

31. The fourth item is an amount of Rs. 5000 due to Bapji Rowther of Palghat towards his decree. In the plaint it was stated that this debt appears to have been incurred by Defendant 2 in her personal capacity in purchasing for herself a tile factory in Yakara and that this was not a debt payable by the Plaintiff. Ext. M. dated 4-3-1933 is copy of the sale deed taken by Defendant 2 for this tile factory for Rs. 5500 of which Rs. 2000 had been paid m cash and the balance agreed to be paid with interest on or before 1-9-1935. The Plaintiff had admittedly a tile factory and a rice mill in Chittoor. The management of these two institutions and of the Yakara tile factory was entrusted to Karunakara Menon after taking a security of Rs. 5000 from him. An agreement had also been executed in his favour by Defendant 2 on her behalf and on behalf of the Plaintiff in 1109 Mithunam (July 1934). This was renewed in 1936 & by this the manager was to keep a common account for the management of the three institutions and to debit in that account the travelling expenses incurred to go from Chittoor to Yakara and back. He was allowed a monthly salary of Rs. 65 for managing the three institutions. All these are evident from Ext. F copy of the plaint in the suit by Karunakara Menon. So the Yakara factory was treated on a part with the Chittoor factory which admittedly belongs to the Plaintiff. The Plaintiff as P. W. 1 said that the Yakara factory did not belong to him as his accountant Rama Iyengar told him so. The Plaintiff has no definite idea about these matters. The documents produced by him would show that Defendant 2 had purchased it for the Plaintiff. He had also acknowledged it by paying the security amount and salary to Karunakara Menon for managing that factory also. As P. W. 1 he had admitted in chief examination that his information was that Defendant 2 had discharged the debt.

This is a debt binding on the Plaintiff''s estate.

32. The fifth item is a sum of Rs. 3000 due to Kulithalai Bank. In Ex. A this

amount is shown as Rs. 5000. The correct figure is Rs. 3000 as shown in Ext. XIV for with Rs. 3000 alone the grand total of Rs. 44,000 shown both in Exts. A and XIV could be reached. In the plaint it is thus alleged:

This amount the Plaintiff learns was borrowed by Defendant 2, in her personal capacity for her own needs on the security of a house in Tennur over which Defendant 2 held a usufructuary mortgage right. This is also not a debt payable by the Plaintiff.

The Plaintiff as P. W. 1 had admitted ''that his father had trade in The Chettinad Mercantile Bank Ltd. Vs. PL.A. Pichammai Achi and Another, already referred to would show that Defendant 2 had obtained a draft for Rs. 3000 from the Appellant bank in the Plaintiff''s name payable on the Kulithalai Bank. She had paid this sum. This was represented by Defendant 2 to be a debt binding on the Plaintiff. Though the ordinary rule, as pointed out in - ''Lala Brij Lal v. inda Kunwar'', AIR 1914 PC 38 (R), is that recitals in mortgage or deeds of sale with regard to existence of necessity for the alienation are not by themselves evidence of the fact and that there must be evidence aliunde to substantiate the allegation, the conduct of the Plaintiff and Defendant 2 in this case in addition to the respectable character of Defendant 1 firm can be taken into account to hold that this is also a debt binding on the Plaintiff''s estate.

33. The sixth item is Rs. 5000 received towards Court expenses. It was stated in the plaint that there was no need to borrow any such amount and that this was received to enable Defendant 2 to secrete the same for herself. There was an appeal 17 of 1937 in the Madras High Court in which the Plaintiff represented by Defendant 2 was the Appellant. That appeal went against them and the High Court had refused leave to appeal to the Privy Council. Defendant 2 applied for special leave to appeal to His Majesty in Council and that was granted on 14-3-1941. Pursuant to that an order, copy of which is Ext. C, was passed by the Madras High Court. Ext. C would show that in 1937 an appeal had been filed by Defendant 2 on behalf of the Plaintiff in the Madras High Court. There was an original suit 192 of 1937 against the present Plaintiff in the Subordinate Judge''s Court at Devakotta. That is evident from Ext. K. As P. W. 1 ho had also admitted that five decrees for about Rs. 65,000 and Anr. decree for Rs. 50,000 obtained by the Imperial Bank of India were passed against him. To conduct all these cases money was required and the sum of Rs. 5000 mentioned in Ext. XIV was in no way excessive. There was therefore the necessity to raise funds to conduct the above said cases.

34. The seventh item was a sum of Rs. 5000 said to be the amount payable to Devakotta Mercantile Bank for the amount borrowed from them for discharging the debt due to Chittoor Sadasiva Iyer. The plaint allegation regarding this was that there was no need to borrow any such amount and that no debt was payable by the Plaintiff''3 estate to Sadasiva Iyer. There is no evidence that such a debt existed. Except to draw the presumption on account of the non-production of the accounts, no definite finding on this is possible.

35. The last item is a sum of Rs. 5000 required for Devakotta building expenses. In the plaint, it was stated that there were no such expenses incurred nor was there any need to incur any such expenses, that there was a spacious and convenient ancestral residential house, that in any event there was no justification in raising money for building expenses by alienating valuable shares, that even if any such expenses have been incurred it was not for necessary purposes binding on the Plaintiff and that the amount also was grossly exaggerated. D. W. 2 had stated that he had personal knowledge about the money required for building a house for the stay of Defendant 2 and the Plaintiff. This statement of D. W. 3 was however not further questioned in cross-examination. The Plaintiff had stated in cross-examination that the house where he was residing .at the time of deposition had been sold in execution of the decree obtained by the Imperial Bank, that the same was purchased in 1937 by his half sister (i.e., his father''s daughter by the first wife), that the same was gifted by her to his wife, that after he attained majority his mother was living in Anr. building in the compound where Thannoor Pandal house (his ancestral house) was, that it was an ancestral house, that it was not put up by his mother and that his mother used to attend to its repairs often. In re-examination he was asked whether the repair referred to was not "maintenance repair" and his answer was

the roofing used to be dismantled and repaired. The worn out plaster used to be replaced.

The original ancestral house was sold in Court auction in 1937 and purchased by the Plaintiff''s half sister. Defendant 2 would not naturally like to remain there. Either she put up a new building or repaired an old one, D. W. 3 had been convinced of this necessity and in the circumstances it is held that this sum was required for meeting a legal necessity binding on the Plaintiff.

36. Thus there was legal necessity binding on the Plaintiff for the consideration of Rs. 88,682-8As-0pies. The Plaintiff himself was not sure of his ground and the following question and answer in his cross-examination would show this.

Question.:

You said that the debts mentioned in Exts. A and B were not family debts. What are your reasons for mentioning so?

Answer.:

There was no necessity to incur fresh debts, when the old debts existed. It is because of this that I said that these debts would not be binding on the family.

37. Thus viewing Exts. XI and XIV front all angles, it is evident that they are valid and not liable to be set aside. Thus we confirm the decree passed by the trial side and dismiss the appeal with costs.

Vithayathil, J.

38. I agree.

