

(1909) 04 MAD CK 0028
In the Madras High Court

Pulukkavandy Ambalam and Others

APPELLANT

Vs

Periyakaruppa Kone and Others

RESPONDENT

Date of Decision : 08-04-1909

Acts Referred:

Citation : 2 Ind. Cas. 203

Hon'ble Judges : Munro, J;Abdur Rahim, J

Bench : Division Bench

Judgement

1. Defendants Nos. 1 to 5 appeal. The Subordinate Judge found that these defendants were members of an undivided Hindu family and this finding was not challenged before us. The suit was to recover the principal and interest due on a promissory note executed by the 2nd defendant in favour of the plaintiff and for certain other reliefs which are not now material. A decree was given on the promissory note against the 2nd defendant personally and against the family properties of defendants Nos. 1, 3, 4 and 5.: The 4th defendant is the son of the 2nd defendant. The 2nd and 3rd defendants are the sons of the first defendant, and the 5th defendant is the son of the 3rd defendant. So far as the 2nd defendant and his son the 4th defendant are concerned, the appeal was not pressed, the 2nd defendant being the maker of the promissory note, and the 4th defendant, as son of the 2nd defendant, being bound to pay the debt so far as his interest-in the property is concerned, there being no contention that the debt is illegal or immoral. The question that remains is whether the defendants Nos. 1,3 and 5 are liable. These" defendants have been held liable on the ground that in the circumstances of the case" it must be taken that the 2nd defendant borrowed the money under the promissory, note for the purposes of a business carried on by him as the accredited agent of his family. If the money was borrowed for such a purpose, then there is no doubt that under the Hindu Law the family property would be liable, and Krishna Ayyar v. Krishnasami Ayyar 23 M.K 597 is authority for holding that that liability can be enforced in a suit on a promissory note like the present. It is contended, however, that the business for which the money was borrowed cannot be considered to be the family business

of the defendants Nos. 1 to 5. The 6th defendant took a lease of six toddy shops. He appointed the 2nd defendant as his agent under a power of Attorney. The 2nd defendant was to conduct the toddy shop business for a year, borrow on the 6th defendant's behalf such sums as might be necessary in order to carry on the business and receive a fixed remuneration of Rs. 50 a month. The profit of the toddy business were to go to the 6th defendant. All these were known to the plaintiff. In these circumstances we are unable to see here how it can be successfully contended that the money which was borrowed under the suit promissory note in pursuance of the power of attorney was borrowed for a family business of defendants Nos. 1 to 5. It may be that as the plaintiff alleges the family was allowed to share in the pay of Rs. 50 a month received by the 2nd defendant. But that itself cannot make 1 the business, in which the 2nd defendant was merely employed as a servant at fixed wages, the business of his family. It is suggested that the agency was distinct from the toddy shops business that the agency was the family business, that the 2nd defendant by borrowing enabled the toddy business and consequently the agency to continue and that therefore the family is liable for the amount borrowed. We cannot accede to this suggestion. No doubt the borrowing kept the toddy business alive and the family benefited by the continued employment of the 2nd defendant in that business, and therefore indirectly by the borrowing. But we think it is going too far to say that the money was borrowed for the benefit of the family, so as to make the family liable. The decree against defendants Nos. 1, 3 and 5 cannot, therefore, be supported and the suit as against them is dismissed with costs throughout. The Lower Court's decree will be modified accordingly.