
(1917) 11 MAD CK 0028
In the Madras High Court

Puzhakkal Edom alias Puthan Edom Karnavan and
Kaikaryakarthamu Valia Achan Avergal

APPELLANT

Vs

Mahadeva Pattar

RESPONDENT

Date of Decision : 08-11-1917

Acts Referred:

Citation : 47 Ind. Cas. 778

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

Bench : Division Bench

Judgement

1. The first question argued before us is on the merits of the case. As a matter of fact, money was advanced by the respondent as alleged by him,

and we think there was necessity on the part of the Karnavan who held the office previous to the appellant to borrow money for Tarwad purposes.

As regards the fact of the advances, the only evidence is on the side of the respondent which supports his case, and that case is corroborated by

the production of receipts obtained from different persons to whom payments were made either on account of maintenance, or salaries or for

payment of kist. No doubt, the respondent himself was in debt to a large extent but he gives evidence that he borrowed money from different

persons in order to make a loan to Andi Achan, He brought the loan to the notice of the Court and it must have been known to the appellant in the

suit.

2. On the question of necessity the Edom consists of 160 members and the income, all told, taking it at the highest, does not amount to more than

Rs. 12,000 a year,, and the admission of the appellant himself is to the effect that unless jungle trees are leased from time to time the income is not

sufficient to meet the maintenance charges, after paying the necessary outgoings. There is evidence to show that at the time when Andi Achan

borrowed from the respondent he had large payments to make amounting to nearly Rs. 3,000 and he did make this payment in full. We are,

therefore, unable to say that the finding of the Subordinate Judge on this point is wrong.

3. Then it is pointed out that the present appellant and a number of other members of the family had institute a suit against Andi Achan for removing

him from the Karnavan's office and in the course of that suit an injunction was obtained restraining him from managing the property. We take it that

the effect of the different orders passed in that connection was to prohibit his contracting loans. Because the injunction seems to be very widely

worded--restraining Andi Achan from carrying on the management of the property which would have authorised him to contract loans for the

purpose--he however obtained permission afterwards to raise Rs. 3,000 by leasing jungle trees. But then the evidence shows that he was unable to

find such a lessee. Therefore he applied to the respondent and obtained from him the amount on the bond in this suit. It has been argued that since

there was an injunction restraining Andi Achan from borrowing money, this bond executed to the respondent is not enforceable even though the

money was advanced for necessary purposes of the family and was utilised for such purposes. We have not been referred to any authority which

supports the proposition, for the English case, *Eastern Trust Co. v. McKenzie, Mann & Co., Ltd.*, (1915) A.C. 750, cited by Mr. C.V.

Ananthakrishna Aiyar does not seem to touch the question at all. On the other hand, the ruling in the *Delhi & London Bank v. Ram Narain*, (1887)

A.W.N. 107 : 5 Ind. Dec. 769 which has been followed in *Manohar Das v. Ram Autar Pande* (1903) A.W.N. 92 lays down the law to the

contrary. We think the effect of an injunction like this is what is laid down in the Civil Procedure Code, and it will be going much too far to say that

a person in the position of Andi Achan being so restrained is not liable to repay the money which he has in fact borrowed, and if the money was

borrowed and utilised for the benefit of the Tarwad that the Tarwad is not liable. We, therefore, uphold the judgment of the Subordinate Judge

and dismiss the appeal with costs.

4. As regards the application for amendment of the decree we think that it must be-allowed. The proportionate cost which the Subordinate Judge has directed as being payable to respondent is its. 432-10-1. In this he has proceeded on a wrong basis, because the only amount for which deduction has to be made is the Court-fee; and calculating on that basis, the costs payable in the lower Court to the respondent would be Rs. 573-10-1. The decree will be modified accordingly.