
(1927) 09 MAD CK 0042
In the Madras High Court

Rajagopala Aiyar

APPELLANT

Vs

A. N. K. R. M. Raman Chettiyar and Others

RESPONDENT

Date of Decision : 21-09-1927

Acts Referred:

Citation : AIR 1927 Mad 1190(1)

Judgement

1. The appellant before us is defendant 3 in the suit which was brought to enforce a mortgage bond, Ex. A, dated the 20th May 1920, executed in favour of the plaintiffs by defendants 1 and 2 and by defendant 3's mother on his behalf as his guardian, he being then a minor. The plaintiffs who are the mortgagees under Ex. A, are the proprietors of four different firms which have their principal place of business at Madras. Their case is that each of the said firms had dealings with the firm of R. Rangaswami Ayyar & Sons which was carrying on business in Javuli or cloths at Madras having also a branch of the same business at Madura. The plaintiffs say that for the purposes of the trade of R. Rangaswami Ayyar & Sons, Hanumantha Ayyar who was the managing proprietor of the said business borrowed moneys from each of them from time to time and also purchased piece goods from them, and that in connexion with his Madura branch the said Hanumantha Ayyar also borrowed moneys from plaintiff 1 for purchasing a house at Madura and making additions and improvements thereto to make it suitable for the carrying on of the business and also for the residence of his family therein. As a result of the afore- said dealings the firm was indebted to all the four plaintiffs in the sum of about Rs. 25 000 at the time of Hanumantha Ayyar's death which took place at Madura about four days prior to the execution of the mortgage bond, Ex. A. On hearing of Hanumantha Ayyar's death the representatives of the four firms went to Madura for the purpose of realizing the amounts due to them from the firm of R. Rangaswami & Sons. That firm was an ancestral trading firm which was started by defendant's grandfather Rangaswami Ayyar, along with his two sons Hanumantha Ayyar and Ramaswami Ayyar, the father of defendant 3. Ramaswamy Ayyar died in 1909 and the business was thereafter continued by Ranagaswami Ayyar and Hanumantha Ayyar.

Rangaswami Ayyar died in 1912 and the business was thenceforward conducted by Hanumantha Ayyar, on behalf of himself and his minor nephew, defendant 3. Hanumantha Ayyar had no son but left a widow who is defendant 2 in the suit. Defendant 1 was the sister's husband of Hanumantha Ayyar and he was managing the affairs of the business during the lifetime of Hanumantha Ayyar. The plaintiffs say that their representatives saw defendants 1 and 2 and the mother of defendant 3 and pressed them for immediate payment of the amount due to their firms by R. Rangaswami & Sons. The latter thereupon expressed their inability to comply with the plaintiffs' demand for immediate payment and asked for time promising to discharge the debt in instalments out of the earnings of the firm and also offering as security a mortgage of the firm's properties. Thereupon an agreement for the liquidation of plaintiff's debts as per the terms set out in Ex. A, was entered into between the parties and the suit mortgage bond was executed by defendants 1 and 2 and defendant 3's mother as his guardian for the repayment of the Rs. 25,000 to all the plaintiffs jointly in the manner and subject to the terms provided therein.

2. The defendants made some payments for interest due on the mortgage bond but did not pay even a single instalment in respect of the principal amount. The suit was therefore brought for the recovery of the amount due on the bond by enforcing the mortgage security and also for a decree against defendants 1 and 2 personally. Defendant 3 was practically the only contesting defendant in the suit. Defendants 1 and 2 did not dispute the plaintiffs' claim save as to the interest claimed, their plea on that point being that the stipulation in the mortgage bond as to interest was penal and therefore unenforceable. On behalf of defendant 3 his guardian for the suit denied the plaintiffs' claim in toto. His case was that the business of R. Rangaswami, & Sons was an ancestral trading business of the family and that after death of the defendant 3's grandfather the only persons interested therein were defendant 3's paternal uncle Hanumantha Ayyar and defendant 3 and that on the death of Hanumantha Ayyar, defendant 3 became exclusively entitled to the business and its assets and that defendant 2 had only a right to maintenance out of the assets of the firm. Defendant 1 was only an employee of the firm under Hanumantha Ayyar and had no interest in the partnership but with the fraudulent intention of securing to himself an interest in the said business, he took advantage of the unfortunate position in which defendant 3's mother was then placed and got her to execute the suit bond on the false representation that she was only executing a power-of-attorney in his favour in order to enable him to carry on the business of the firm on behalf of the minor, defendant 3. The mortgage bond contains a false and fraudulent recital that defendant 1 was also interested in the business of R. R. & Sons and its assets as one of its partners. The plaintiffs for their own purposes colluded with defendant 1 in the fraud he practised on defendant 3's guardian. The suit mortgage was therefore not binding on defendant 3. Defendant 3's guardian also denied that any of the liabilities recited in the mortgage bond were in fact contracted by Hanumantha Ayyar for the purposes of the firm or that there was

any necessity for the firm to contract such liabilities and that in any case there was any necessity for mortgaging defendant's (minor's) properties, as the debts, even if true and binding, could have been discharged out of the liquid assets of the firm. He also pleaded that the rate of interest stipulated in the bond was penal and unenforceable.

3. The issues raised in the case relate to the above contentions put forward on behalf of defendant 3. The learned Subordinate Judge has, after a careful consideration of the evidence, found all the issues in plaintiffs' favour and given a decree for the plaintiffs as prayed.

4. At the hearing of the appeal before us Mr. G. Krishnaswami Ayyar, the learned counsel for the appellant, contested all those findings on the ground that they were erroneous and not supported by the evidence in the case. We are taken through the material evidence bearing on all those questions.

5. As regards the first point raised by him viz., that the signature of defendant 3's mother to the suit mortgage bond was obtained by fraud, we entirely agree with the findings of the learned trial Judge that she was fully aware of the nature of the document Ex. A when she signed it. The document was registered at her own house by the Sub-Registrar who went there for that purpose the very next day after its execution i.e., on 21st May 1920 and it ought to be presumed that that officer discharged the duty laid on him by the rule framed under the Registration Act to which the learned Subordinate Judge has referred and which requires that the registering officer should before admitting a document to registration satisfy himself as to the due execution of the document by the persons purporting to execute it; if the latter happens to be an illiterate person the Sub-Registrar has to read out the document, and if necessary explain its contents to him.

6. Apart from this the plaintiffs called a number of witnesses who deposed to their having been present at the execution of the bond and to the same having been read out to defendant 2 and defendant 3's mother before they signed it. As against their evidence which the learned Subordinate Judge accepted as reliable, there was only the evidence of defendant 3's mother herself in support of this plea. It is argued that as defendant 3's mother has been disputing defendant 1's claim that he was also a partner of the firm of R. R. & Sons with Hanumantha Ayyar and defendant 3, and as such entitled to an equal share with each of them in its assets, it is extremely unlikely that she would have signed Ex. A which contains false recitals in support of that claim. The question as to whether defendant 1 was also a partner of the firm of R. R. & Sons and if so what was his interest therein, is, we are informed, one of the points at issue in C. S. 114 of 1923 on the original side of this Court, instituted on behalf of defendant 3 against defendants 1 and 2 and so far as the present suit is concerned that question had not to be considered at all except incidentally in connexion with the alleged fraud practised on defendant 3's mother to induce her to sign Ex. A. The learned Subordinate Judge has also found and in our opinion rightly that there is

no evidence whatever to show that the plaintiffs connived at any fraud to be practised upon defendant 3's mother by defendant 1 in connexion with the execution of the suit document.

7. On that finding the validity of the suit mortgage so far as the plaintiffs are concerned will not be affected even if the recital as to defendant 1's interest in the partnership of R. R. and Sons and in its assets, including the mortgaged properties are false, a question on which we think it is not desirable that any opinion should be expressed in this suit as it is the subject-matter of a separate suit between the parties which is still pending trial. We agree therefore with the learned Subordinate Judge that the plea that defendant 3's mother signed Ex A being led to believe that it was only a power of attorney in defendant's favour is not true. The evidence in this case shows that along with Ex. A, defendant's mother executed a power-of-attorney also in defendant 1's favour which was also registered in her house by the Sub-Registrar along with Ex. A. That power-of-attorney, if produced, might have thrown some light on the alleged fraud, but it has not been exhibited in this case.

8. The next contention urged on behalf of the appellant is that the liability of Hanumantha Ayyar to the plaintiffs has not been satisfactorily proved. On that question also we see no reason for holding that the Subordinate Judge's conclusion is erroneous. In support of his contention on this point the learned counsel for the appellant raised before us a new point which was neither raised in the grounds of appeal nor, so far as we can see, raised in the lower Court. The contention refers to Exs. J. series which were relied upon by plaintiff 1 to prove loans advanced under those documents to Hanumantha Ayyar to the extent of Rs. 7,500. Mr. G. Krishnaswami Ayyar contended that the amounts borrowed under Exs. J. series were all discharged by payments made by Hanumantha Ayyar as the endorsements made on the said documents themselves show and also by the fact that they were produced in the suit by defendant 2, the widow of Hanumantha Ayyar. If this were a real plea it is difficult to understand why it was not set up in the lower Court nor even in the grounds of appeal.

9. On the other hand ground 19, which relates to Exs. J series proceeds upon a diametrically opposite view. It says that the said documents and the other documents were not duly proved and could not therefore be admitted in evidence. It is hardly the position which would be taken up by a party who relies on those very documents to prove the discharge of his liability to the plaintiffs to the extent of Rs. 7,500. This argument which we think was put forward on the spur of the moment proceeds on a misappreciation of the tenour of the endorsements made on Exs. J. series. As regards those documents the facts appear to be as follows: Hanumantha Ayyar borrowed from plaintiff I's branch at Madura on the documents, Exs. J. series, the several sums referred to therein. Those documents were forwarded by the Madura branch of the plaintiff's firm to its head office at Madras where also Hanumantha Ayyar had his head office of R. R. & Sons. Hanumantha Ayyar had accounts with the head office of the plaintiff's

firm at Madras.

10. Plaintiff 1's agent at the head office to whom J series were forwarded by the Madura branch debited R. R. and Sons in his books with the amounts borrowed under each document of J series as it was received by him from the Madura branch. After debiting the amount of each of the said documents in his books against R. R. and Sons he made the endorsement thereon that the amount was received as per account of the date not of the debit made by him at Madras but of the date of the document when the amount was given by the Madura branch to Hanumantha Ayyar. In other words each of the documents of J series was treated as discharged by debiting R. R. & Sons in the books of the head office with the amount due thereunder and treating such debit against R. R. and Sons as equivalent to payment in respect of the document, he returned the same to Hanumantha Ayyar. Upon those facts it seems to us to be futile to contend that the possession of J series by defendant 2 proved that the loans originally given on those documents have been discharged by actual payments made by Hanumantha Ayyar. Those documents were treated as discharged by the debts themselves being debited in the plaintiff's accounts against R. R. & Sons and in no other sense. Apart from this the only other point which was pressed in connexion with the liabilities incurred by Hanumantha Ayyar was that after his father's death he started a trade in "English piece goods" whereas till then they were trading only in country-made cloths, and that the character of the ancestral business was thereby completely altered so as to make it a new business, and that the liabilities incurred by Hanumantha Ayyar for a new business cannot be binding upon the minor, defendant 3. In support of this contention a decision of the Privy Council in *Sanyasi Charan Mandal v. Krishnanadhan Banerji A. I. R. 1922 P. C. 237* was relied on. The Subordinate Judge overruled this contention chiefly on the ground that the business in English piecegoods was not a new business started by Hanumantha Ayyar but was only, if at all, an extension of the ancestral business. We agree in that view and we are also of opinion that an ancestral business does not lose its Character as such and become a new business by a mere extension of the same by a manager, a distinction which we find is noticed by their Lordships themselves in *Sanyasi Charan v. Krishnanadhan Banerji A. I. R. 1922 P. C. 237*.

11. If then the debts for which the suit mortgage bond was executed had been incurred in connexion with the family trade, by Hanumantha Ayyar, the manager, and sole adult male member of the joint family, we are of opinion that such debts must equally be binding on the minor, defendant 3, also to the extent of the partnership assets. Defendant 3's family has been admittedly a trading family for a long time and it would be extremely difficult for such a trade to be carried on properly and in the interests of the family if the adult members who carry on the business and who are equally interested in it with the minor members of the family cannot in the course of the business borrow moneys for the purposes of such business so as to be binding upon the minor members also. In the case of an ordinary Hindu family any person who lends money to the manager for

alleged family purposes and seeks to render the shares of the other members of the family also liable for his debts, has to show as against such other members, especially if they are minors, that there was real necessity for the loan or that he made reasonable enquiries and upon the facts represented to him he believed there was necessity for the loan, but in the case of a trading family a less rigorous rule appears to have been laid down. Mr. Mayne in his Hindu Law says as follows:

The manager of a trading family has wider powers than those of the manager of a nontrading family. There is no deviation from the fundamental principle that what is done must be for the benefit or necessities of the family, but acts 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. Even where the debts in fact are incurred merely for "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. Mayne, 9th Edn. pp. 398 and 399.

12. The authorities relied on by the learned author in support of the above view are Raghunathji Tarachand v. Bank of Bombay (2), and S. Krishnamurthi v. Bank of Burma [1912] 35 Mad. 692 We observe, however, that there is some conflict of authority on this question of onus as pointed out by Sir John Wallis, C. J., in Guruswami Nadar v. Gopalaswami Udayar [1919] 42 Mad. 629 referring to Ganpat Rai v. Muni Lal [1912] 34 All. 135 and Nagendra Chandra Dey v. Amarchandra Kundu 7 C. W. N. 725 in which a different view is taken; but the learned Chief Justice himself inclined to the view taken by the Bombay High Court in Raghunathji Tarachand v. The Bank of Bombay [1910] 34 Bom. 72 as he observes

that the case of a joint trading family is in many ways exceptional and it appears, open to question whether in such a family the presumption should not be the other way

viz., that the debt was contracted by the manager for the necessary purposes of the business. The Bombay High Court itself in a later case, in Gangadhar Narayan Pandit Vs. Ibrahim Bava Dingankar, seems to consider the propositions laid down by Chandravarkar, J., in Raghunathji Tarachand v. Bank of Bombay [1910] 34 Bom. 72 as far too wide and that in all cases where the manager of a joint Hindu family mortgages a joint estate, it must still be incumbent on the party supporting the mortgage to prove that the money raised on the mortgage was required for family purposes. But the learned Judges also proceed to observe as follows:

No doubt if the family is carrying on trading business it would be very much easier to prove that the money was required for the purpose of that trade and so

for family purposes than if the family were agriculturists.

13. So far as the present case is concerned we are satisfied that the moneys borrowed by Hanumantha Ayyar were required for the purposes of the family trade and that therefore the debts for which the suit mortgage bond was executed were binding upon defendant 3 (minor) even according to the stricter view as to the onus taken in 34 All. 135 and 47 Bom. 637 and we consider it unnecessary for us to say in this case which of the two conflicting views as to the onus should in our opinion be accepted, especially as this question was not argued before us.

14. We are also unable to accept the contention that though the debts due to the plaintiffs may be binding on the minor, the mortgage of his properties under Ex. A, is not binding on him as the firm had large liquid assets and the debts could have been discharged without effecting the mortgage. There is absolutely no evidence in support of this plea. If the debt could easily have been discharged by the sale of the stock-in-trade of the firm or by the realization of its outstandings, it may be asked why no attempt was made after the execution of the suit mortgage to discharge the mortgage debt in that manner, or why default was made in the payment of the comparatively small amount of monthly instalment which was fixed under the mortgage. The evidence shows clearly that the mortgage bond was executed by the mother of defendant 3 in order to avert the threatened suits by the several creditors of the firm, the launching of which would have not only affected prejudicially the business of the firm but also added considerably to its liabilities. We, therefore, agree with the learned Subordinate Judge that the suit mortgage is binding on defendant 3.

15. The only remaining point which has to be dealt with relates to the question of interest. On that question also we are clearly of opinion that the rate of interest provided in the mortgage bond is not penal and that it is therefore enforceable.

16. In the result this appeal is dismissed with costs.