

(1941) 07 MAD CK 0013
In the Madras High Court

Ramanathan Chettiar by next friend Chidambaram Chettiar	APPELLANT
Vs	
Muthuraman Naidu and Others	RESPONDENT

Date of Decision : 31-07-1941

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 117, 50

Citation : AIR 1942 Mad 161 : (1942) ILR (Mad) 204 : (1941) 2 MLJ 816

Hon'ble Judges : Mockett, J;Kunhi Raman, J

Bench : Full Bench

Judgement

Mockett, J.—This is an appeal from the judgment and decree of the learned Subordinate Judge of Kumbakonam in O.S. No. 32 of 1935.

In that suit the plaintiff (the present appellant) prayed for a decree declaring in"substance that his (plaintiff"s) half share in a house was not liable to

be attached in execution of a decree passed in O.S. No. 33 of 1932 in the East Tanjore District Court. He also prayed for an injunction restraining

the first defendant from executing the said decree against his half share. O.S. No. 33 of 1932 was a suit by one Muthuraman Naidu against

R.M.M.S.T. Vairavan Chettiar for money due on a promissory note. Vairavan Chettiar is the natural father of the appellant (the plaintiff in O.S.

No. 32 of 1935). The promissory note was executed on the 6th October, 1929 by Vairavan Chettiar to Thambuswami Naidu and this note was

endorsed by the payee to Muthuraman Naidu, the plaintiff in O.S. No. 33 of 1932. The promissory note is marked Ex. VI. The judgment in O.S.

No. 33 of 1932 is marked as Ex. VII-B and the decree based thereon as Ex, B. As the arguments in this case have been directed to one aspect

only it is unnecessary to set out at any great length the details of this suit. It will be enough to state that the plaintiff alleged that he was adopted by

the widow of Chidambaram Chettiar, the brother of Vairavan Chettiar in 1924 and that in 1926 there was a division in status and an actual division

of one house in that family. The lower Court found the allegation of adoption to be proved and no arguments have been addressed to us attacking

that finding. The lower Court also found that the allegation regarding the division in status was not proved and that finding has not been attacked

before us. The decree in O.S. No. 33 of 1932 was assigned to the third defendant, the second respondent in this case. The essential facts in this

case and it is upon these facts that the arguments have been based, can therefore be summarised as follows:

The appellant's natural father executed a promissory note to Thambuswami Naidu who endorsed it to the first defendant Muthuraman Naidu and

on the basis of the decree passed in the suit on that promissory note, O.S. No. 33 of 1932, in which Muthuraman was plaintiff execution was

sought to be levied on the appellant's share in the joint family property at the instance of defendant 3 the assignee of the decree from Muthuraman.

The effect of the finding of the learned trial Judge with regard to the adoption in 1924 is that in 1929, the date of the execution of the promissory

note, the plaintiff (appellant) was no longer the son of Vairavan Chettiar, the maker of the promissory note, having been adopted by the widow of

Vairavan Chettiar's brother Chidambaram Chettiar. This is said to have an important bearing on this case. The learned trial Judge has dismissed

the appellant's suit. The appellant contends that his property is not liable in execution because no liability of any sort can attach to him in view of

the fact that the original decree against his father Vairavan Chettiar was based on a promissory note to which he (the appellant) was not a party

and that Vairavan Chettiar was sued not by the payee but an endorsee from the payee. There has been no contest on the facts as I have indicated.

The learned Judge has investigated the status of the appellant's family. There is no doubt about who they are. They are an old-established Nattu.

kottai Chetty firm whose hereditary business is money-lending and rice trade and their style and vilasam is R.M.M.S.T. Such families and such

businesses are well known in South India and Burma. The appellant has contended in the first place that the learned Judge was wrong in his finding

with regard to the form of the promissory note and the form of the suit. In paragraph 53 of his judgment there appears the following:

It is clear on a reading of Ex. VI that it was executed by Vairavan Chettiar not merely in his individual behalf but as representing his firm and trading business. The promissory note was in fact executed by the firm and the endorsee thereof has the same rights on the negotiable instrument as the endorser to sue the firm which is the executant of the promissory note. The suit was also against the firm represented by the manager who had executed the note on behalf of the firm.

On an examination of the promissory note and the pleadings and the decree I am unable to agree with this finding. The promissory note is signed

by R.M.M.S.T. Vairavan Chettiar. It is in renewal of a former promissory note which is stated to have been executed by Subbayya Chettiar "who

was the agent of our firm at Velipalayam". It is not signed on behalf of the firm. It is true that the words "we shall pay" are used, but it is not

possible in view of "the practice of Nattukottai Chetti agents who frequently use the word "we" as meaning "I", to attach any great importance to

this. I observe that the translations of Exs. VI and A vary. Ex. A says, "On demand I shall pay you" whereas Ex. VI has the words "we shall pay".

We have had therefore recourse to the Tamil Interpreter of this Court who informs us that actually the word "we" is not present in the original, nor

is the word "I", but the subsequent "shall" denotes the plural. But whether the suit could have been filed against the firm, vide Ghulamsa Ravuthar

v. Visvanathan Chettiar (1917) 5 L.W.721 is of no great importance in this case. It may well be, that the plaint could have been so framed. The

plaint in fact is not, in my view, framed against the firm. The defendant is R.M.M.S.T. Vairavan Chettiar and he is described as "R.M.M.S.T.

Vairavan Chettiar, father's name not known". Paragraph 1 . alleges that the defendant is carrying on money-lending etc., business under the

vilasam (name and style) of R. M. M. S. T at Velipalayam. That is a personal allegation that he himself is a firm or the proprietor of a firm.

Paragraph 2 states that the money was borrowed in connection with and for the benefit of the defendants' ancestral family business and the prayer

is for a decree against "the defendant personally and out of the properties of the defendant's business vilasam". It must be observed that the plaint

is not filed as against the R.M.M.S.T. firm, in which case particulars could have been demanded as to its members under Order 30, of the Code of

Civil Procedure, but appears to allege that the defendant owns the business. The decree describes the defendant as ""R.M.M.S.T. Vairavan

Chettiar, father's name not given"" and the decree is that the defendant do pay to the plaintiff the sum of Rs. 22,341-14-0. It may be, as the learned

Counsel for the respondents has argued, that this firm was so well known, that the draftsman of the plaint overlooked the necessity for a careful

pleading. The allegation in paragraph 2 is very clear that the money was borrowed for the benefit of the defendant's ancestral family business and

there is no shadow of doubt on the record, nor is it suggested before us that that is not so and that the present appellant was not a member of the

trading family of R.M.M.S.T. The conclusion I therefore arrive at is that, although the plaint is directed against the defendant personally and there is

no allegation that the appellant is in any way concerned with the R.M.M.S.T. firm there is no doubt that this money was borrowed for purposes of

the joint family trade and that the appellant was a member of the joint family.

2. In *Sadasuk Janki Das v. Sir Kishen Pershad* (1918) 36 M.L.J. 429 : 1918 L.R. 46 IndAp 33 : ILR 46 Cal. 663 (P.C.) the Privy Council have

made it abundantly clear that the name of a person or firm to be charged upon a negotiable instrument should be clearly stated on the face or on

the back of the document so that the responsibility is made plain and can be easily recognised as the document passes from hand to hand. Their

Lordships observe:

In this case the preliminary words mention no more than that Mohan Lal has been directed to execute the hundis, and they do not necessarily imply

that he has been clothed with authority to execute them in any other form than that in which they were actually prepared--a form which it has

already been shown constituted nothing more than a personal liability on behalf of Mohan Lal.

In *Abdul Majid Khan v. Saraswati Bai* (1933) 65 M.L.J. 65 : L.R. 61 IndAp 90 (P.C.) cited to us their Lordships have laid down that:

Where the karta of a Hindu trading family borrows money on promissory notes executed in his own name and not in the name of the firm, there is

no presumption that the borrowing was for the purposes of the joint family business, and the lender must prove that the money was required for the

family business.

The first of these decisions supports, I think, my construction of the promissory note and with regard to the second decision, I concur with the

learned Judge's finding, which has not been attacked, that the money was borrowed by Vairavan Chettiar for the benefit of the R.M.M.S.T. Firm.

3. But Mr. A. V. Viswanatha Sastri has argued that notwithstanding this view of the pleadings, which we indicated to him appealed to us, the

decree was still executable against the share of the appellant. Mr. T. V. Muthukrishna Aiyar has argued that the findings in this case that at the time

of the making of the promissory note the appellant had been adopted by the widow of Chidambaram Chettiar combined with the view we take that

the suit and the decree were prima facie against Vairavan Chettiar personally are fatal to the decision of the lower Court that this decree could be

executed against the appellant. Mr. Muthukrishna Aiyar has argued that since the decision of the lower Court a decision of a Full Bench of this

High Court has concluded the matter in his favour. That case is *S. Maruthamuthu Naicker Vs. P. Kadir Badsha Rowther and Others*, . In that

case, the facts were that a Hindu father executed a promissory note which was endorsed by the payee to the plaintiff. A suit was brought based on

the promissory note and by the indorsee making the sons of the maker defendants. The decision of the Full Bench was that the sons were not liable

on a negotiable instrument on which their names did not appear. Reference was made to the decision in *Sadasuk Janki Das v. Sir Kishen Pershad*

(1918) 36 M.L.J. 429: 1918 L.R. 46 IndAp 33: ILR 46 Cal. 663 (P.C.) to which we have also referred, and the statement of the law by Lord

Buckmaster cited. Leach, C. J., in the course of his judgment, with which the other members of the Bench concur, after reviewing the case-law,

stated:

From these decisions, it will be observed that there are two principles to be borne in mind. The first is the principle which I have already stated,

namely, that no one whose name does not appear on a negotiable instrument can be sued on it. The second is that there is no privity of contract

between an indorsee and the maker or acceptor.

The reference to the Full Bench was:

Whether an indorsee of the promissory note executed by the managing member is entitled to recover the debt from the property of the non-

executant coparceners on the ground of their liability under the Hindu law or whether he is limited to the remedy available on the note.

And the answer of the Full Bench was:

The indorsee of a promissory note executed by the managing member of a joint Hindu family is limited to his remedy on the note, unless the

endorsement is so worded as to transfer the debt as well and the Stamp Law is complied with, and therefore, in the case of an ordinary

indorsement the indorsee cannot sue the non-executant coparceners on the ground of their liability under the Hindu law.

At page 576, the learned Chief Justice observes:

The maker alone can be sued on the note and the fact that under Hindu law sons are liable in respect of debts incurred on behalf of the family or by

the father for his own purposes, provided they are not incurred for illegal or immoral purposes, does not affect the principle involved.

It seems to me that the decision of the Full Bench was concerned only with the question of an action on a promissory note. At no time was any

question of rights in execution under Hindu law discussed. On the contrary the remarks and the observations in the judgment of the learned Chief

Justice make it clear that this case was decided on the basis of a right of suit and that the discussion of any other right under Hindu law was

expressly excluded. But the latter question is raised in this appeal. This Full Bench decision related to a promissory note made by a father and the

liability under discussion was the liability of the son to an indorsee in a suit. We have to consider here the liability of a member of a trading family

not in a suit but in execution for debts incurred by the manager for the purpose of the trading family. It is clear from the decision of the Full Bench

that in a suit it matters not what the relationship between the maker and the person sought to be made liable is, if the latter's name is not upon the

promissory note. There is a further decision of this High Court which is instructive. In Reddi Krishnan Naidu and Others Vs. Chintala Somi Naidu

and Others, , Leach, C. J., and Krishnaswami Aiyangar; J., had before them an appeal in which a question of execution came up for consideration.

The appellants obtained a money decree against the third respondent making the third respondent's sons parties to the suit. The suit was on a

promissory note executed by the father alone and the decree was passed against

the father alone, the plaintiff deciding not to ask for a decree against the sons, who were dismissed from the suit. Notwithstanding this dismissal, the Bench held that execution can be levied against the sons' share in the joint family property on the basis that under Hindu law the sons were liable to pay their father's debts. There was of course no question of endorsement of a promissory note in that case, but it is a clear case of execution being levied on a person in respect of the debt due under a promissory note by the maker of that promissory note, although the name of the person on whose property execution was sought to be levied was not upon the promissory note. The Bench was largely concerned with the consideration of principles of *res judicata*, but the facts are of interest for the reason I have indicated. I derive this from that decision, that although under the law relating to negotiable instruments and the framing of suits thereon the sons would not be liable in a suit by the payee against the father the sole maker nevertheless the result will ultimately be in the circumstances of that case, that, although not liable in the suit, they were nevertheless liable in execution under a totally different system of law, namely, the Hindu law.

4. But, to return to the argument of the learned Counsel for the appellant, does the fact that in the case now before us the promissory note was endorsed alter the position? In *S. Maruthamuthu Naicker Vs. P. Kadir Badsha Rowther and Others*, a distinction is made between the indorsee's remedy on a mere endorsement of the note and his remedy on an endorsement transferring the debt as well and complying with the Stamp law. It has been naturally a matter for careful consideration as to whether that affects the question before us; it seems to me that it does. The absence of such a formal assignment of the debt is no doubt fatal to a suit by the indorsee purported to be based on the debt and with which the Hindu law is concerned. It seems to me that for the appellant to escape liability we must hold that there is no debt due by the manager (he happens to be their natural father) to the decree-holder which they are under an obligation to pay. In so far as a father and son are concerned, a decree passed against a father creates a debt *prima facie* dischargeable by the sons, *Periaswami Mudaliar v. Seetharama Chettiar* (1903) 14 M.L.J. 84:

ILR Mad. 243 (F.B.) see also Mayne's Hindu Law, 10th edition, page 420. It

seems to be established that the judgment against the father having created a debt which the son is liable to discharge, the consequent proceedings against the son will not be upon the judgment but upon the debt created by the decree. But to create a debt payable by the son, I think it reasonable to suppose that the decree itself must relate to a debt for which he is liable. Whether the decree now sought to be executed not against the son but against a member of a joint trading family did relate to a debt will be a matter for consideration. So far the relationship of a father and son has been discussed.

5. So far as the powers of a manager to contract debts for family purposes are concerned it seems clear that the manager of a joint family business

has an implied authority to contract debts for the ordinary purpose of the family business, and, where such debts have been incurred, the other co-

parceners are liable but only to the extent of their interest in the joint family vide Mayne, 10th edition, pages 449 and 450 for a summary of the

law. In *Vadlamannati Venkatanarayana Rao Vs. Gottumukkula Venkata Somaraju*, , Venkatasubba Rao, J., points out that:

There is a legal duty cast upon the son, as upon any other junior coparcener, to discharge a liability incurred by the father in his capacity of

manager for family purposes, and it is therefore unnecessary on the facts here to invoke the doctrine of pious obligation.

It will be seen that the learned Judge emphasizes that, although the manager may also be the father, all the junior co-parceners are under a duty to

discharge liabilities properly; incurred by him because of his position as manager.

6. I have already indicated that the circumstances of this case show that although the suit is not framed as against the firm, there is no doubt that it is

against the manager for money advanced for the firm. The Full Bench decision in *Vadlamannati Venkatanarayana Rao Vs. Gottumukkula Venkata*

Somaraju, , also held that the principle of representation by the managing member was not confined to immovable property but to other

transactions as well, for instance, loans. I have been unable to understand why there should ever have been such a distinction. This decision of the

Full Bench is, I consider, important in this case because it is an authority binding on me for the proposition that a Hindu father, by virtue of his

position as manager, can represent the entire family in all transactions, not only

with regard to immovable property but with regard to other transactions as well; that the decree need not be specifically passed against him as such; and that, once a liability is declared to be a family liability, every item of the joint family property is bound to satisfy that liability.

7. Our attention has been drawn to the decision of this High Court in *Lakshmana Chettiar v. Muthu Chellia Goundan* (1934) 68 M.L.J. 104 which

was not cited to the Full Bench in *Vadlamannati Venkatanarayana Rao Vs. Gottumukkula Venkata Somaraju*, . It appears from the facts of that

case that the money borrowed was a personal debt and did not concern a trading family or an endorsed promissory note but it is evident that the

learned Judges were reluctant to allow investigations in proceedings in execution to be made against persons who are not sons or descendants of

the judgment-debtor. Where a suit is brought by an original payee against an original maker there appears to be no difficulty about the legal

position of the members of the maker's family in execution proceedings; it is argued that the fact that the decree on which execution is sought to be

levied against the appellant's property is based upon an endorsed promissory note materially affects his liability as a member of his family.

8. Except for the decision in *S. Maruthamuthu Naicker Vs. P. Kadir Badsha Rowther and Others*, , and the cases therein cited, no case relating to

an endorsed promissory note has been brought to our notice and no case relating to execution on a decree on an endorsed promissory note. As in

S. Maruthamuthu Naicker Vs. P. Kadir Badsha Rowther and Others, , so in this appeal, the following facts are in my view of vital importance: (1)

The promissory note was endorsed to Muthuraman Naidu, and, (2) the debt was not assigned .to Muthuraman Naidu. There is the further fact that

the element of pious obligation between a father and son is absent.

There is a wealth of authority:

that a decree obtained against a managing member for a debt binding on the family can be executed against the shares of the other members.

Vide (1887) L.R. 14 I.A. 187 (Privy Council) and the numerous cases cited by Mayne, 10th Edition, at page 450.

9. The question in this appeal therefore seems to be whether there is a debt in the hands of the third defendant which the plaintiff is bound to pay.

In my view, there is not. I consider that the general principle laid down in *S.*

Maruthamuthu Naicker Vs. P. Kadir Badsha Rowther and Others, , is

applicable to this case. No debt was ever assigned to Muthuraman Naidu by Thambuswami Naidu, the promisor under Ex. VI. It could have been

assigned, but it was not. By his endorsement and delivery Thambuswami Naidu transferred the property in the note to Muthuraman Chettiar--

Section 50 of the Negotiable Instruments Act. The subsequent decree therefore can only have been on the note, and not on the debt. There is not

therefore in existence any decree based on a debt. Any decree against the maker of the note will be as Varadachariar, J., points out in S.

Maruthamuthu Naicker Vs. P. Kadir Badsha Rowther and Others, , for compensation and not for debt--Section 117 of the Negotiable

Instruments Act. It seems to me therefore that the present decree-holder cannot on the principle that the members of this trading family are liable to

pay debts properly incurred by the manager make their property liable in execution in respect of a decree against the manager not for a debt but

for a remedy under the provisions of a statute. I see no reason to stretch the principles of Hindu law in so far as they relate to the liability of

persons not parties to suits, nor to extend the meaning of the word "debt". I again emphasise that the element of pious obligation by a son which

seems to have given a somewhat comprehensive meaning to the word "debt" is absent in this appeal. That the payee might, had the plaint been

correctly framed or the debt correctly assigned, have been entitled to recover from the plaintiff is no reason for taking another view; nor is the

possibility that, had there been no endorsement, no difficulty would have arisen for Thambuswami Naidu to recover. Indeed I consider that the fact

that the plaintiff in the suit on the note preferred other methods is a reason for a holder of the decree therein being confined rigidly to his rights as

they work out logically.

10. For the above reasons this appeal must be allowed with costs here and below.

11. It must follow also that Appeal No. 256 of 1939 will also be allowed with costs, which will be limited to the stamp duty paid, printing charges

and other out of pocket expenses.

Kunhi Raman, J.

12. I have had the advantage of perusing the judgment just delivered by my learned brother. In stating that I concur in the views expressed in it I

wish to add a few words.

13. There is no doubt at all that the decree in O.S. No. 33 of 1932 was not against a firm represented by Vairavan Chettiar as manager, but that it

was against the individual Vairavan Chettiar. The decree cannot therefore be executed against other members of the firm or their properties.

14. It is clear from the decision of a Full Bench of this Court reported in S. Maruthamuthu Naicker Vs. P. Kadir Badsha Rowther and Others, ,

which is binding on us, that the payee of a promissory note executed by the manager of a joint Hindu family may, if he wishes to sue, base his suit

on the note, in which case, only the maker of the note can be made liable, or on the debt, in which event, he may seek to make the sons or the

other undivided members of the family of the maker also liable. When however, the payee indorses the note to a third party, without assigning the

debt also to the indorsee, the latter can sue only on the note and not on the debt. In the present case, the suit was by such an indorsee who did not

therefore acquire "any wider rights in respect of the debt under the Hindu law. The decree he obtained was only against the maker of the note, the

cause of action being based purely on the negotiable instrument. Such a decree Cannot obviously be executed against any other undivided member

of the family of the maker of the note. Seeing that the appellant who is the natural son of the maker of the note was given away in adoption to his

paternal uncle, no question of pious obligation to discharge the debt created by the decree in this case can also arise.

15. In the circumstances, I agree that the appeals must be allowed as indicated in the judgment of my learned brother.