
(1936) 09 MAD CK 0011
In the Madras High Court

Ramanathan Chettiar, minor by next friend C.T.R.M.
Chidambaram Chettiar

APPELLANT

Vs

S.R.M.M.C.T.M. Firm

RESPONDENT

Date of Decision : 16-09-1936

Acts Referred:

Citation : (1937) ILR (Mad) 376 : (1937) 45 LW 30 : (1937) 1 MLJ 16

Hon'ble Judges : M. Venkatasubba Rao, J

Bench : Division Bench

Judgement

M. Venkatasubba Rao, Kt., Officiating C.J.

1. This suit has been brought by the plaintiff for a declaration that he is not bound by the decree obtained in the High Court by the first defendant

against the second, in C.S. No. 448 of 1932. The facts may be briefly stated. Chidambara, the undivided brother of the second defendant

(Vairavan) died in 1907. The plaintiff who was born in 1922 is the natural born son of the second defendant but was adopted in 1924 to the

deceased Chidambara by his widow Valliammal. A mortgage by the deposit of title deeds was granted on 30th May, 1927, by the second

defendant to the first, to secure a debt of Rs. 50,000 and on that mortgage the first defendant brought the suit above-mentioned and obtained a

decree. It is this decree that the plaintiff impeaches and seeks to get rid of.

2. The learned trial Judge on the Original Side has found first, that Chidambara and Vairavan, who were members of a Nattukottai Chetty Hindu

family, inherited a banking concern, which till Chidambara's death they both conducted and which thereafter the second defendant continued;

secondly, that the plaintiff's family, while carrying on business as bankers, had

dealings with the first defendant and the mortgage in question was granted in respect of a debt that had become due in the course of such dealings. Holding on these findings that the mortgage is binding upon the plaintiff and that he is bound by the decree, the learned Judge dismissed the suit.

3. The first contention urged by Mr. Sitarama Rao, is, that his client (the plaintiff) is not bound by the decree, as he was not made a party to the mortgage suit and the second defendant was not sued in a representative capacity, that is, as representing the family of which he was the manager. There is some evidence to show that R.M.M.S.T. Vairavan Chetty, impleaded as the defendant in the mortgage suit, is not the individual Vairavan but the family firm of which he was the manager. Granting, however, that the initials "R.M.M.S.T." do not convey this meaning and that the second defendant alone was individually impleaded, there can be no question on the authorities that he effectively represented in the suit the entire family, which has therefore become bound by the decree. In (1887) L.R. 14 I.A. 187 (Privy Council) , the leading case on the point, their Lordships point out that where the mortgage extends to the entire interest of the family and is not confined to the share of any particular member and where in the suit the mortgagee claims not only to recover against the individual mortgagor the amount of the mortgage but asks that the debt may be satisfied out of the mortgaged property-where these conditions are fulfilled, although the manager alone is impleaded, he effectively represents all the members, who therefore become bound by the decree. See also AIR 1914 136 (Privy Council) . This contention of Mr. Sitarama Rao therefore fails.

4. Mr. Sitarama Rao next contends that if any part of the sum of Rs. 50,000 had been utilised in paying off a debt incurred before the plaintiff's adoption, for that portion of the debt, the plaintiff would not be liable. Whether this as a proposition of law is correct or not, we shall examine presently; but the contention receives no support from the evidence on the record. The question put to the first defendant's agents and his answers on this point may be here reproduced.

Q.-So far as you know, you do not know what for he (Vairavan) borrowed this money?

A.-I know: for paying bank dues, for lending to others.

Q.-So the debts he borrowed were for discharging his old liabilities?

A.-I do not know all these details. He was taking all these things for his banking purposes.

5. This evidence remains uncontradicted and there is nothing to show that any portion of the amount borrowed was utilised for the payment of the debts incurred before the plaintiff's adoption. Here, I must point out, that the finding of the trial Judge that the debt was incurred for a legitimate purpose in the course of the carrying on of a family concern, has not been attacked. The evidence extracted above shows that the amount was borrowed "for paying bank dues, for lending to others," these being the natural incidents of a banking concern. Mr. Sitarama Rao's contention therefore is opposed to the facts proved and cannot be accepted.

6. Granting for a moment that a portion of the debt was incurred before the plaintiff's adoption, does that circumstance make any difference? Mr.

Sitarama Rao has had to assume for his contention that the debts were incurred not only before the plaintiff's adoption but also before his birth.

Before dealing with this contention, we may usefully refer to certain principles which may be regarded fundamental and have not been and cannot

be controverted. The doctrine that a son is liable to pay his father's debts not incurred for immoral or illegal purposes, applies as much to debts

incurred previous to, as after, his birth. Similarly, a nephew subsequently born is liable for the debts incurred by his uncle for purposes recognised

by the Hindu Law as proper. This principle is incontestable and has been tacitly assumed or acted upon in several decisions *Muttayan Chetti v.*

Sivagiri Zamindar I.L.R.(1879) 3 Mad. 370 at bottom of p. 378, (1883) ILR 6 1 (Privy Council) on appeal from *Muttayan Chetti Sivagiri*

Zamindar I.L.R.(1879) 3 Mad. 370, (1897) 7 MLJ 240 and *Maharaja of Bobbili v. Zamindar of Chundi* (1910) 21 M.L.J. 593 : ILR 35 Mad.

108 and Mr. Sitarama Rao, as already stated, far from disputing it, affirms its correctness. There is a distinction in this respect between alienations

and debts. In the case of alienations, whether they are for justifiable purposes or not, the person subsequently born or adopted cannot question

them (1897) 7 MLJ 240 and *Veeranna v. Sayamma* (1928) 56 M.L.J. 401 : ILR 52 Mad. 398 but in the case of debts, as already pointed out,

the character of the debt when incurred becomes the decisive element. Mr.

Sitarama Rao, acceding to these propositions, puts his argument thus :

From *Veeranna v. Sayamma* (1928) 56 M.L.J. 401 : ILR 52 Mad. 398 it follows that the second defendant as the sole survivor of the family (this

argument implies that the plaintiff had not even been born at the material time, that is, when a portion of the debts was incurred) was the absolute

owner of the business assets. If that be so, the learned Counsel proceeds to argue, the second defendant, when contracting those debts, acted on

his own behalf and not as representing any Hindu coparcenary, which may be likened to a corporation. The next step in the argument is, that as the

second defendant never purported to act on behalf of a coparcenary, the debts incurred by him cannot be binding upon the plaintiff, who having

been subsequently born became by adoption his nephew. This position, which is said to be a logical deduction from *Veeranna v. Sayamma* (1928)

56 M.L.J. 401 : ILR 52 Mad. 398 is untenable and we cannot accept it as sound. That case related to an alienation and not to a debt. There, it

was argued that so long as any widow remained in the family possessing an unexercised power of adoption, no alienation by way of gift made by

the last surviving male member could be binding upon the son subsequently brought into the family by adoption. This contention was repelled as

being opposed to the basic principles of Hindu Law. In the judgments delivered in that case, the "theory that the last survivor is no more than a

provisional heir, based upon the fiction of relation back in the case of such adoptions, was repudiated. The effect of the decision is no doubt that

for the purpose of alienations the sole survivor is regarded as the absolute owner, but we agree with Mr. Doraiswami Aiyar that it would be wrong

to apply the principle to the case of debts by extending the analogy. The property in the hands of the sole survivor is separate property which,

however, must not be confused with self-acquired property; what is separate property becomes, on the introduction of a fresh member into the

family, ancestral property with all its incidents. Similarly, although when the debts are incurred, the family consists of a single male member, he must

be deemed in contracting debts to be acting on behalf of a potential joint family, which is capable by expansion of comprising more than one

member. Viewed in that light, the act of the last single survivor must be deemed as that done in a representative capacity, that is to say, as

representing a potential joint family. Mr. Sitarama Rao had been driven to concede, that if at the time a debt is incurred there happen to be two or more members instead of a single surviving member, the foundation on which his contention rests, disappears. That is the reason why he has had to confine his argument to the period not before the plaintiff's adoption which was in 1924 but before his birth which was in 1932. It would be a strange thing to hold in a matter of this sort, that where there are two or more survivors, a different legal consequence would follow than from where there is a single survivor. Indeed to accept Mr. Sitarama Rao's contention would lead to grave anomalies and leave this branch of the Hindu Law in a most confused state. Nothing that has been shown compels us to take such a view.

7. In the result, the appeal fails and it is dismissed with costs.