
(1915) 08 BOM CK 0003
In the Bombay High Court
Case No : Second Appeal No. 278 of 1914

Ramkrishna Trimbak Nadkarni	Vs	APPELLANT
Narayan Shivrao Aras		RESPONDENT

Date of Decision : 20-08-1915

Acts Referred:

Contract Act, 1872 — Section 23

Citation : AIR 1915 Bom 280 : (1915) 17 BOMLR 955

Hon'ble Judges : Shah, J; Basil Scott, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Basil Scott, C.J.—The plaintiff sues to enforce a mortgage effected in his favour by the 1st defendant. The mortgage security consisted of a piece of land, the property of the 1st defendant, and of land which was the property of the family of the 5th defendant and his sons, the present appellants, which was ostensibly burdened with a mortgage debt created by the 5th defendant in respect of certain payments made or liabilities incurred by the 1st defendant at the 5th defendant's request in respect of dealings in a trade in fish instituted by the 5th defendant and carried on largely under the management of the 1st defendant.

2. The present appellants pleaded that they were not liable for their father's debt; that they did not admit the bona fides of the mortgage bonds of their father; that they were passed for debts incurred for immoral and illegal purposes; that their father was given to profligate habits and was fond of gambling in speculative transactions recklessly; that they derived no benefit from the transactions; and that they were not liable under the Hindu law to pay off debts incurred by their father so imprudently.

3. When the case came to trial issues were raised upon the pleadings. The 2nd issue was whether defendant No. 5 contracted the above debt for illegal or immoral purposes as alleged by defendants Nos. 12 to 14. But during the hearing

a further issue was raised in these terms:-Is the mortgage transaction of defendant No. 5 with defendant No. 1 null and void by reason of its having been entered into in violation of the Government Servants' Conduct Rules as prescribed by Government? The point then made was that having been entered into in contravention of Government Servants' Conduct Rules, the transactions which resulted in the mortgage debt were null and void u/s 23 of the Contract Act as being agreements forbidden by law or opposed to public policy. The learned Judge held that the transactions were not void u/s 23, but he decided the 2nd issue in favour of the present appellants. It was suggested to him that the whole scheme of business was avyavahara, and therefore, such as could not give rise to a liability in the sons to pay their father's debts, and upon the authority of *Durbar Khachar Odha Ala Vs. Khachar Harsur Oghad*, he decided that the debts in suit came under that class of debts which it is not the bounden duty of the sons to pay as being illegal in the sense in which the Hindu law texts so consider them. Accordingly a decree was passed for the amount claimed, and on default for sale of the father's interest alone in the family properties, and for sale of the property belonging to the first defendant.

4. The 1st defendant who was made personally liable under the decree for any deficiency that might arise on the sale appealed to the District Judge, and again the same arguments were put forward on behalf of the present appellants. The Government Servants' Conduct Rules were only made use of for the purpose of contending that the contract was void as being contrary to public policy u/s 23. The learned Judge held that defendants Nos. 12 to 14, the present appellants, failed to prove that their father's conduct was avyavahar, and accordingly modified the decree so as to make the interest of defendants Nos. 12 to 14 in the mortgaged property liable as well as the interest of defendant No. 5.

5. From that decree defendants Nos. 12 to 14 have appealed, joining as respondent only defendant No. 1, although they seek to reduce the mortgage security available for payment of the plaintiff's debt according to the decree of the District Court. It is clear, we think, that they cannot get a decree in the absence of the plaintiff. But it is desirable that we should express our opinion upon the points which have been thoroughly argued by the pleaders on both sides. Section 23 of the Contract Act is no longer appealed to. The contention that the transactions were void as being contrary to public policy is abandoned, but the Government Servants' Conduct Rules are now used in aid of the argument that the father's conduct was avyavahar. The only authority which can be relied upon in support of that contention is the case of *Durbar Khachar Odha Ala Vs. Khachar Harsur Oghad*, . That case has not met with acceptance in any of the other High Courts in India; see *Chhakauri Mahton v. Ganga Prasad* ILR (1911) Cal. 862; *Venugopala Naidu v. Ramanadhan Chetty* ILR (1912) Mad. 458 and *Sumer Singh v. Liladhar* ILR (1911) 33 All 472. But assuming for the purpose of argument that it was correctly decided, it only decides this, that a civil penalty imposed by way of damages upon the father for a civil wrong committed by him does not give rise to any moral obligation on the son to

discharge that liability.

6. Now the Government Servants' Conduct Rule which is referred to in this case is as follows:-

A Government servant may not, without the previous sanction of the Local Government, engage in any trade or undertake any employment, other than his public duties.

A Government servant may undertake occasional work of a literary or artistic character, provided that his public duties do not suffer thereby; but the Government may, in its discretion, at any time forbid him to undertake or require him to abandon any employment which in its opinion is undesirable.

7. That is a rule which is not based upon any statutory prohibition, but is, as it is expressed to be, merely a rule of conduct. The 5th defendant who is alleged to have violated that rule was a Post-Master at Akola on a small salary, and in order to supplement his income he engaged in a fish trade a very common occupation on the West coast of India. The work in connection with the trade, as appears from the evidence, was done almost entirely by the 1st defendant.

8. The question then is whether applying the test laid down in *Durbar Khachar v. Khachar Harsur* as the highest point at which the appellants' case can be put, such conduct on the part of the 5th defendant could be treated as conduct which the father "as a decent and respectable man" ought not to have engaged in; and whether the debts of the fish trade were debts "attributable to his failings, follies or caprices". We have no doubt that such debts cannot be said to be attributable either to his failings, follies or caprices, nor do we think that it can be said that his conduct in embarking in such fish trade is conduct of which no decent and respectable man would be guilty. As was put by Mr. Nilkanth on behalf of the 1st defendant if the restriction or the prohibition against embarking in trade occurred in a contract with a large employer of labour other than Government in which the clause was that the servant might not engage in a trade, it cannot be contended that a disregard of such an injunction would taint his trade dealings with immorality or impropriety as between himself and those with whom he traded. We, therefore, affirm the decree and dismiss the appeal with costs.