

(1939) 12 MAD CK 0017
In the Madras High Court

Reddi Krishnan Naidu and Others		APPELLANT
	Vs	
Chintala Somi Naidu and Others		RESPONDENT

Date of Decision : 12-12-1939

Acts Referred:

Citation : AIR 1940 Mad 544 : (1940) ILR (Mad) 815 : (1940) 51 LW 315 : (1940) 1 MLJ 363

Hon'ble Judges : Alfred Henry Lionel Leach, C.J

Bench : Division Bench

Judgement

Alfred Henry Lionel Leach, C.J.—These two appeals arise out of the same suit and they can be disposed of here in one judgment. The

appellants obtained a money decree against the third respondent in the Court of the District Munsif of Parvatipur. The appellants made the third

respondent's sons parties to the suit and they are respondents 1, 2 and 4. The suit was on a promissory note executed by the father alone. The

sons were joined as defendants on the ground that the debt was incurred for family necessities. The District Munsif dismissed the suit, as he was

not satisfied that the promissory note was genuine, but on appeal to the District Judge a decree was passed against the father. In the District Court

the appellants decided not to ask for a decree against the sons who were dismissed from the suit. In due course the appellants instituted execution

proceedings and asked for the attachment and sale of the sons' interests in the family property. The sons objected on the ground that as they had

been dismissed from the suit they could not be held liable for their father's debt. The District Munsif upheld their objection, but on appeal the

Subordinate Judge held that they could be held liable in execution proceedings. The sons then appealed to this Court. The appeal was heard by

King, J., who allowed it, but granted leave to appeal under Clause 15 of the Letters Patent.

2. The Subordinate Judge found that there was no intention on the part of the appellants in allowing the sons to be dismissed from the suit to

exonerate them altogether. King, J., reversed the Subordinate Judge's decision because he considered that the authorities which support the

Subordinate Judge's decision had in effect been overruled by the decision of the Privy Council in *Raja Ram v. Raja Bakhsh Singh* (1938) 1 M.L.J.

41 : ILR 13 Luck. 61 . The appellants contend that the learned Judge has misconceived the effect of this decision. They say that it has not in any

way altered the law as stated in the decisions of this Court.

3. It is not necessary to examine all the judgments of this Court which have a bearing on the question; it is sufficient to refer to the Full Bench

decision in *Periasami Mudaliar v. Seetharama Chettiar* (1903) 14 M.L.J. 84 : ILR 27 Mad. 243 and to *Periaswami v. Vaidhilingam Pillai* (1937)

47 L.W. 60 and *Doraiswami Nadan and Others Vs. Nagasami Naicken and Another*, , which were decided by Division Benches. In *Periasami*

Mudaliar v. Seetharama Chettiar (1903) 14 M.L.J. 84 : ILR 27 Mad. 243 ,Benson, Bhashyam Aiyangar and Russell, JJ., held that, independently

of the debt arising from the original transaction entered into by a father a decree passed against him in respect of the transaction by its own force

creates a debt as against him which his sons are under the Hindu law under an obligation to discharge, unless they can show that the debt is illegal

or immoral. Bhashyam Aiyangar, J., said:

But I can see no reason why a suit could not be brought against the son to recover a debt of record due by the father, which debt the"" father was

under an obligation to discharge, quite independently of the cause of action or the alleged original debt on which the suit had been brought against

him.... The whole of the joint family property in the hands of the son must be held liable to satisfy the debt imposed upon the father by the

judgment, as a solemn debt of record, quite independently of the original cause of action or alleged debt on which the suit against the father had

been brought.

4. In *Periaswami v. Vaidhilingam Pillai* (1937) 47 L.W. 60, Varadachariar and Pandrang Row, JJ., considered a case in which the suit was filed

against the father and his sons, but before judgment was passed the suit was withdrawn as against the sons. The question was whether the sons were liable inasmuch as the debt was a debt binding upon them under the rule of Hindu Law. The learned Judges held that the withdrawal of the suit as against the sons did not exonerate them. The result of the withdrawal was not to bring into operation the rule of *res judicata* embodied in Section 11 of the Code of Civil Procedure, but only to entail the statutory penalty enacted in Order 23, Rule 1, which was that no fresh suit could be instituted against the sons on the same cause of action. Therefore it could not be said that what had happened in the suit amounted to an adjudication that the sons were not liable in respect of the decree debt. *Doraiswami Nadan and Others Vs. Nagasami Naicken and Another*, was decided by *Coutts-Trotter, C.J. and Walsh, J.*, who also held that a decree passed against a father personally after the sons had been exonerated could be executed against the son's interests in the family property in respect of a decree debt passed against the father.

5. The facts in *Raja Ram v. Raja Bakhsh Singh* (1938) 1 M.L.J. 41 : ILR 13 Luck. 61, on which *King, J.*, based his decision were these. After the death of a Hindu the sons and grandsons were made defendants in a suit filed by a creditor of the deceased to recover the amount of the debt from their interest in the family properties. Before judgment the grandsons were dismissed from the suit, but it was sought to realise their interests in the property in execution proceedings. The Privy Council held that they were not liable inasmuch as they had been dismissed from the suit. The question of their liability was directly raised and as they had been dismissed from the suit they could not be made liable under the decree passed in it. That case differs from the case now before us in that there the suit was brought against the grandsons after the death of the grandfather against whom no decree had been obtained. The dismissal of the grandsons from the suit amounted to a decision in their favour, of the question of their liability. That is not the position here. A decree was passed against the father after the sons had been dismissed from the suit, and the passing of the decree gave to the decree-holders a new right, which they could enforce against the sons. We do not consider that *Raja Ram v. Raja Bakhsh*

Singh (1938) 1 M.L.J. 41 : ILR 13 Luck. 61 has overruled the decision of the Full Bench in *Periasami Mudaliar v. Seetharama Chettiar* (1903) 14

M.L.J. 84 : ILR 27 Mad. 243 . In our opinion the decision of the Full Bench remains unaffected and a decree-holder in circumstances like we

have here may proceed to execute the decree against the sons' interests in the family property.

6. The appeals will be allowed with costs in this Court and in the second appeals but the advocate's fee will be allowed only in Appeal No. 97 of

1938 of this Court and in the corresponding second appeal. The result is that the decrees of the Subordinate Judge will be restored.