
(1938) 04 MAD CK 0020
In the Madras High Court

S. Muniyandia Pillai

APPELLANT

Vs

Muthusami Servai and Another

RESPONDENT

Date of Decision : 26-04-1938

Acts Referred:

Citation : (1939) ILR (Mad) 70 : (1938) 48 LW 271 : (1938) 2 MLJ 399

Hon'ble Judges : Madhavan Nair, J

Bench : Division Bench

Judgement

Madhavan Nair, J.—In this case the plaintiff, a subscriber to a chit fund conducted by the first defendant and the father of defendants 2 and

3, sued for the recovery of money subscribed by him to the chit fund. A decree was given in his favour as against the first defendant but the suit

was dismissed as against defendants 2 and 3, the sons of the deceased stakeholder. The decree as against the first defendant was based upon the

Full Bench decision reported in Sesha Aiyar v. Krishna Aiyar (1935) 70 M.L.J. 36 : I.L.R.Mad. 562 (F.B.). In that case it was held that the

stake-holders were personally responsible for the refund of the money to the subscriber and that they in conducting the chit fund committed offence

u/s 294-A of the Indian Penal Code.

2. In this revision petition it is argued that the lower Court should have given a decree against defendants 2 and 3 also. The question whether the

sons of a deceased stake-holder are liable to pay their father's debt out of joint family properties in their hands in a case precisely like the present

was raised in C.R.P. No. 303 of 1936 decided by Horwill, J. The decision is reported in Muthusami Servai and Another Vs. N.K. Mytheen

Pichai Rowther and Another, . The learned Judge held that the sons were not

liable because he was of opinion that the debt was in the nature of an avyavaharika debt, that is, it was founded upon a criminal offence committed by the father. In support of that conclusion he relied upon a decision of this Court in *Muthammal v. Sivakami Ammal* (1925) 21 L.W. 606. In that case it was pointed out that the sons were not liable for the father's debt if the debt of the father arose out of conduct on his part which is utterly repugnant to good morals, or is grossly unjust, or flagrantly dishonest (see judgment of Venkatasubba Rao, J.), at p. 627. I, who was a party to that decision, pointed out that a liability which arose out of the commission of an offence by the father has always been held to be immoral and that such a liability need not be discharged by the sons. Since the liability of the father in the present case arose out of a transaction which was held in *Sesha Aiyar v. Krishna Aiyar* (1935) 70 M.L.J. 36 : ILR Mad. 562 (F.B.) to be illegal we must hold that defendants 2 and 3 are not liable for the debt of their deceased father. In our opinion the present case falls exactly within the decision of Horwill, J., in *Muthusami Servai and Another Vs. N.K. Mytheen Pichai Rowther and Another*, . We may also in this connection refer to a recent decision of the Privy Council in AIR 1934 238 (Privy Council) . In that case the Secretary of a School Committee who was in charge of a fund deposited with the bank was authorised to draw upon it for certain specific purposes connected with the school. After his death the Committee sued the sons to recover from them out of property left them by their father or out of the property of their joint Hindu family an alleged deficiency in the fund. The deficiency amounted to Rs. 42,993 and according to the father's own admission Rs. 30,916 of it was due to drawings by him for purposes other than those authorised. It was held by the Privy Council that the drawings in question were criminal breach of trust within Section 405, Indian Penal Code, and that under Hindu Law the sons to that extent were not liable but that they were liable for the balance of the deficiency as they had not shown that they were not under a pious obligation in respect of it. This decision lends additional support to the conclusion arrived at by Horwill, J., in *Muthusami Servai and Another Vs. N.K. Mytheen Pichai Rowther and Another*, . In our opinion the decision of Horwill, J., is correct and the decree of the lower Court exempting defendants 2 and 3 from liability is right.

3. The Civil Revision Petition is dismissed with costs.