

(1906) 03 MAD CK 0003
In the Madras High Court

Sambanda Pandara Sannadhi	Vs	APPELLANT
T.P. Balagopalakrishna Chetty		RESPONDENT

Date of Decision : 21-03-1906

Acts Referred:

Citation : (1906) 16 MLJ 415

Judgement

1. The ""plaintiff in O.S. No. 56 of 01 sued the Pandara Sannadhi of Dharmapuram Athinam for the recovery of a certain sum of money due on a promissory note executed by him for articles purchased according to the plaintiff ""for the necessary use of the said Athinam"" and he prayed for a decree directing payment ""by the defendant from the funds of his Athinam Mutt."" A razinamah decree was passed which provided for the recovery of the amount decreed ""from the properties of Dharmapuram Athinam Mutt, of which the defendant is trustee.
2. The defendant resigned the office of Pandara Sannadhi in favour of the appellant who has been made a party to the execution proceedings taken by the decree-holder to execute the decree by attachment and sale of the Mutt propertiRs. The appellant raised the contention that the decree cannot be enforced against the Mutt propertiRs. The Subordinate Judge following the decision in Vidyapurna Thirthaswami v. Vidyanidhi Thirthaswami I.L.R(1903) M. 435 held that the Pandara Sannadhi had full control over the income of the Mute properties and that it was not open to him by relinquishing his position to deprive the creditor of his power to recover his debt from the income of the Mutt during the life-time of the Pandara Sannadhi.
3. The District Judge was of opinion that these questions could not be decided in

execution proceedings and that the appellant's only remedy was to set aside the decree by a suit.

4. In *Sudindra v. Buddan* I.L.R(1885) M. 80 it was held by Hutchins and Parker JJ., following the Privy Council decision in *Prosunno Kumari*

Debya v. Golab Chand Baboo (1875) 14 B.L.J. 9 M. 80 that a decree parsed against the trustee of a Mutt is binding on his successor ""upon

whom lies the onus of coming forward and taking steps to set aside a decree, which as it stands is binding upon the Mutt as represented by him,

and that in execution proceedings he cannot, be allowed to dispute the correctness of the decree.

5. The decree which is now sought to be executed WAS clearly passed against the Pandara Sannadhi as the representative of the Mutt and the

decree-holder is, as held in the decision cited, entitled to enforce it against the appellant as the present representative of the Mutt, subject to his

right to set it aside for adequate reasons in a properly framed suit.

6. But it is contended before us that the decree is void because the Pandara Sannadhi did not represent the Mutt in a suit brought upon a pro-note

executed by himself, as it was not open to him to question the binding nature of the transaction, and secondly, the decree was based upon a

razinamah. It is suggested that it was therefore, necessary to mike the sishyas or disciples parties to the suit to make the decree binding on the

Mutt.

7. The sishyas or disciples are not co-owners; nor have they got such interest in the Mutt property as would entitle them to be made defendants in

a suit to recover money or property from a Pandara Sannadhi. In *Sudindra v. Budan* I.L.R(1885) M. 80 the settlement of accounts on which the

suit was brought was made with the defendants who were accordingly precluded from contesting its validity, and yet the decree was held binding

so far as the execution proceedings were concerned. The contention that the Pandara Sannadhi was not the representative by reason of his having

executed the promissory note must therefore be disallowed.

8. Nor can the other contention be supported.. It would be unreasonable to hold that a Pandara Sannadhi is bound to waste Mutt property in

litigation when it is in the interest of the Mutt to enter into a compromise. The decree based on the compromise must, therefore, be held to be

binding in these proceedings.

9. The appeal, therefore, fails and is dismissed with costs.