(1939) 11 MAD CK 0020

In the Madras High Court

S.K. Panikar — APPELLANT

Vs

The Travancore National and Quilon Bank Ltd. — RESPONDENT

Date of Decision : 09-11-1939

Acts Referred:

Citation : (1942) 55 LW 252 : (1942) 1 MLJ 161

Hon'ble Judges : Venkataramana Rao, J

Bench : Division Bench

Judgement

Venkataramana Rao, J.—This is an application for leave to set off the amount standing to the credit of the applicant in the current and savings bank either or survivor account in the name of the applicant and his wife Gowrikutti Amma in the Calcutta Branch of the Travancore National and Quilon Bank, Ltd., against the loan due and payable by the applicant to the bank. The amount due by him to the bank is a sum of Rs. 2,000 and there is a sum Es. 1,100 to his credit in the current and savings bank account of the bank. In his affidavit the applicant alleges that he opened a current and savings bank account about April, 1937 in the Calcutta Branch of the bank in his name and in the name of his wife Gowri Amma on either or survivor account and deposited some amount, that the money deposited belonged to him, that under his instructions the Chief Auditor, B. N. Railway, Calcutta was forwarding his salary every month to be credited to the said account and that the amount now standing to his credit in the said account represented the balance of his salary left after his withdrawals from the account. He further alleges that for convenience of operation of the account and to facilitate the drawing of the amount in the said account by his wife in the event of her surviving him, he joined her name also in the said account and made it an either or survivor account. It appears from the accounts of the bank that the applicant took a loan of Rs. 3,000 in November, 1937 and that he repaid towards that loan a sum of Rs. 1,000 in February, 1938 by setting off a sum of Rs. 1,000 from his current and savings bank account. The applicant had also given security of 200 shares of Hindustan Investment Trust Limited, which are now with the bank. There is an affidavit by Gowri Amma the wife of the applicant that the money standing in the current and savings bank account represents her husband''s salary. These facts are not Controverted by the Official Liquidators but the only ground .taken by them is that the money sought to be set off is under a joint account whereas the money due and owing by the applicant is under a separate account, and therefore no set off should be allowed. It seems to me that this is a clear case of set off. Under the law prevailing in India a deposit by a husband in the name of himself and his wife payable to either or survivor in the absence of evidence of the contrary must be presumed to belong to the husband. In Guran Ditto, v. Bam Ditta (1928) 55 M.L.J. 651 : L.R. 55 IndAp 235 : ILR 55 Cal. 944. (P.C) this question pointedly arose as to the ownership of such moneys with reference, to a similar deposit. One Teku Ram invested a sum* of money in the name of himself and his wife payable to either or survivor. On the death of Teku Ram the question arose who was entitled to the money. Their Lordships of the Privy Council had no hesitation in holding that the money was the property of Teku Ram and remained at his disposal at the date of his death. During; the course of the judgment their Lordships made the following observations at page 950:

The general principle of equity, applicable both in this country and in India, is that in the case of a voluntary conveyance of property by a grantor, without any declaration of trust, there is a resulting trust in favour of the grantor, unless it can be proved that an actual gift was intended.. An exception has, however, been made in English law, and a gift to a wife is presumed, where money belonging to the husband is deposited at a bank in the name of a wife, on, where a deposit is made, in the joint names of both husband and wife.

This exception has not been admitted in Indian law under the different conditions which attached to family life, and where the social relationships are of an essentially different character.

Prima facie therefore the money in the current and savings bank account is the property of the applicant. But we have got the undisputed fact in this case that the said sum represents the accumulation of the salary of the applicant. Under the law of set off, which is applicable in the "winding up of a company which is the law prevailing in the bankruptcy of a debtor where there are two amounts, one in the account of A and the other in the account of A and B, if it is shown that the latter account though standing in the name of A and B was really in trust for A, the amount due under one account can be set off against the amount due under another account. James, L.J., in Ex parte Morier, In re Willis Percival & Co (1879) 12 Ch.D. 491. observed:

Where the money is due in autre droit the only exception which equity has introduced into the principle of a legal set off is when the money is really and truly the property of one man in the name of another.

This exception clearly applies to this case. I therefore allow the set off claimed. The applicant will have the costs of the Judge''s summons and Rs. 35 as and for his counsel''s fee and the Official Liquidators will have Rs. 35 as and for their costs, the costs to come out of the assets of the bank. The applicant is given leave to pay the balance due after the set off and on receipt of the same, the Official Liquidators are directed to deliver the 200 shares deposited as security to the applicant.

