
(1962) 11 AP CK 0009

In the Andhra Pradesh High Court

Case No : Appeal No's. 349 and 350 of 1959

Sri Venkateswara and Channakeswaraswami Temple Upputur
and Another

APPELLANT

Vs

Bendapudi Radhakrishna and Others

RESPONDENT

Date of Decision : 05-11-1962

Acts Referred:

Citation : AIR 1963 AP 425

Hon'ble Judges : P. Chandra Reddy, C.J.;Narasimham, J;Gopal Rao Ekbote, J

Bench : Full Bench

Advocate : R. Venugopala Reddy, for the Appellant; P. Ramachandra Reddy, as amicus curiae, T.V.S. Das and S.L. Chennakesavarao, for the Respondent

Final Decision : Allowed

Judgement

Chandra Reddy, C.J.—These two appeals are directed against the judgment of the Subordinate Judge, Bapatla, dismissing O. S. Nos. 56 and 57 of 1957.

2. The two suits were brought by Sri Venkateswara and Chennakeswara Swami Temples, Upputur, represented by its Executive Officer, for recovering Rs. 8255-74 and Rs. 33,829-5-0 respectively, being the amounts collected by the 1st defendant. The 1st defendant was one of the hereditary trustees of the above-mentioned institution. He was elected as managing trustee on 1-6-1947. In discharge of his duties as managing trustee, he collected the aforesaid sums between 15-3-1951 and 30-9-1955, when he ceased to be the managing trustee, the first being the income from general endowments and the second from specific endowments. As he failed to account for the sums received by him in his capacity as managing trustee, these two actions were laid against him. His minor sons and his undivided brother were impleaded as defendants 2 to 5 and 6 respectively. Subsequently, the 6th defendant was given up and the 1st defendant remained ex parte. Defendants 2 to 5 opposed these suits. Their main defence was that, as they were not benefited by these amounts and as the 1st defendant might have used them for his own illegal purposes, they were not

Cable to discharge the debt from out of the family properties.

3. The trial Court dismissed the suits as against defendants 2 to 5 holding that, as the 1st defendant was not authorised to keep cash in his hands and as the retention of the amounts in his hands was in contravention of the directions issued to him, the debt was tainted with immorality and consequently the minors were not liable for the debt in question. It, however, granted a decree in favour of the plaintiffs as against the 1st defendant. The institutions aggrieved by these decrees carried two appeals to this Court. When the appeals came on for hearing before a Division Bench consisting of Umamaheswaram and Ekbote JJ., they directed the matter to be placed before a Full Bench as they thought that these appeals raise an important and difficult Question of law in regard to the liability of the sons for the amounts misappropriated by their father and that there should be an authoritative decision of this Court. That is how these appeals are now before the Full Bench.

4. It is urged by the learned counsel for the appellants that the view of the Subordinate Judge that the principle of pious obligation would not come into play merely because the money was retained by the father instead of depositing it into the Bank and subsequently misappropriated is unsustainable and that the rule stated in Alapati Anandaram and Others Vs. The President, Co-operative Credit Society and Others, , governs the instant case.

5. The counsel for the respondents seeks to support the judgment of the trial Court on the basis of Toshanpal Singh v. District Judge, Agra AIR 1934 238 (Privy Council) : Alapati Anandaram and Others Vs. The President, Co-operative Credit Society and Others, is opposed to the doctrine of AIR 1934 238 (Privy Council) The question that calls for decision in these appeals is whether those appeals fell within the scope of the rationes of the judgment in Alapati Anandaram and Others Vs. The President, Co-operative Credit Society and Others, or in AIR 1934 238 (Privy Council) and if the earlier ruling is applicable to it, whether it is in conflict with AIR 1934 238 (Privy Council) and as such requires re-consideration.

6. It is not clear from the order of reference whether the learned Judges doubted the correctness of Alapati Anandaram and Others Vs. The President, Co-operative Credit Society and Others, Be that as it may we will proceed to view the question from both the angles.

7. Under Hindu Law, a son is under a pious obligation to discharge his father's debts, out of his ancestral property although he has not received any benefit out of the debts, provided the debts are not "Avyavaharika". The basis of this obligation is the belief of the Smriti writers that a son was bound to pay his father's debts to save him from punishment from a future state for the non-payment of his debts. In the opinion of these Rishis, a duty was cast upon every person to pay off his debts, that it was sinful to remain in debt and that if he should die indebted, his salvation would be endangered and so the sons were under a duty to relieve him from the sin by discharging those debts. But they did

not make this an unqualified duty. The sons would be exonerated if the debt was one (SIC) with immorality or illegality. There was no unanimity of judicial opinion as to the precise connotation of the term "Avyavaharika". But most of the decided cases accepted the translation of this term by Colebrook as repugnant to good morals as it was felt that this translation is in consonance with the significance of the terms as used in the Smrithi texts and represented its correct meaning.

The basic principles in the light of which the Court has to examine whether the debt of a Hindu father was repugnant to good morals are well settled and it is needless to examine the case-law on the subject in detail. It is sufficient to say for the purpose of this inquiry that it is now well settled that a son is not liable for his father's debt arising out of criminal acts. When could a father's debt be said to arise out of a criminal act which excludes the sons' liability, is the problem that poses itself in this enquiry. Could it be predicated that the debt would bear the stamp of immorality, simply because it involves an element of criminality irrespective of the nature of the original debt? Would it affect the liability of the son, if the debt had a legal origin, but the father was subsequently guilty of misappropriation? We need not pause to consider whether failure to account for the monies that came into the hands of a father either as trustee or as agent would in every case constitute misappropriation or a breach of trust punishable under the Indian Penal Code or whether it only remains a civil liability.

8. We will deal with the question that has presented itself before us in this enquiry with reference to some of the decided cases.

9. We will first take up *Mc Dowell and Co. v. Raghava Chetty* ILR Mad 71, which is regarded as lending countenance to the theory that the rule of pious obligation is inapplicable to a case where a father became liable for money received by him and subsequently misappropriated or committed a breach of trust. There, a Hindu father occupied the position of a cashier of the plaintiff-company. He took for his own purposes money out of the cash chest of the employer. It was with regard to these amounts that the two mortgages executed by the cashier for himself and on behalf of his minor sons were sought to be enforced by *Mc Dowell and Co.*, against the mortgagors. One of the answers of the sons, who were also impleaded in the suit, was that the debt under one of the mortgages was not binding on them as it was tainted with immorality and, therefore, not chargeable upon their share of the mortgage property.

In dealing with this defence, the Bench consisting of Chief Justice White and Subrahmanya Ayyar, J., observed that every one of the items making up the total of the claims related to the company's moneys taken by the 1st defendant and mis-appropriated under circumstances which constituted the taking itself a criminal offence. If the facts are closely scrutinised it would appear that the taking itself was unauthorised and as such it constituted an offence. This could be easily gathered from the remarks occurring at page 75 of the report "under circumstances which" constituted the taking itself a criminal offence" It is for that

reason that the resultant debt was held to fall within the meaning of an avyavaharika debt. There is nothing in the report which would suggest that the nature of the debt would have been the same even if the money was obtained lawfully but subsequently misappropriated.

10. It is urged for the respondents that this effect could be strictly attributed to the decision having regard to the fact that the learned judges referred with approval to Mahabir Prasad v. Basdeo Singh ILR All 234. According to them this factor is indicative of the view of the learned Judges that the debt would fall outside the rule if the father had made himself amenable to criminal law irrespective of when the criminal liability arose. We are not persuaded that the reference to ILR All 234 in ILR Mad 71 has that effect. ILR All 234 does not contain a complete statement of facts which formed basis of the conclusion of the learned Judges. All that could be seen from the report is that one of the questions that posed itself before the learned Judges was whether the share of a son in the property could be brought to sale in execution of a decree of a civil Court against his father on account of the latter's criminal embezzlement. In answering that question, they observed :

"The embezzlement, which gave rise to all the litigation in the criminal and civil courts was committed by the father in 1875 and he was convicted and sentenced to imprisonment for two years."

It cannot, therefore, be postulated that in that case the father obtained the money lawfully and subsequently embezzled it. Some light is thrown on the subject by the following excerpts from the judgment at page 237 :

"The Maxim, In Jure, Non Remota Causa, Sed Proxima Spectatur does not, however, apply to any transaction originally founded in fraud and much less in Proved crime, for the law will look to the corrupt beginning and consider it as one entire act."

11. This appears to be a case, which belongs to the same category as ILR Mad 71. Further, in neither of the two cases is the distinction between the obtaining of money lawfully and embezzling it subsequently and the taking of the money itself amounting to an offence kept in view. We do not think that these two cases establish the position that a debt which was not immoral at the inception becomes one by reason of the subsequent criminal conduct of the father.

12. The nature of the debt incurred by a father who collected the income as trustee and subsequently mis-appropriated was dealt with in some of the rulings of the Madras High Court.

13. In Venugopal Naidu v. Ramandhan Chetty ILR Mad 458 : AIR 1914 Mad 654 a Hindu father who as a member of the Devasthanam committee unauthorisedly spent the funds of the temple on litigation and was afterwards directed by the Court to pay the costs out of his own private funds and not out of the devastanam funds. The Question for determination was whether this constituted

a debt, which his sons and grand-sons were under pious obligation to discharge and it was answered in the affirmative. Dealing with the character of the debt, Sadasiva Ayyar J., who spoke for the Court, said:

"The third defendant clearly owed a legally valid debt to the devastanam even it he had really mis-appropriated the moneys which he had taken from the devasthanam funds (instead of having merely sanctioned their expenditure bona fide on inappropriate objects) and his descendants" are bound to repay the debt according to the decision in *Natesayyan v. Ponnuswami* ILR Mad 99, where it is observed "upon any intelligible principle of morality, a debt due by the father by reason of his having retained for himself money which he was bound to pay to another would be a debt of the most sacred obligation and for the non-discharge of which, punishment in a future state might be expected to be inflicted, if any".

14. This principle is also illustrated by *Venkatakrishnayya v. Kundurthi Byragi* 50 MLJ 353 : AIR 192G Mad 535. What was laid down there was that under Hindu law a person was liable to render an account of the amounts collected by his father and grand-father in their capacity as trustees but subsequently mis-appropriated by them and that the circumstances that the money so collected was embezzled by them would not affect his liability. The learned Judges followed *Sanyasayya v. Muthamma* 35 MLJ 661 : AIR 1919 Mad 943. This doctrine applies with full vigour to the case on hand.

15. The principle imbedded in *Tirumalayappa Moodaliar v. Veerabudra* 19 MLJ 759 is in accordance with that view:

16. There is an elaborate and a very instructive discussion on this subject in *Ramasubramania Pillay v. Sivakami Ammal* 21 Mad LW 606 : AIR 192S Mad 841. It is interesting to note there that ILR Mad 71 and ILR All 234 were assigned to the category of cases in which the moneys were taken and mis-appropriated under circumstances which constituted the taking itself a criminal offence. The distinction between the two types of cases was forcibly brought out by Venkata Subba Rao, J., who stated the rule thus:

"If the debt is in its inception not immoral, subsequent dishonesty of the father does not exempt the son.

It is not every impropriety or every lapse from right conduct that stamps the debt as immoral. The son can claim immunity only, when the father's conduct is utterly repugnant to good morals and is grossly unjust or flagrantly dishonest."

Madhavan Nair J., who was the other judge of the Bench also expressed himself on this aspect of the matter in similar terms.

17. The first part of the rule clearly establishes that a son could not be exonerated if the debt incurred by the father was not immoral if the money was not wrongfully taken by him, though subsequently it was misappropriated or there was a breach of trust.

18. It is this principle that is enunciated by Mookerjee and Carnduff JJ. of the Calcutta High Court in *Chakouri Mahton v. Ganga Proshad* ILR Cal 862. What was stated there was that where the taking of money itself was not a criminal offence, a subsequent misappropriation by the father would not discharge the son from his liability to satisfy that debt. But the position would be different if the money was obtained by the father and misappropriated under circumstances which would render the taking itself a criminal offence. This question was discussed at length by Mookerjee J., who gave the opinion of the Division Bench.

19. To a like effect is the decision in *Hanmant Kashinath Joshi Vs. Ganesh Annaji Pujari*, The learned Judges adopted the reasoning of Mookerjee J., in ILR Cal 862.

20. What emerges from these rulings is that a son could claim immunity only where the debt in its origin was immoral by reason of the money having been obtained by the commission of an offence, but not where the father came by the money lawfully but subsequently misappropriated it. It is only in the former case that the debt answers the description of an *avyavaharika* debt. If originally the taking was not immoral i.e. if it did not have a corrupt beginning or founded upon fraud, it could not be characterised as an *avyavaharika* debt and the son could not be exempted from satisfying that debt. The supervening event namely, the misappropriation later on would not change the nature of the debt. The vices should be inherent in the debt itself.

21. We have now to turn to ILR All 548 : AIR 1934 PC 238 much relied on for the respondents as over-ruling the decisions adverted to above. In this case, the Secretary of a School Committee was in charge of a fund deposited at a Bank and the Secretary could draw upon it only for specific purposes connected with the school. He operated upon the account for his own purposes and thereby committed breach of trust. After his death, the Committee sued his sons to recover from them the amount of the deficiency in the fund. It was held by the Judicial Committee of the Privy Council that as the father had committed a crime, the sons were not liable for the resultant loss. It is apparent from the report that the authority of the Secretary was to draw but money only for the purpose of the school and he was not authorised to take any part of the fund to utilise it for his private purposes. So, [he withdrawal of the money out of the fund for his own ends was illegal and amounted to an offence. It is in that setting that the Judicial Committee held that the liability sought to be fastened on the sons was tarnished with immorality. It does not appear that their Lordships intended to lay down that, irrespective of the nature of the debt at its inception it would be an immoral or illegal debt, if there was an element of criminality in the conduct of the father. Lord Blanesburgh referred to the rival contentions of the parties in the following words but left the question posed in the arguments open :

"A father, it was said, who accepts a sum of money to be held for another, or to be applied in a certain way, comes at once under a liability *Ex Contractu* or *Quasi Ex Contractu*, although there may be no right of action against him until he has been guilty of some breach of duty and this right of action may be enforced

against his sons, although it" appears that ultimately the father has criminally made away with the fund. This contention was supported by elaborate citation of authority. On the other hand, it was contended by the appellants, in an argument supported also by a great array of cases, that there were debts of a father with a stigma far short of criminality attached, for which his sons are not liable."

The former contention was characterised as "a difficult and doubtful question of law" which did not call for a decision in that case.

22. This interpretation of ours as to the scope of AIR 1934 238 (Privy Council) draws confirmation from the observations of the Supreme Court in S.M. Jakati and Another Vs. S.M. Borkar and Others, . Said their Lordships:

"In AIR 1934 238 (Privy Council) the Judicial Committee held that drawings of monies for unauthorised purposes, which amounted to criminal breach of trust u/s 405 of the Indian Penal Code, were not binding on the sons but a civil debt arising on account of the receipt of monies" by the father which were not accounted for could not be termed *avyavaharika*."

It may also be noticed that the argument advanced on behalf of the School Committee cannot be said to embody exactly the controversy that arises in a case like the present one. We are, therefore, unable to agree that this has affected the correctness of the rulings of the Madras, Bombay and Calcutta High Courts cited above.

23. We may now come to ILR (1941) Mad 27 : Alapati Anandaramaiah and Others Vs. The President, Co-operative Credit Society and Others, , assailed on behalf the respondents. In this case, a Hindu father governed by the Mitakshara School of law was employed as the Secretary of a Society and he collected debts due to the Society. Out of the collections he misappropriated large sums of money, for a large portion of which he executed a mortgage and for the other a letter acknowledging his liability. In a suit brought by the sons through their maternal grandfather for partition of the family properties and for setting aside certain alienations made by the father, the question had to be considered whether the debt created in that case was tainted with illegality and immorality and the Division Bench consisting of Chief Justice Leach and Krishnaswamy Ayyangar, J., answered it against the sons. The learned Judges referred to a number of previous decisions bearing on the subject, among them being ILR Mad 99 and ILR Mad 71. They distinguished ILR 27 Mad 71 in the manner we have done above. They relied upon the following observations of Venkata Subba Rao, J., in Palanivel Ramasubramania Pillay and Another, by mother Muthammal Vs. Sivakami Ammal, , in support of their conclusion.

"It cannot be gainsaid that there is absolute want of harmony, so far as the decisions were made to rest upon particular grounds. But if the facts of the cases are examined, the conflict is only apparent and the true principle appears to be that the sons are not liable, where the moneys were originally obtained by the father by the commission of an offence; the son's liability is on the other hand

recognised where in its origin, the debt was not immoral, but there was a supervening dishonest act of the father."

They also examined the scope of AIR 1934 238 (Privy Council) and said that its operation did not extend to cases where the taking of the money itself did not constitute an offence and that it left the decisions as in 21 Mad L W 606 : Palanivel Ramasubramania Pillay and Another, by mother Muthammal Vs. Sivakami Ammal, unaffected.

24. There is a wealth of authority in support of this decision. Undoubtedly, it is in conformity with the rulings of the Madras, Bombay and Calcutta High Courts noticed above. We are of opinion that these decisions make the nearest approach to the concept of an avyavaharika debt as interpreted in judicial pronouncements. It is difficult to posit that the principle embodied in ILR Mad 71 is inconsistent with the dicta in AIR 1934 238 (Privy Council)

25. We may state here that Palanivel Ramasubramania Pillay and Another, by mother Muthammal Vs. Sivakami Ammal, , which formed the main basis of this decision, have been approved by the Privy Council in AIR 1943 142 (Privy Council) . What happened in that case was this. Under a decree of a Court in a partition suit, a Hindu father had to hand over to his brother in time a promissory note assigned to the latter for his share by the decree. As the father did not carry out this term of the decree, he became responsible for the amount payable under the promissory note and a decree was passed against him. In a suit by the affected person, judgment was entered against him for the loss and damage caused by the wrongful act of the father. When ultimately the matter came up in appeal before the Judicial Committee at the instance of the decree-holder, the Judicial Committee decided the issue bearing on the liability of the sons against them as in their Lordships' opinion, the sons were liable, since the debt at its inception was a just and true one and that the subsequent dishonest conduct of the father which led to the suit and the decree did not affect the nature of the debt.

Their Lordships said, inter alia that an examination of the nature and the character of the debt should be made with reference to the time when it originated i.e., when the liability was first incurred and if at its inception, it was not tainted with immorality or illegality, it must be hold to be binding on the sons, the subsequent dishonest conduct of the father in respect of such liability not taking away the son's liability in respect of it.

25. It is worthy of note that their Lordships gave approval to the principle in Rule 1 in Palanivel Ramasubramania Pillay and Another, by mother Muthammal Vs. Sivakami Ammal, , already extracted, which in the opinion of their Lordships was amply borne out by the numerous authorities which they have examined.

26a. After this authoritative pronouncement, giving recognition to the distinction drawn above, it is futile to contend that a debt is an avyavaharika debt though it had a lawful origin merely because there is an element of criminality in the

subsequent conduct of the father. Whatever doubts there might have existed prior to AIR 1943 142 (Privy Council) they have been solved by this ruling.

27. This view of ours gains further support from a judgment of the East Punjab High Court in *Mulchand v. Small Town Committee, Dharamkot* AIR 1949 E P 177. There, the father received money in discharge of his duties as the treasurer of the Small Town Committee and later on he spent it upon himself. It was laid down by a Division Bench of the East Punjab High Court that, as the father had received the money in his capacity as treasurer, and as the debt due from him could not be said to have been tainted with immorality or illegality at its origin, a civil liability came into being as soon as the money was obtained and it continued to subsist as long as the debt itself subsisted. They added that the fact that the money was later misappropriated was a wholly irrelevant circumstance and if the debt was not immoral originally, it was the duty of the sons to repay it.

28. In the same strain of thought is *Sita Ram and Another Vs. Tarachand*, . In both the cases *Alapati Anandarao and Others Vs. The President, Co-operative Credit Society and Others*, , was called in aid. There is, therefore, no warrant for questioning the correctness of *Alapati Anandarao and Others Vs. The President, Co-operative Credit Society and Others*, . We must hold that it embodies correct law and it is not inconsistent with AIR 1934 238 (Privy Council) Our attention was not drawn to any case which struck a note different from that in *Alapati Anandarao and Others Vs. The President, Co-operative Credit Society and Others*, . That ruling receives confirmation from a long course of decisions and is in keeping with the spirit underlying the doctrine of pious obligation. Therefore, the opinion expressed there still holds good as statements of law.

29. Applying the test propounded above, there can be little doubt that, in this case, at its commencement the debt was *vyavaharika* in that the father, the 1st defendant, was not only entitled to collect the income from the endowments out was bound to do it in his capacity as managing trustee. the fact that subsequently he failed to account for these monies or misappropriated them, would not alter the character of the original debt and the sons are obliged to discharge the debt. We are not called upon to consider whether the father had expended the money on his family and the minors were benefited by this. It is true that the evidence is only one way in this case, viz., that these monies were spent for the benefit of the family. The Executive Officer as P. W. 1 deposed to this fact and there is no evidence contra. However, that is quite irrelevant in the context of this enquiry.

30. On the above discussion it follows that the sons, i.e., the respondents have not succeeded in showing that the debt is vitiated by immorality or illegality which alone would enable them to escape the liability. On the other hand, it is firmly established that the debt had a lawful origin and that the criminality consisting in the misappropriation was a subsequent event. That being so, the debt would not be converted into an *avyavaharika* debt. The non-compliance with the direction of the authority concerned to deposit "the collections exceeding a

particular amount would not have the effect of stamping that debt with immorality or illegality. In this situation, the plaintiffs are entitled to a decree and the Subordinate Judge erred in dismissing the suits.

31. In the result, we accept the appeals and decree the suits as prayed for, i.e., there will be a decree against defendants 2 to 5 also. The decree against the sons will be executed as against their ancestral properties. The respondents will pay the costs of the appellant only in A. S. 350 of 1959.

32. We are thankful to Sri P. Ramachandra Reddy, for assisting us as Amicus Curiae on behalf of the respondents.