

(1924) 02 MAD CK 0026
In the Madras High Court

Taduri Ramachandra Jagannatharao and Others	APPELLANT
Vs	
Vadrevu Viswesam	RESPONDENT

Date of Decision : 11-02-1924

Acts Referred:

Citation : AIR 1924 Mad 682 : (1924) 19 LW 691 : (1924) 46 MLJ 590

Hon'ble Judges : Ramesam, J; Jackson, J

Bench : Full Bench

Judgement

Ramesam, J.—Suit by the plaintiff to recover (1) a sum of Rs. 2,500 deposited with 1st defendant on 6th July 1917 and (2) a sum of Rs.

350 payable to plaintiff for money paid for 1st defendant. The defendants 2 to 5 are the sons of 1st defendant who formed with him, members of a

joint family up to 1918. In that year a suit was filed by the present 2nd defendant against his father and brothers for partition. No written statement

was filed and the suit was compromised and a decree was passed in terms of the compromise on 23-1-1920. Under the compromise, provision

was made for paying off most of the debts contracted by the 1st defendant but not the suit debt. No specific properties were allotted to the 1st

defendant and it was arranged that a maintenance of Rs. 30 should be paid to him every month. The present suit was filed on 6-7-1920 and the

defendants 2 to 5 are sought to be made liable with reference to the shares in their hands of what had been prior to 1920, joint family property.

The defendants denied the genuineness of the debts. The District Judge found that the debts were true. He had doubts about the bona fides of the

partition, but on the ground that under the compromise it was agreed that all the debts of the 1st defendant were agreed to be paid by all the

defendants, decreed the suit. All the defendants appealed. The 1st defendant died during the pendency of the appeal. With the construction of the

terms of the compromise by the District Judge, we are not able to agree.

2. The other appellants do not question the correctness of the finding that the debts are true. Nor do they say that the debts are illegal or immoral.

They contend that the sons are not liable for the father's debt (not charged on the property) after partition and rely on Karri Venkatareddi v.

Chelluri Satyanarayanamurthi (1920) 40 MLJ 473 following Vinjanampati Peda Venkanna and Another Vs. Vadlamannati Sreenivasa

Deekshatulu, . The respondent replies that the partition is not bona fide within the meaning of the exception recognised in these cases and if the

partition is held bona fide, he contends that Karri Venkata Reddi v. Chelluri Satyanarayanamurthi (1920) 40 MLJ 473 is incorrectly decided and

as to Vinjanampati Peda Venkanna and Another Vs. Vadlamannati Sreenivasa Deekshatulu, while conceding that the actual decision is correct, in

so far as it rests on any ground other than the ground that the pronote in that case was renewed by the father after partition, such ground is not

correctly decided.

3. We are of opinion that the partition by the decree of 1920 was bona fide in the sense that the intention was to really divide the status of the

parties; it is probably also bona fide though the matter has not been fully gone into, in the sense that there has been no unequal allotment of

properties if we regard all the debts as debts of 1st defendants only i. e., that his share, minus all the debts would have been much less than what

he actually got viz., an annuity of Rs. 360 and we come to this conclusion in spite of the fact that there has been no division by metes and bounds

and the decision in Appa v. Ranga ILR (1882) Mad 71 is doubtful, if it meant to decide that the family continues joint in cases where there is a

relinquishment by the father subject to a maintenance. It is not bona fide only in the sense, that provision was not made for all the debts of 1st

defendant not illegal and immoral (Ghose's Hindu Law Vol. 1 page 438) out of the whole joint family properties from which they would have been

recoverable if there had been no partition and debts like the plaintiffs will be defeated if it is held that the defendants 2 to 5 are not liable. As it is

doubtful whether the exception mentioned in the cases uses the expression "

bona fide " in this sense, we had to consider the question of the correctness of the decisions relied on.

4. It may be that, under the primitive Hindu Law, a son is under a pious duty to discharge his father's debts irrespective of the devolution, on him,

of any kind of property. But the decisions have established the principle that a son is not liable unless the self-acquired property of the father or

property which had been joint between them has devolved upon the son. For the purposes of this case, it is not necessary to go further behind the

case of *Girdharee Lal v. Kantoo Lal* (1874) 1 IA 321, their Lordships quote from Knight Bruce L. J. in *Hanuman Prasad Panday v. Mussumat*

Baboe (1856) 6 MIA 201 ""Unless the debt was of such a nature that it was not the duty of the son to pay it, the discharge of it even though it

affected ancestral estate, would still be an act of pious duty in the son. By the Hindu Law the freedom of the son from the obligation to "discharge

the father's debt has respect to the nature of the debt and not to the nature of the estate, whether ancestral or acquired by the creator of the debt

and say "" That is an authority to show that ancestral property which descends to a father under the Mitakshara law is not exempted from liability to

pay his debts because a son is born to him. It would be a pious duty on the part of the son to pay his father's debts, and it being the pious duty of

the son to pay his father's debts the ancestral property, in which the son as the son of his father acquired an interest by birth, is liable to the father's

debts."" At page 334, effect was given to these observations, in *Muddun Thakur*'s case in favour of a creditor in execution. While the Calcutta High

Court gave full effect in a case from Bengal in *Suraj Bansi Koer v. Sheo Persad Singh* ILR (1879) C 148 the Madras High Court at first did not,

on the ground that the decision in 1 I. A. 321 cannot apply to Madras where a member of a joint family has a right to alienate his share (unlike

Bengal) and there is no need for the equitable right, recognised in favour of the executing creditor in 1 I. A. 321. The creditor carried the case to

the Privy Council (*Muttayan v. Zamindar of Sivagiri* ILR (1882) M 1. Meanwhile a Full Bench of the Madras High Court in *Ponnappa Pillai v.*

Pappu Iyengar ILR (1881) M 1 (*Muthuswami Iyer, J.* who decided the earlier case and *Innes J.* dissenting) held that the decision in 1 I.A. 321

applied to Madras equally. The Privy Council in *Muttayan v. Zamindar of Sivagiri*

ILR (1882) M 1 while deciding the case on another point, pointed out that there was no ground for not applying the decision in 1 I. A. 321 to Madras. In Ramaswami Nadan v. Ulaganatha Goundan ILR (1898) M 49 : 8 MLJ 312 a Full Bench held that the liability of the father and son was co-extensive and the cause of action against the son arose simultaneously with that against the father though it must be added that the son cannot be sued alone during the father's life. Periaswami Mudaliar v. Seetharama Chettiar ILR (1903) M 243 : 14 MLJ 84. In Krishnaswami Konan v. Ramaswami Iyer ILR (1899) M 519 : 9 MLJ 127 the question arose whether in Execution of a decree obtained against the father alone, the share of the son in the joint family property allotted to him in a partition can be seized in execution. The District Judge (afterwards Miller, J.) held "" when the separation is before the suit as in this case, I think the creditor is bound to make parties all those whose interests he wishes to bind by his decree. The property is, from the date of separation, the son's property, in which the father has no interest, and though the son may be liable to pay the debt, his liability must be enforced in a suit against himself."" Incidentally it may be observed that the son's share, even after partition may and is spoken of in this and other cases as ancestral property and even joint property (in the sense that it represents what had been joint property). It is indeed ancestral property in the hands of the son as against his own sons. The High Court said "" The principle upon which the son cannot object to ancestral property being seized in execution for an unsecured personal debt of the father is that the father, under the Hindu Law is entitled to sell on account of such debt the whole of the ancestral estate. This necessarily implies that at the time the property is seized, it remains the undivided estate of the father and son . . . Ergo, property taken by the son in partition cannot be seized on Account of such unsecured personal debt of the father, even though the debt had been incurred before the partition. Of course if the partition had been made with a view to defraud or delay creditors it would be otherwise, but no such case is made out here "". This is the first case which considered the effect of a partition.

5. The whole decision and the exception in case of a mala fide partition relate to the seizure in execution of a decree to which the son was not a party. In Ramachandra Padayachi v. Konday-ya Chetty ILR (1901) M 555, the

sons were parties to the suit and it was held (Bhashyam Aiyangar, J. being one of the Judges) that the son was liable to the extent of the family property which had come to him under the partition. Krishnaswami Konan v. Rama-swami Iyer ILR (1899) M 519 : 9 MLJ 127 was thus distinguished, at page 557. "" In that case the suit was brought after partition against the father alone and the point decided was that property taken by a son under a partition effected before the suit could not be seized in execution of a decree obtained against the father only in such suit. The case turned on the plaintiff's rights in execution not as here on the question whether the plaintiff is entitled to Judgment as against the son. "" The next case is Kameswaramma v. Venkatasubba Rao ILR (1914) M 1120 (Wallis, C. J. and Oldfield, J.). In my opinion the reasoning in this case is conclusive against the appellants. The learned Judges say: ""I think it is also clear that plaintiff as a Hindu son is liable for the debt to the extent of the joint family property which came to his hands at partition [Ramachandra Padayachi v. Kondayya Chetty ILR (1901) M 555]."" They quote the sentence I already quoted from Krishnaswami Konan v. Ramaswami Aiyar (1899) ILR 22 M 519 : 19 MLJ 127 and say "" That necessarily implies that at the time the property is attached, it remains the undivided property of the father and son. The same view has been taken under very similar circumstances (Miller and Krishnaswami Aiyar, JJ.) in Lakshmi Chettiar v. Govindarajulu Naidu (1910) 8 MLT 349, see also Rathna Naidu v. Aiyana Chariar (1890) 18 MLJ 599... At the date of the execution the property now in question had ceased to be joint family property and the cases referred to on the other side are cases in which the property remained joint and so subject to alienation by the father in satisfaction of the debt."" Incidentally it may be mentioned that the case in Rathna Naidu v. Aiyana Chariar (1890) 18 MLJ 599 is one where the father mortgaged his son's share after partition. Obviously he has no such power and the case cannot help the point under discussion. Now comes the case in Peda Venkanna v. Sreenhasa Deekshathulu ILR (1917) M 136. The point elaborately argued in that case and also elaborately discussed is whether Sahn Ram's case 44 IA 126. (1890) 18 MLJ 599 effected any change in the law relating to the son's liability a point which, after giving rise to Full Bench decisions in this Court, is set at rest by

Lord Dunedin's Judgment in *Raja Brij Narain Rai v. Mangla Prasad Rai* (1924) 46 MLJ 23 (a Judgment of a Full Board of the Privy Council);

while deciding that it did not, Wallis, C. J. said "" This Court has held in a series of cases that as the effect of partition is to put an end to the father's

right to sell the son's share for an antecedent debt it also puts an end to the creditor's right to bring the son's share to sale during his lifetime at any

rate when the partition has not been effected to defeat and delay creditors: *Krishnaswami Konan v. Ramaswami Iyer* ILR (1899) M 519 : 1899 9

MLJ 127, *Kameswaramma v. Venkatasubba Rao* ILR (1914) M 1120 "" Having regard to the expression "" to bring the son's share to sale and to

the fact that *Kameswaramma v. Venkatasubba Rao* ILR (1914) M 1120 was cited in support of his Lordship's proposition and without any

qualification or disapproval, it is impossible to say, solely because, lower down the page His Lordship used the expression "" to say nothing of the

further ground, etc., "" that His Lordship impliedly intended to over-rule his own opinion in *Kameswaramma v. Venkatasubba Rao* ILR (1914) M

1120 following *Ramachandra Padayachi v. Kondayya Chetty* ILR (1901) M 555. *Kumaraswami Sastri*, J. begins by saying he agrees with the

Judgment of the Chief Justice on the narrower ground "" that a son is not after partition liable to be proceeded against in respect of a personal debt

incurred by the father before partition. "" If "" proceeded against"" meant ""proceeded against in execution"" there is no difficulty in accepting the

statement but if it meant, as it was intended to mean, "" proceeded against in suit"" it is not justified, I say with great deference to my learned brother,

by Wallis, C. J. 's expression "" to say nothing of the further ground "" and by imputing to it a significance inconsistent with the earlier statement of

the law following *Kameswaramma v. Venkatasubba Rao* ILR (1914) M 1120. His Lordship then reviews the cases at page 143. It is difficult to

see how it can be said that *Rathna Naidu v. Aiyana Chariar* (1890) 18 MLJ 599 followed *Krishnaswami Konan v. Ramaswami Aiyar* ILR (1899)

M 519 : 1899 9 MLJ 127. He then distinguishes *Ramachandra Padayachi v. Kondayya Chetti* ILR (1901) M 555 by saying that "" the debt sued

on arose out of a joint family business carried on by the father and son before partition and the liability of the son rested....on contract entered into

in respect of a joint family trade to the extent of the joint family assets, etc. "" I am not able to follow the distinction. If the son was a party to the

contract, he is liable not only as to the joint family property but even as to his self-acquired property and unless he is a minor, he is liable to be

arrested. In other words, he is personally liable and there is no question of Hindu Law in the case. If he was not a party, this liability rests only on

the Hindu Law relating to son's liability on the contracts of a father or manager. Suppose the family trade is not ancestral trade but a new trade

started by the father and cannot therefore be said to be for justifiable necessity, can it be said that Ramachandra Padayachi v. Kondayya Chetti

ILR (1901) M 555 does not apply to such a case. No such distinction was made in Kameswaramma v. Venkatasubba Rao ILR (1914) M 1120

which is not the case of a family trade. He then refers to the renewal of the note by the father. In my opinion the case in Peda Venkanna v.

Srinivasa Dikshitalu ILR (1917) M 136 is correctly decided so far as it rests On the ground that the note sued on was renewed by the father after

partition. Wallis, C. J. did not intend to over-rule Ramachandra Padayachi v. Kondayya Chetti ILR (1901) M 555 and Kameswaramma v.

Venkatasubba Rao ILR (1914) M 1120, or even to distinguish Ramachandra Padayachi v. Kondayya Chetty ILR (1901) M 555 in the manner

suggested by Kumaraswami Sastri, J. In these circumstances we cannot accept the decision in Karri Venkata Reddi v. Satyanarayanamurthi

(1920) 40 MLJ 473 as binding on us as it rests solely on the ground that the matter was concluded by Peda Venkanna v. Srinivasa Deekshathulu

ILR (1917) M 136. Our brother Oldfield, J. who was also a party to Kameswaramma v. Venkatasubba Rao ILR (1914) M 1120 made no

reference to it in the later case and gave no additional reasons. Abdur Rahim, J. simply said that all the cases were considered by Peda Venkanna

v. Srinivasa Deekshathulu ILR (1917) M 136 We are also referred to an unreported decision in A.S. No. 419 of 1918 by Abdur Rahim and

Phillips, JJ. It purports to follow Peda Venkanna v. Srinivasa Deekshathulu (1917) ILR 41 M 136 and concurs with Kumaraswami Sastri, J. in his

distinction of Ramachandra Padayachi v. Kondayya Chetti ILR (1901) M 555. I have already dealt with this. This case does not add to the other

cases. We are of opinion that Ramachandra Padayachi V. Kondayya Chetti ILR (1901) M 555 and Kameswaramma v. Venkatasubba Rao ILR

(1914) M 1120 were not over-ruled and following them, we hold that a son in possession of property which had been joint and which fell to his

share in partition is liable in a suit brought after partition (impleading the son also) for the father's debts incurred before the partition and not illegal and immoral (see also *Strange's Hindu Law*, Vol. 1, page 191).

6. We do not think it necessary to refer the question to a Full Bench. On this ground, the appeal is dismissed with costs.

Jackson, J.

7. I agree.

8. The point is correctly appreciated in *Dr. Gour's Hindu Code*, Section 118, paragraph 311 with reference to *Ramachandra Padayachi v.*

Kondayya Chetti ILR (1901) M 555 and *Kameswaramma v. Venkatasubba Rao* ILR (1914) M 1120. "On separation the son ... is liable for

debts incurred before partition. " But in *Trevelyan's Hindu Law*, 2nd Edition, page 308, the point is not stated so clearly. " A creditor cannot

enforce the payment of the debt of the father against property which has been allotted on partition to the son. " This would be correct if " enforce in

execution " is meant and not correct if it also includes " enforce by suit. "

9. In *Mayne's Hindu Law*, 9th Edition, page 411, it is stated " where the son is joined in a suit against the father this is for the purpose of enabling

the Court to exercise the power of the father to sell family property in discharge of his debts not being illegal or immoral and to prevent the son

from questioning the nature of the debt in execution proceedings against the property. After partition, of course, the son holds the share which is

allotted to him free from any such liability. " If any such liability " be taken to mean attachment in execution proceedings the passage presents no

difficulty but if the words mean free from any liability for such debts the statement seems to go too far.