
(1925) 02 MAD CK 0059
In the Madras High Court

Varadarajulu Chetti and Others

APPELLANT

Vs

Velayudha Udayan by the guardian Sengamalai Udayan and
Another

RESPONDENT

Date of Decision : 12-02-1925

Acts Referred:

Succession Certificate Act, 1889 — Section 4

Citation : 90 Ind. Cas. 743

Hon'ble Judges : Odgers, J

Bench : Single Bench

Judgement

Odgers, J.—In the first of these cases, the plaintiff brought a suit on a promissory note dated the 15th June 1916 executed by one Balakrishna Chetty, deceased, to Appudayan, the deceased adoptive father of the plaintiff. The District Munsif dismissed the suit holding that the discharge alleged to be evidenced by Ex. I was proved.

2. The question was raised in this case as also in the connected S.A. No. 1700 of 1923 whether the plaintiff was in fact the adopted son of Appudayan, and by consent the evidence on this point taken in the other case was treated as evidence in this case before the District Munsif. It was contended by Mr. V.C. Seshachariar for the appellant that such a proceeding is wrong in law and the Vakils have no power to bind their clients by such a consent. The matter is, however, concluded by the Full Bench ruling in Jainab Bibi Saheba v. Hyderally Saheb 56 Ind. Cas. 957 : 43 M. 609 that the evidence recorded in a previous judicial proceeding between the same parties is made admissible in a subsequent proceeding by the consent of both parties. The suits were heard on the same day, and although the defendants were not the same in the other case, the question of adoption was common to the two cases and all the parties concerned presumably let in their evidence at one and the same time. As Coutts-Trotter, J., (as he then was) held in the case referred to, "Consent can cure what would otherwise be a defective method of letting in evidence in its substance and

context relevant and germane to the issues." Both the Courts on the evidence of adoption given in the other case came to the conclusion that the adoption was true.

3. The next point is that the acting District Judge having disbelieved, as against the District Munsif Ex. I and having found that it is not genuine ought to have given the defendants an opportunity of letting in further evidence with regard to this Ex. I, as it was not challenged before the District Munsif. I am unable to see how the plaintiff could have challenged it there, as it was a matter of defence and all he could do naturally was to cross-examine the defendant's witnesses on it. Further Ex. I was supported by three witnesses, D. Ws. Nos. 1 to 3. The acting District Judge disbelieved these witnesses when they said that money was paid to the plaintiff. I think this point also fails.

4. The most substantial point raised in this appeal is that there is nothing to show, on the, face of the suit on promissory note Ex. A that it was executed in favour of a managing member and it is contended that there must be something on the face of the document, to show that it is a family debt before the plaintiff can be absolved from the obligation of obtaining a certificate u/s 4 of the Succession Certificate Act. There are cases on both sides of the line. The appellant-defendant here has referred to a case in Venkataramanna v. Venkayya 5 Ind. Dec. 264, where it was held that a certificate in such a case was necessary unless there was something on the face of the bond to show that the debt was due to the joint family. It was held there that though Act VII of 1899 applied only to cases of succession, the preamble states that it is intended to afford protection to parties paying debts to the representatives of deceased persons. No authorities are referred to in the judgment. On the other hand, in a later case in Pallamraju v. Bapanna 8 Ind. Dec. 274, Shephard and Boddam, JJ., held that, as the family was admittedly undivided and the plaintiff claimed by survivorship, the Succession Certificate Act did not apply, following a similar case in Subramanian Chetti v. Rekku Sarvai 7 Ind. Dec. 165. In Pichaikuttia Pillai v. Ranganandan 28 M.L.J. 323 : 17 M.L.T. 264, Seshagiri Iyer, J., sitting as a Single Judge held that where the document stands in the name of an individual member and does not show on the face of it that the debt is due to the family, no certificate is necessary, in the case of a debt due to a Hindu joint family. The cases were all reviewed and in the absence of an authoritative ruling by the Full Bench I am bound by the later decisions of the Benches of this Court which Mr. Justice Seshagiri Iyer preferred. A further point is as to Ex. G. The District Munsif held that it constituted an assignment of the promissory note to the plaintiff; the District Judge held against this that it was only a record of proceedings. In this view he is, in my opinion, right.

5. The second appeal must be dismissed with costs.