
(1912) 03 MAD CK 0053
In the Madras High Court

Venugopal Naidu and Others

APPELLANT

Vs

A. Ramanadhan Chetty and Another

RESPONDENT

Date of Decision : 28-03-1912

Acts Referred:

Citation : (1912) 23 MLJ 61

Hon'ble Judges : Sadasiva Aiyar, J;Benson, J

Bench : Full Bench

Judgement

Sadasiva Aiyar, J.—The defendants 8 and 11 to 14 (5 of the legal representatives of the 3rd defendant who died pending the suit) are the appellants in the above second appeal. The suit was brought by plaintiff, one of the five members of a temple committee, for contribution from the other four committee members in respect of moneys which had been recovered from the plaintiff above in execution of the decree obtained by the trustee of the Madura Menakshi temple against the members of the committee (inclusive of plaintiff and 3rd defendant) for moneys which they had spent out of the temple funds in previous litigation carried on by them in the High Court, the High Court, having in that previous litigation directed that committee members should pay such costs out of their private funds and not out of the Devasthanam funds. (See the last sentence of the judgment in Alagiri Swami Naicker v. Sunder eswara Iyer ILR (1898) M. 278

2. The lower courts decided that the 3rd defendant's legal representatives (sons and grand sons) are liable to discharge 3rd defendant's debt to plaintiff, the debt being based on 3rd defendant's liability to contribute his quota of the amount paid by plaintiff alone to discharge the joint decree against plaintiff and his fellow committee members in the temple manager's suit. the only ground argued before us in this second appeal is the 4th ground in the special appeal memorandum. That ground is to the effect that 3rd defendant's sons and grandsons are not legally bound to discharge the debt incurred by 3rd defendant, to the Devasthanam whose funds were spent without due authority by 3rd defendant and the other members of the committee, as 3rd defendant's

descendants are not under a pious obligation to discharge such a debt.

3. Reliance is strongly placed by the learned vakil for the appellants in the case *Darbar Khachar v. Khachar Harrur* ILR (1908) B. 348 where it was held that under the Hindu Law Texts, a son is not liable for his father's "Avyavaharika" debts, the term being interpreted by the learned judges who decided that case, as meaning "Unusual" or "not sanctioned by law or custom. The learned Judges ruled in effect that the son is not liable for debts which the father ought not, "as a decent and respectable man" to have incurred. That very learned judge, Mr. Justice Mookerjee of the Calcutta High Court has elaborately considered the whole question in a case *Ghadowri Mahton v. Ganga Pershad* (1912) 15 C.L.J. 228 and I cannot usefully add anything to the observations found in the lucid judgment in that case. The learned Judge virtually dissents from the decision in *Darbar Khachar v. Khachar Harrur* I. L.R. (1908) B. 348. Learned Sanskrit scholars have differed from one another as to the meaning of the expression "Avyavaharika" debt (see the first paragraph in page 231 of the judgment in 15 Calcutta Law Journal case.) I am inclined to accept Colebrooke's paraphrase namely "debt incurred for a cause repugnant to good morals" as more nearly approaching the true import of the expression than any of the meanings given by the other authorities. If I might venture upon giving my own translation of the expression "Avyavaharika" I would paraphrase an Avyavaharika debt as a debt which is not supportable as valid by legal arguments and on which no right could be established in the creditor's favour in a court of justice (compare the use of the word "Vyavahara" in such expressions as *Vyavahara Mayukha*, *Vyavahara Darpana*, etc.)

4. The 3rd defendant clearly owed a legally valid debt to the Devasthanam even if he had really misappropriated the moneys which he had taken from the Devasthanam fund (instead of having merely sanctioned their expenditure bonce fide on inappropriate objects) and his descendants are bound to repay that debt according to the decision in *Natesayyan v. Ponnusawmi* ILR (1892) M. 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 in any.

5. As regards the case in *Ramayyengar v. Secretary of State* (1909) 20 M.L.J. 89 (also relied on strongly by the appellant's learned Vakil) that decision rested "on its own special circumstances," for, the learned Judges found in that case that the father knowingly brought a false case as a pauper. When he lost the suit and was made liable for the Government cost, it was held that his sons were not liable to Government for such costs so incurred. Without saying that I agree with the reasons given in the said decision, that decision is easily distinguishable from the present case. The judgment in *Alagirlswami Naicker v. Sundaramier* ILR (1898) M. 278 does not establish that the committee members (three of whom joined in the appeal to the High Court with the concurrence of the remaining

two) dishonestly preferred the appeal to the High Court which appeal costs they were directed to bear out of their private funds. Imprudent and even "unconscientiously" imprudent debts of the father are not in my opinion, immoral, illegal or "Avyavaharika" debts (see Khali- bal Rahman v. Gobind Pershad ILR (1892) C. 328 and the sons cannot, in Hindu Law escape liability for such debts of their father.

6. This Second Appeal consequently fails and is dismissed with the costs of first respondent (plaintiff).

Benson, J.

7. I agree that the sons are liable and that the second appeal should be dismissed with costs.