
(1912) 03 MAD CK 0054
In the Madras High Court

Venugopala Naidu and Four Ors. through their Guardian APPELLANT
Vs
A. Ramanadhan Chetty and Another RESPONDENT

Date of Decision : 28-03-1912

Acts Referred:

Citation : (1914) ILR (Mad) 458

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

Bench : Division Bench

Judgement

Sadasiva Ayyar, J.—The defendants Nos. 8 and 11 to 14 (5 of the legal representatives of the third 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 money which had been recovered from plaintiff alone in execution of the decree obtained by the trustee of the Madura Minakshi temple against the members of the committee (inclusive of plaintiff and third 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 the committee members should pay such costs out of their private funds, and not out of the devastanam fund. See the last sentence of the judgment in Alagirisami Naickar v. Sundareswara Ayyar (1898) 21 Mad. 278.

2. The lower Courts decided that the third defendant's legal representatives (sons and grandsons) are liable to discharge third defendant's debt to plaintiff, the debt being based on third 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 fourth ground in the special appeal memorandum. That ground is to the effect that third defendant's sons and grandsons are not legally bound to discharge the debt incurred by third defendant to the devastanam whose funds were spent without due authority by

third defendant and the other members of the committee, as third defendant's descendants are not under a pious obligation to discharge such a debt.

3. Reliance is strongly placed by the learned vakils for the appellants on *Durbar Khachar v. Khachar Harsur* (1908) 32 Bom. 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, Mukhejee, J., of the Calcutta High Court has elaborately considered the whole question in *Chakouri 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 *Durbar Khachar v. Khachar Harsur* (1908) 32 Bom. 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 *Chakouri Mahton v. Ganga Pershad* (1912) 15 C.L.J. 228. I am inclined to adopt 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 third defendant clearly owed a legally valid debt to the devastanam even if he had really misappropriated the moneys which he had taken from the devastanam funds (instead of having merely sanctioned their expenditure bond fide on inappropriate objects) and his descendants are bound to repay that debt according to the decision in *Natasayyan v. Ponnusami* ILR (1893) 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 in any."

5. As regards the case in *Ramaiengar and Vedantachari minor by next friend, A. Rangasawmi Iyengar Vs. The Secretary of State for India in Council*, (also relied on strongly by the appellant's learned vakils, 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 costs, 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 *Alagirisami Naickar v. Sundareswara Ayyar* ILR (1898) Mad. 27 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 opinion¹, immoral, illegal or "Avyavaharika" debts see *Khalilul Rahman v. Gobind Pershad* ILR 20 Calc. 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.