

PRIVY COUNCIL

T.S. Murugesam Pillai

Vs.

M.D. Gnana Sambandha Pandara Sannadhi and others

P.C.A.No. 117 of 1915.

(Lords Buckmaster, CJ, Shaw, Wrenbury and Mr. Ameer Ali. JJ)

23.1.1917

JUDGMENT

Lord Shaw J.

1. This is an appeal from a decree of the High Court of Judicature at Madras, dated the 18th January 1910, which reversed a decree of the Court of the Subordinate Judge of Mayavaram, dated the 6th November 1907.

2. The object of the suit is for the recovery of moneys advanced under mortgage, and, in the event of default, for the sale of the hypothecated properties. The properties were those of the mutt, to be presently mentioned. The defense in substance is, that the loan over these properties, although granted by the head of the institution, was not granted in respect of any necessity of the mutt itself, which necessity falls to be proved.

3. The Dharmapuram adinam or mutt is situated in the Madras Presidency. It is one of some importance, being a religious institution consisting of a group of religious houses, having various temples and other property, and endowments yield considerable revenue. The head of the institution is known as the *Pandara Sannadhi*. The transactions which form the subject of inquiry cover a period from about 1880 to the date of the suit, that is, a period of over a quarter of a century.

4. It appears to be established that in the year 1880-81 the mutt had just emerged from a heavy and expensive litigation, the costs in which amounted to about a lakh of rupees. The title of *Manickavasaka*, the then *Pandara*, who had in 1873 succeeded to the headship of the *adinam*, had been challenged, and the litigation, which lasted from 1875 to 1879, terminated in favour of *Manickavasaka*. In 1881, however, a fresh suit was instituted - this time by the *Pandara* himself - in order to establish certain right in

regard to religious houses alleged to be subordinate to the main *adinam* of Dharmapuram. This litigation is said to have cost about Rs. 80,000 and it was partially successful. The report of the case is contained in *Giyana Sambandha Pandara Sannadhi v. Kandhasami Tambiran*¹,

5. There seems little reason to doubt that in this crisis in the affairs of the *adinam*, the obtaining of an advance was important in the interests of the institution. Accordingly, on the 8th December 1881, *Manickavasaka* granted a promissory note in favour of Sadaya Pillai, who is alleged by the respondents to have been the manager of the institution, but who appears only to have been the manager of one temple. The promissory note bears that "the sum received by us to-day in cash for the expenses of our *adinam* is Rs. 14,000."

6. Shortly thereafter Sadaya Pillai died, leaving a widow and three minor sons. On the 24th June 1883, a hypothecation bond was executed by the same Pandara, namely *Manickavasaka*, in favor of Pillai's widow and children for the sum of Rs. 14,946 this sum being the Rs. 14,000 contained in the promissory note with certain accumulated interest. The bond narrates that the original promissory note had been granted, and that the sum was paid "for the expenses of the aforesaid *adinam*." Various payments were made from time to time, of interest and towards the discharge of the debt.

7. Then in 1888 *Manickavasaka* died. So that it is fairly clear that, so far as his acts and writings are concerned, they confirm the constitution of the debt as one for the necessary expenses of the *adinam*.

8. *Manickavasaka* was succeeded by Sivagnana. He also recognised the binding nature of the mortgage. He made payments from time to time under the bond up to the year 1897. On the 4th November of that year he granted a fresh mortgage for Rs. 20,000. This is the mortgage sued upon. It is admitted that the Rs. 20,000 is the balance due, as the mortgage itself expresses it, under the former bond of 1883 granted by *Manickavasaka*, Sivagnana's predecessor : and accordingly "the bond is granted, as was the former one, over the lands belonging to the *adinam*." This deed is the plainest ratification of the former transaction and of the fact that the advance had been made for the necessities of the mutt itself.

9. In the year 1903 Sivagnana vacated office, and it is true of him, as of his predecessor, that his conduct and deeds confirm the view that the debt bound the mutt.

10. The third *Pandara*, who is called *Manickavasaka II*, entered office in that year. In

1904, he made a payment of interest upon the mortgage. The validity thereof accordingly has been recognised by three generations, so to speak, of *Pandaras*.

11. Their Lordships have thought it right to give this narrative, because, in their opinion, the Court below has failed to attach, to the transactions and actings set forth, a sufficient importance.

12. The Board does not wish to cast any doubt upon the proposition that, in the case of mortgages granted over the security of an *adinam* or mutt by the head thereof, it lies upon the mortgagee, or those in his right, to prove that the debt was a necessary expense of the institution itself. But it is a circumstance of great weight when holder after holder of the headship recognizes and deals with the debt on that basis; and, as time goes on, this may itself come to be a not unimportant element of probaton upon the issue. It must also be fully borne in mind that, with the lapse of time, the parties to the transaction may die or disappear. In the present case, Pillai, the lender, is dead; *Manickavasaka*, the borrower, is also dead; and it is conceivable that, as years elapse, in such cases nearly all the material evidence may in the course of years disappear, while the debt itself still remains, having from its initiation till almost the date of suit been recognized by all concerned as a debt truly constituted by the *adinam*. In such cases a Court is much more easily satisfied that the debt was properly incurred than where the transaction was itself recent, and can therefore be the subject of more exact evidence, or where the transaction, although remote, has been the subject of challenge or dispute by those charged with the interests of the institution.

13. The Board does not enter upon the oral evidence; having considered it, it sees no reason to disagree with the view thereof taken by the Subordinate Judge in the careful judgment which he has pronounced.

14. There is, it may be added, one element in the case to which their Lordships attach great weight. There is a certain body of evidence that the loan was made for the purposes of the mutt; there is none to the contrary; but a more important question than even the balance of the oral evidence appears to be : What do the books of the mutt disclose upon the subject? It is the habit of the heads or managers of these institutions to have books kept, and the entries are usually made in much detail and with much elaboration. They form a current record, on the financial side, of the history of the institution.

15. A practice has grown up in Indian procedure of those in possession of important documents or information lying by, trusting to the abstract doctrine of the onus of

proof, and failing accordingly to furnish to the Courts the best material for its decision. With regard to third parties, this may be right enough : they have no responsibility for the conduct of the suit; but with regard to the parties to the suit it is, in their Lordship's opinion, an inversion of sound practice for those desiring to rely upon a certain state of facts to withhold from the Court the written evidence in their possession which would throw light upon the proposition. The present is a good instance of this bad practice. It is proved in the case by the first witness that "the mutt has regular fair day-books; they are not now before the Court; ledgers are also maintained in the mutt." These ledgers and day-books were in the possession of the defendants or those of them who were heads of the institution, and they are not put in evidence. The proposition that these defendants challenged was that the expenses incurred had been incurred for the mutt and were necessary for its purposes. The best assistance to a Court of Justice would have been a scrutiny of these documents, and their Lordships feel free to conclude that if they had been by their entries confirmatory of the defendants' view the defendants would have brought them into Court. This part of the case, which in their Lordships' view is of considerable importance, is not referred to in the High Court. Their Lordships will humbly advise His Majesty that this appeal should be allowed, the decree of the High Court set aside, the decree of the Court of the Subordinate Judge restored. The respondents will pay the costs of the cause since the date of the Subordinate Judge's decree and also the costs of this appeal.

Appeal allowed.

Cases Referred.

1. [1887] 10 Mad. 375.