

M. C. Chacko

Vs

The State Bank of Travancore, Trivandrum

Civil Appeal No. 652 of 1966

(CJI J. C. Shah, G. K. Mitter JJ)

23.07.1969

JUDGMENT

SHAH, ACTING C.J. -

1. The High Land Bank, Kottayam, of which the appellant M. C. Chacko was the Manager, had an overdraft account with the Kottayam Bank. K. C. Chacko, father of the appellant, had executed from time to time letters of guarantee in favour of the Kottayam Bank agreeing to pay the amounts due by the High Land Bank under the overdraft arrangement. By the last letter of guarantee, dated 22nd January, 1953, K. C. Chacko agreed to hold himself liable for the amounts due by the High Land Bank to the Kottayam Bank on the overdraft arrangement subject to a limit of Rs. 20,000/-.
2. The Kottayam Bank Ltd. filed a suit in the court of the Subordinate Judge of Kottayam against the High Land Bank for a decree for the amount due in the account. To this suit were also impleaded K. C. Chacko, the guarantor, M. C. Chacko, Manager of the High Land Bank and M. C. Joseph, Kuriakose Annamma and Chinnamma, the last three being the son, daughter and wife respectively of K. C. Chacko. Against the High Land Bank the claim was made on the footing of the overdraft account : against K. C. Chacko on the letter of guarantee and against M. C. Chacko, his brother, his sister and his mother as universal donees of the property of K. C. Chacko under a deed, date June 21, 1951, under which it was claimed, a charge was created on the properties to which the deed related and against M. C. Chacko, also on the claim that he had personally agreed to pay the amounts due by the High Land Bank. During the pendency of the suit, K. C. Chacko died and the suit was prosecuted against his widow, daughter and sons who were described also as his legal representatives.
3. The trial court decreed the suit against the High Land Bank and also against M. C. Chacko, limited to the property received by him from his father under the deed, dated June 21, 1951. The claim of the Kottayam Bank to enforce the liability under the letter of guarantee personally against K. C. Chacko was held barred by the law of limitation and on that account not enforceable against his heirs and legal representatives. The Court also rejected the claim that M. C. Chacko has personally agreed to pay the amount due under the overdraft arrangement.
4. In appeal to the High Court by M. C. Chacko the decree passed by the trial court was confirmed and the cross objections filed by the State Bank of Travancore with which the Kottayam Bank was merged claiming that M. C. Chacko was personally liable were dismissed. This appeal with special leave is preferred by M. C. Chacko against the decree of the High Court.
5. Two questions arise in this appeal : (1) whether under Ext. D-1 a charge is created in favour of

the Kottayam Bank to satisfy the debt arising under the letter of guarantee and (2) whether the charge assuming that a charge arises..... is enforceable by the Bank when it was not a party to the deed Ext. D-1.

6. Ext. D-1 is called a deed of partition : in truth it is a deed whereby K. C. Chacko gave the properties described in the Schedule A to M. C. Chacko and other properties described in Schs. B to F to M. C. Chacko, M. C. Joseph, Annamma and Chinnamma. In Paragraph 17 it is recited :

"I have no debts whatsoever. If in pursuance of the letter given by me to the Kottayam Bank at the request of my eldest son, Chacko, for the purpose of the High Land Bank Ltd., Kottayam, of which he is the Managing Director, any amount is due and payable to the Kottayam Bank, that amount is to be paid from the High Land Bank by my son, Chacko. If the same is not so done and any amount becomes payable (by me) as per my letter, for that my eldest son, Chacko and the properties in Schedule A alone will be answerable for that amount."

The other paragraphs which deal with the properties in Schedule A may also be referred to. Paragraph 10 of the deed recited :

"The donees of the properties included in Schedules A, B and C, are as from this date, to be in possession of their respective properties and to get mutation of registry in their names, any land revenue and enjoy the income save that from coconut trees."

By Paragraph 12 it was declared that notwithstanding the deed of partition, K. C. Chacko will take the income from the coconut trees standing on the properties included in Schedules A, B, C and F till his death and that the donees of the properties will take and enjoy the income from the coconut trees in their respective properties after his death. In Paragraph 13 it was recited that :

"As it is decided that Chinnamma..... should receive and have for her maintenance the rent of the building in Item 7 in the Schedule A as well as the rent of the building in Item 18 of the Schedule B, she is to be in possession of these buildings as from this date and is to let them out and enjoy the rent. The respective donees will have possession and enjoyment after her death. Chinnamma is to have full rights and liberty to reside in any of the houses included in Schedules A, B or C and so long as she so resides in any of the houses, the donees of the respective house is to meet all her expenses. The rent collected by Chinnamma from the buildings given possession of to her is to be utilised by her for her private expenses as she pleases."

In our judgment the various covenants in the deed were intended to incorporate an arrangement binding between the members of the family for satisfaction of the debt, if any, arising under the letter of guarantee.

7. We are, unable to agree with the High Court that by Clause 17 of the deed it was intended to create a charge in favour of the Kottayam Bank for the amount which may fall due under the letter of guarantee. The letter of guarantee created merely a personal obligation. The deed Ext. D-1 was executed before the last letter of guarantee, dated January 2, 1953. By Clause 17 of Ext. D-1 it is merely directed that the liability, if any, arising under the letter of guarantee, shall be satisfied by M. C. Chacko and not by the donor, his son M. C. Joseph, his daughter Annamma and his wife Chinnamma. The reason for the provision in the deed is clear. M. C. Chacko was the Managing

Director of the High Land Bank Ltd., and it was at the instance of M. C. Chacko that the letters of guarantee were executed by the donor. For creating a charge on immovable property no particular form of words is needed : by adequate words intention may be expressed to make property or a fund belonging to a person charged for payment of a debt mentioned in the deed. But in order that a charge may be created, there must be evidence of intention disclosed by the deed that a specified property or fund belonging to a person was intended to be made liable to satisfy the debt due by him. The recitals in Clause 17 of the deed do not evidence any intention of the donor to create a charge in favour of the Kottayam Bank : they merely set out an arrangement between the donor and the members of his family that the liability under the letter of guarantee, if and when it arises, will be satisfied by M. C. Chacko out of the property allotted to him under the deed.

8. The debt which M. C. Chacko was directed by the deed to satisfy was not in any sense a "family debt". It was a debt of K. C. Chacko and K. C. Chacko was personally liable to pay that debt. After his death his sons, his daughter and his widow would be liable to satisfy the debt out of his estate in their hands. From the recitals in the deed Ext. D-1 an intention to convert a personal debt into a secured debt in favour of the Bank, a third person, cannot be inferred. In *Akella Suryanarayana Rao and Others v. Dwarapudi Basivireddi and Others* (ILR 55 Mad 436) the Madras High Court in construing a deed of partition of joint family property pursuant to a compromise decree, held that properties allotted to certain branches to which were also "allotted certain debts" with a stipulation that until the debts were fully discharged the properties allotted to the shares of the respective persons shall be liable in the first instance, were not subject to a charge in favour of the creditors. The Court held that the covenant in the partition deed resulted in a contract of indemnity, and not a charge. In the present case also the covenant that M. C. Chacko will either personally or out of the properties given to him satisfy the debt is intended to confer a right of indemnity upon other members of the family, if the Kottayam Bank enforced the liability against them, and created no charge in favour of the Bank. Clauses 12 and 13 of the deed support that view. By Clause 12 the right to the coconut trees standing in the properties included in Schedules A, B, C and F is reserved to K. C. Chacko. Similarly Chinnamma, wife of K. C. Chacko, is permitted during her lifetime to occupy the houses in the properties described in the three schedules and to recover the income and to utilise the same for herself. It is clear that K. C. Chacko had no intention to create a charge or to encumber any of the properties for the debt which may become due to the Bank.

9. The Kottayam Bank not being a party to the deed was not bound by the covenants in the deed, nor could it enforce the covenants. It is settled law that a person not a party to a contract cannot subject to certain well recognised exceptions, cannot enforce the terms of the contract : the recognised exceptions are that beneficiaries under the terms of the contract or where the contract is a part of the family arrangement may enforce the covenant. In *Krishna Lal Sadhu v. Pramila Bala Dasi* (ILR 55 Cal 1315), Rankin, C.J. observed :

"Clause (d) of Section 2 of the Contract Act widens the definition of 'consideration' so as to enable a party to a contract to enforce the same in India in certain cases in which the English Law would regard the party as the recipient of a purely voluntary promise and would refuse to him a right of action on the ground of nudum pactum. Not only, however, is there nothing in Section 2 to encourage the idea that contracts can be enforced by a person who is not a party to the contract, but this notion is rightly excluded by the definition of 'promisor' and 'promisee'."

Under the English Common Law only a person who is a party to a contract can sue on it and that the law knows nothing of a right gained by a third party arising out of a contract : *Dunlop Pneumatic*

Tyre Co. v. Selfridge and Co. (1915 AC 847). It has however been recognised that where a trust is created by a contract, a beneficiary may enforce the rights which the trust so created has given him. The basis of that rule is that though he is not a party to the contract his rights are equitable and not contractual. The Judicial Committee applied that rule to an Indian case Khwaja Muhammad Khan v. Hussaini Begam. ((1910) 37 IA 1520). In a later case Jamna Das v. Ram Autar ((1911) 39 IA 7) the Judicial Committee pointed out that the purchaser's contract to pay off a mortgage debt could not be enforced by the mortgagee who was not a party to the contract. It must therefore be taken as well settled that except in the case of a beneficiary under a trust created by a contract or in the case of a family arrangement, no right may be enforced by a person who is not a party to the contract.

10. Even if it be granted that there was an intention to create a charge, the Kottayam Bank not being a party to the deed could enforce the charge only if it was a beneficiary under the terms of the contract, and it is not claimed that the Bank was a beneficiary under the deed Ext. D-1. The suit against M. C. Chacko must therefore be dismissed.

11. The decree passed by the High Court is modified and it is declared that M. C. Chacko is not personally liable for the debt due under the letter of guarantee executed by K. C. Chacko, nor are the properties in Schedule A allotted to M. C. Chacko under the deed, dated June 21, 1951, liable to satisfy the debt due to the Kottayam Bank under the letter of guarantee.

12. Having regard to the circumstances of the case and specially that a concession that persons not parties to a contract may enforce the benefit reserved to them under the contract was made before the High Court, we direct that the parties to this appeal will bear their respective costs throughout.

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