

P. R. Subramania Iyer

vs

Lakshmi Ammal Lakshmi Ammal and Others

Civil Appeal No. 748 of 1967

(K. S. Hegde, A. N. Grover, D. G. Palekar JJ)

04.05.1972

JUDGMENT

HEGDE, J. -

1. This is an appeal by certificate under Article 133(1)(a) of the Constitution. The suit from which this appeal arises was brought on the foot of a promissory note executed by deceased R. A. Krishnan and G. R. Harihara Iyer (10th defendant in the suit). But in the suit decree was claimed against defendant Nos. 1 to 10 personally against their assets and against the business assets of the deceased Veeraraghava Iyer. A decree against the assets of deceased R. A. Krishnan in the hands of Defendants 1 to 9 was also claimed.

2. The defendants resisted the suit on various grounds. The trial court dismissed the suit but the High Court in appeal decreed the suit against the assets of R. A. Krishnan in the hands of his heirs and against the 10th defendant personally. Not being satisfied with that decree, the appellant has brought this appeal. The suit promissory note reads :

"Rs. 25,000/-

On demand we promise to pay THE ALATHUR BANK or order the sum of Rupees Twenty-five Thousand only with interest at nine per cent. Per annum from the date hereof until payment in full, for value received in cash.

(Sd.) R. A. Krishnan 28-4-1950Burmah Shell Agent, Trivandrum 4 one anna revenue stamps(son of Mr. A. Ramaswami Iyer) affixed and signed on it.(Sd.) G. R. Harihara Iyer Stanes Agent, Trivandrum".(son of G. M. Ramakrishna Iyer) drum."
28-4-1950.##

3. From the promissory note it appears that it was a debt borrowed by the two executants. But the plaintiff's case is that the debt was borrowed to finance the business left by Veeraraghava Iyer grant-father of R. A. Krishnan. The said Veeraraghava Iyer died on August 5, 1937 leaving behind him his widow, a daughter (1st defendant) and her children. He had also left behind him a son but he was a congenital idiot. After the death of Veeraraghava Iyer the business which he was carrying on devolved on his widow. The widow died on January 19, 1945. The first defendant succeeded to that estate. She died during the pendency of this appeal.

4. Defendant No. 10, Harihara Iyer has nothing to do with the family of Lekshmi. Defendant Nos. 2 to 6 are the sons of defendant No. 1. Defendants Nos. 7 to 9 are the children of R. A. Krishnan.

5. The plaintiff cannot have a personal decree against defendants 1 to 9 as they were not parties to the suit promissory note. There is no privity of contract between the plaintiff and defendants 1 to 9. It is not shown how the plaintiff can get a personal decree against them.

6. We are unable to find out any legal basis for granting a decree against the assets of Defendants 1 to 9. The plaintiff has been taking inconsistent positions. At one stage he contended that defendant No. 1 had put forward defendants 2 to 9 as the owners of the business left by Veeraraghava Iyer. hence she must be deemed to have surrendered her right. This is an untenable contention. The mere fact that a mother's estate was managed by her sons does not indicate that the mother had surrendered her right. At another stage it appears to have been contended on behalf of then plaintiff that deceased Krishnan borrowed the loan in question as the agent of defendant No. 1. There is no basis for their plea either in the pleadings or in the evidence. The trial court as well as the High Court have rejected that contention.

7. The next plea taken was that the first defendant having allowed R. A. Krishnan to manage her business, she cannot now be allowed to contend that she is not liable for the suit debt. Both the trial court as well as the High Court have held that there is no satisfactory evidence to show that the suit debt was utilised for financing the businesses in question. We see no reason to differ from that conclusion. In this view, it is not necessary to go into the question whether even if the money borrowed had been used for those businesses, the first defendant would have been liable in law for that debt.

8. The theory of joint family liability urged before the High Court has no substance. On the facts of this case, no question of joint family liability arises. The first defendant was the owner of the businesses in question in her own right and not as the representative of any family. We find no substance in any of the contentions advanced on behalf of the appellant.

9. In the result this appeal fails and the same dismissed with costs.

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