(1997) 09 AP CK 0001

Andhra Pradesh High Court

Case No: C.R.P. No. 3725 of 1996

Pentala Raghavaiah		APPELLANT
	Vs	
Boggawarapu Peda Ammayya		RESPONDENT

Date of Decision: Sept. 23, 1997

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 151, 47

Citation: (1998) 1 ALD 11 : (1997) 5 ALT 405 : (1998) 1 APLJ 111 : (1998) 2 CivCC 303

Hon'ble Judges: R. Bayapu Redy, J

Bench: Single Bench

Advocate: Mr. B.V. Subbaiah, for the Appellant; Mr. K. Harinath, for the Respondent

Judgement

1. This revision is filed against the orders dated 19-6-96 passed in E.A.33/87 in E.P.46/78 in O.S.105/64 on the file of the Subordinate Judge''s Court, Guntur, by which the claim of the petitioner herein in the E.P. schedule properties was rejected in part.

2. The respondent herein filed O.S. 105/64 on the file of Subordinate Judge''s Court, Guntur against Boggavarapu Pedda Ammaiah and Company as first defendant; P. Yellamanda, who is the father of the present petitioner, as second defendant, P. Seetharamaiah, the paternal grand-father of the petitioner herein, as third defendant and some other defendants for dissolution of the first defendant firm and for recovery of some amount by settlement of accounts. Final decree was passed in the said suit against the second defendant P. Yellamanda, who is the father of the petitioner herein, directing him to pay an amount of Rs. 1,45,929-59 Ps. to the respondent herein. A partition deed was executed between the father and the grand father of the petitioner relating to the family properties. Subsequently, the paternal grandfather of the present petitioner executed a Will on 2-11-1964 bequeathing his properties to the petitioner. The father and paternal grandfather of the petitioner also executed two gift deeds relating to some properties in favour of

some others. The respondent herein, who is the decree holder in O.S. 105/64, filed the suit O.S.87/68 on the file of the Subordinate Judge, Guntur questioning the above said partition and the alienations made by the father and grand-father of the petitioner and the will executed by the grand-father, contending that such allienations were made with a view to defeat the creditors. The said suit was decreed and the partition deed as well as the gift deeds were set aside as fraudulent. The Court, however, upheld the validity of the will executed by the grand-father of the petitioner. The appeal filed in A.S. 178/78 on the file of the Addl. District Judge, Guntur against the decree and judgment in O.S.87/68 was dismissed and the second appeal No.190/82 filed in the High Court was also dismissed thereby confirming the decree and judgment passed in O.S.87/68, which thus became final. Subsequently, the respondent, who is the decree holder in O.S.105/64, filed E.P.46/78 in O.S.105/64 for attachment and sale of the joint family properties to realise the decree debt from the father of the petitioner herein. The petitioner filed E.A.33/87 u/s 47 and Section 151 C.P.C. contending that he is entitled for half share in the E.P. schedule properties on the basis of the Will executed in his favour by his grand-father and such half share in the E.P. schedule properties is, therefore, not liable for attachment and sale. He also contended that his father Yellamanda did Tobacco business with the respondent and thereby became indebted to him; that the debts contracted by his father in connection with such Tobacco business started for the first time are not binding upon him (petitioner) as they are ''Avyavaharika'' debts and as such his half share in the half share belonging to his father in the E.P. schedule properties is also not liable for attachment and sale. The petitioner, therefore, contended that 3/4th share in the E.P. schedule properties is not liable for attachment and sale. The respondent contested the petition by filing his counter contending that the Tobacco business was done by the father of the petitioner for the benefit of the joint family and the debt contracted by him is not ''Avyavaharika debt''; that the petitioner is liable to discharge such debt incurred by his father in connection with such business; that the will executed by the grand-father of the petitioner is also not valid as it was done only with a view to defeat the creditors and that, therefore, the petition filed by the petitioner is liable to be dismissed.

3. On the basis of the material placed before him, the learned Subordinate Judge upheld the contention of the petitioner regarding his half share in the E.P. schedule properties claimed by him under the Will executed by his paternal grand-father and came to the conclusion that such half share which now belongs to the petitioner in the E.P. schedule properties is not liable for attachment and sale. He, however, held that the respondent can proceed with the execution petition in respect of the remaining half share of E.P, schedule properties belonging to him and his father as the debt contracted by the father of the petitioner is not ''Avyavaharika debt'' and that the share belonging to the petitioner also in the joint family property is liable for discharging such debt contracted by his father. The petitioner has chosen to file the present revision questioning the said orders of the lower Court in so far as it

relates to the dismissal of E.A.33/87 relating to the half share in the E.P. schedule properties belonging to the petitioner and his father.

4. Heard both the Counsel.

5. The contention of the petitioner is that the joint family consisting of himself and his father is an agricultural family; that his father, however, started Tobacco business with the respondent without the consent of the joint family members and incurred heavy debts; that such debts contracted by his father are ''Avyavaharika debts'' and are, therefore, not binding upon him (petitioner) and that, therefore, his share in the joint family properties is, not liable for attachment and sale. He has tried to rely upon some decisions in support of his contention in this regard. But such contention cannot be accepted and the decisions sought to be relied upon by him cannot be said to be of any assistance for such contention. He mainly tried to rely upon the decision of the Privy Council reported in AIR 1932 182 (Privy Council) . It is observed by Their Lordships in the said decision that the business started by the father as manager of the family cannot be said to be ancestral so as to render the minor son''s interest in the joint family property liable for the debt incurred for such business. But it is to be seen from a perusal of the said decision of the Privy Council that Their Lordships decided only the question of the binding character of the mortgage as such on the footing that monies had been borrowed contemporaneously with the mortgage for the purpose of carrying on a trade started by the father and that they, however, declined to deal with the question of the son''s liability for the debt under the doctrine of pious obligation on the ground that the question had not been raised in the Courts in India. Therefore, the above cited decision is not of any assistance for the contention of the petitioner in this case. He has also tried to rely upon the decision of the Madras High Court reported in K.M. Raghothaman and Another Vs. M.P. Kannappan and Another, . It is observed in the said decision that in respect of the debts contracted by the father even for his personal benefit, at a point of time when he is joint with his sons, the sons are liable to pay such debts unless the debts were incurred for immoral or illegal purposes and that such liability of the sons, which had its origin in an obligation of the piety and religion, has since metamorphosed into one of legal liability, but that does not, however, extend to debts tainted with immorality. But in the present case, even though the debt contracted by the father of the petitioner is of commercial character and was incurred in connection with the Tobacco business started by him, though for the first time, it is not established that such debt is ''Avyavaharika'' debt and is tainted with immorality. He has also tried to rely upon the decision of our High Court reported in Chakka Purnachandrarao Vs. Kunala Mallikharjuna Rao and Others, . It is observed in the said decision that in a Hindu joint family the rule is that unless a new business started by the manager of the family is a speculative one, it is binding upon the family and that the mere fact that the business is different in kind from the business previously carried on or that it relates to a commodity different from that which the family were dealing in previously, does not make it any the less

binding upon the family. This decision is also not of any assistance for the contention of the petitioner as nothing is stated therein about the liability of the share of the son in the joint family properties to discharge the antecedent debt of the family contracted by the father.

6. He has also tried to rely upon the decision of the Supreme Court reported in Chattanatha Karayalar Vs. Ramachandra Iyer and Another, , wherein it is observed by Their Lordships that with reference to a trade newly started, there is this difference between the position of a father and a manager; that while the debts contracted therefore by the former would be binding on the sons on the theory of pious obligation, those incurred by a manager would not be binding on the members unless there was necessity for the starting of the trade. The contention of the petitioner in this case is that his joint family is primarily an agricultural family; that his father, however, started Tobacco business for the first time without the consent of the members of the joint family; that it was a speculative business that was started by his father; that the Subordinate Judge, Guntur specifically held in O.S. 105/64 that the trade started by the second defendant therein (who is the father of the present petitioner) is a new one and that too hazardous and that in view of such conduct of his father in starting a hazardous business for the first time and incurring the debts, it cannot be said that his (minor son''s) share is also liable for discharging such debts. But as already stated above, though the debt was incurred in connection with a new business started for the first time by the father of the petitioner, there is no material to show that such debt is immoral of ''Avyavaharika'' debt. When once the debt contracted by the father, even though in connection with a newly started business, is not proved to be immoral or Avyavaharika, the sons''s share in the joint family properties is also liable to discharge such debt under the doctrine of pious obligation. Such view is clearly held by our own High Court as well as other High Courts, as seen from some of the Judgments on which the learned Counsel for the respondent has tried to rely upon.

7. In the decision of the Madras High Court reported in Atchutam v. Ratnaji (1926) LW193, the creditor filed a suit against the father and his sons for recovery of amounts borrowed by the father for the conduct of hardware trade which he was carrying on in partnership with another. It was contended by the sons that they were not liable for discharging such debts as the trade was not an ancestral or family trade and as the debt was a ''commercial debt''. It was also sought to be contended on behalf of the sons in that case that the pious obligation of the sons to discharge the debts does not extend to such commercial debts. But such contention was rejected by Their Lordships and it was observed in that decision that there was nothing illegal or immoral in carrying on a hardware trade by the father; that the sons'' pious obligation to pay the father''s debt extends to all those debts which are not ''Avyavaharika'' (i.e., illegal or immoral) and commercial debts do not fall in that category and that the pious obligation of the sons extends to discharge such commercial debts also.

8. In another decision of the Madras High Court reported in Venkateswara Rao v. Ammayya, 49 (1939) L W529 it was observed by Their Lordships that a debt incurred by a Hindu father in connection with a trade started by himself cannot be held to be ''avyavaharika'' so as not to be binding on his son even though the trade is not the normal occupation of the family. In that case, the Counsel for the appellant who was appearing for the son, tried to rely upon the above cited decision of the Privy Council reported in Benares Bank v. Harinarain (supra) in support of his contention that the son''s share is not liable for discharging the debt contracted by the father in connection with the business newly started by him. But Their Lordships specifically observed that in the said decision of the Privy Council the question of the binding character of the mortgage as such on the footing that monies had been borrowed contemporaneously with the mortgage for the purpose of carrying on a trade started by the father alone was decided and that, They, however, declined to deal with the question of the son''s liability for the debt under the pious obligation doctrine on the ground that the question had not been raised in the lower Courts. Their Lordships followed the above cited earlier decision of the Madras High Court reported in Atchutam v. Ratnaji (supra) and observed, as mentioned above, that the debt incurred by the father in connection with a trade started by himself, though trade is not the normal occupation of the joint family, is binding upon the son also so long as such debt is not ''Avyavaharika'' debt.

9. In the Division Bench decision of this Court reported in Sreerama Raju v. Palam Raju 1963 (1) AWR 255, a Hindu father, who was an agriculturist, started a rice milling business for the first time and incurred some debts in connection with that business. His sons, who are subsequently born, tried to contend as in the present case, that the alienations made by his father for discharging such debts contracted by him in connection with his newly started business are not binding on them. But such contention was rejected by Their Lordships in that decision, wherein it was held that the debts contracted by the father in connection with the rice-mill business started by him, which are commercial debts, cannot be considered as ''Avyavaharika'' debts and that the sons are, therefore, liable to discharge such commercial debts which are not ''Avyavaharika'' debts under the theory of pious obligation. Their Lordships also referred to the above cited decisions of the Madras High Court reported in Atchutam v. Ratnaji (supra) and Venkateswara Rao v. Ammayya (supra) as well as the above cited decision of the Supreme Court reported in Chattanatha v. Ramachandra (supra) and followed the same. Their Lordships also explained the above cited decision of the Privy Council reported in Benares Bank v. Harinarain (supra), in which the question of the son''s liability for the debt under the pious obligation doctrine was not considered. Their Lordships also referred to the observations made by Sri Mulla in his treatise on Hindu Law, 12th Edition at page 469 under the heading "Commercial Debts", which are as follows :

"The text of Gautama, Chapter XII, Section 41 to the effect that the sons are not liable for their father''s commercial debts has long become absolete, and sons are

now liable for simple money debts incurred by the father in the course of business even though started by the father himself.'"'

Their Lordships also referred to similar observations made by Sri Mayne in his treatise on Hindu Law, 11th Edition at page 386 which are as follows :

"The pious obligation of the son to pay the debts of a new business started by the father would, in any case, remain."

After referring to all those decisions and observations, it was held by Their Lordships that commercial debts incurred by the father are not ''Avyavaharika'' debts and as such the sons arc liable to discharge such debts which were contracted by the father in connection with his business, though started by him for the first time.

10. In the decision of the Supreme Court reported in Manibhai Vs. Hemraj, also it is observed in para-38, after referring to various earlier decisions of the Supreme Court as well as some other High Courts, as follows:

"Even if "any loan is taken by the father for his personal benefit which is found as vyavaharik debt and not avyavaharik, the sons are liable to discharge their father''s debt under the doctrine of pious obligation and in this view of the matter if any alienation of the joint family property is subsequently made to discharge such antecedent debt or loan of the father, such alienation would be binding on the sons.'"'

In the said decision of the Supreme Court, the above cited decision of the Privy Council reported in Benares Bank v. Harinarain (supra) was also referred and distinguished on facts by observing that Their Lordships of the Privy Council in that case considered the mortgage as not binding only to the extent of Rs.3658/- which was given by the Bank by the transactions in dispute itself and that the observations made by Their Lordships of the Privy Council cannot be made applicable to a case where the liability of the sons is sought to be based on the doctrine of pious obligation to discharge the antecedent debts which are not proved to be Avyavaharika debts. In the present case also, there is absolutely no material to show that the debts contracted by the father of the petitioner are ''Avyavaharika'' debts, and in the absence of any such material, the lower Court rightly felt that even though the debts were contracted by the father in connection with his newly started business, the petitioner is liable to discharge such antecedent debts as the said debts are not proved to be ''Avyavaharika debts''. Therefore, there is no illegality or irregularity in such findings given and orders passed by the lower Court and there are, therefore, no merits in the present revision petition.

11. In the result, the revision petition is dismissed. No costs.