(1946) 08 MAD CK 0025

Madras High Court

Case No: None

Bhadri Venkataswami — APPELLANT

Vs

Mandi Tata Reddy and Another — RESPONDENT

Date of Decision: Aug. 22, 1946

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 53

Citation: AIR 1947 Mad 162 : (1947) ILR (Mad) 163 : (1946) 59 LW 649 : (1946) 2 MLJ 361

Hon'ble Judges: Alfred Henry Lionel Leach, C.J

Bench: Division Bench

Judgement

Alfred Henry Lionel Leach, C.J.

On the 20th August, 1937, Govinda Reddi, the father of the respondents, executed a promissory note in favour of one Sankariah, who on the 1st July, 1940, indorsed it to the appellant. On the 16th August,. 1940, the appellant filed a suit to enforce the payment of the promissory note. Govinda Reddi had died in the meantime and the respondents were made the second and third defendants as his legal representatives. The first defendant was the brother of Govinda Reddi. The indorsement of the promissory note in favour of the appellant admittedly only operated to transfer the instrument and not the debt in respect of which it was made. Therefore the appellant was not in a position to maintain the suit against the brother of the maker, but only against the maker''s legal representatives. The trial Court (the Court of the District Munsiff of Nellore) dismissed the suit in its entirety on the ground that it was not maintainable against any of the defendants because the action was on the instrument itself and the defendants were not parties to it. On appeal, the Subordinate Judge of Nellore decreed the suit against the respondents, limited, however, to the separate assets of their deceased father in their hands. The plaintiff has appealed. He says that by virtue of Section 53 of the CPC he is entitled to a decree against the sons of Govinda Reddi covering his share in the ancestral property as well as his separate assets in the hands of his sons. The case has been placed before a Bench for decision as judgments of this Court delivered by Judges sitting alone are in conflict.

2. The appeal depends on the effect to be given to Section 53 of the Code of Civil Procedure; and before referring to the judgments in conflict we will set out the terms of the section. It reads as follows:

For the purposes of Section 50 and Section 52 property in the hands of a son or other descendant which is liable under Hindu Law for the payment of the debt of a deceased ancestor, in respect of which a decree has been passed, shall be deemed to be property of the deceased which has come to'' the hands of the sons or other descendants as his legal representative.

This section was inserted in the Code of 1908 as there was a difference of opinion in the High Courts of India on the question whether the interest of the father in the joint family estate was available for his creditors as his own property when in the hands of his sons as the surviving coparceners. The section now makes it quite clear that for the purposes of Sections 50 and 52 of the Code sons have to be regarded as the legal representatives of their deceased father even in respect of his share of the family estate which devolved upon them by survivorship.

4. In Natarajan Chettiar Vs. Perumal Ammal and Another, . Horwill, J., held that the sons of the maker of a promissory note were liable only to the extent of the father''s separate property which had come into their hands and not to the extent of his share of the joint family property. The learned Judge referred to Section 53 but he gave no reason for limiting its application to the, father''s separate property in their hands. The case in conflict is Pothuraju v. Appala Naidu (1944) 2 M.L.J. 82 where Chandrasekhara Aiyar, J., passed a decree against the sons of a Hindu father who had executed a promissory note without limiting its execution to the separate property of the father. The learned Judge did not, however, refer to Section 53 of the Code of Civil Procedure.

5. We consider that in view of Section 53, the Subordinate Judge should not have limited the decree to the separate assets of the father in the hands of the sons, but he should have made it apply as well to the share of the father is the family estate in the hands of the sons. They are his legal representatives in respect of all kinds of property in which he had an interest, when it comes to enforcing payment of a debt due by his estate.

6. The decree of the Subordinate Judge will be amended accordingly. The appellant is entitled to his costs in this Court and before the Subordinate Judge.