

(1916) 08 MAD CK 0075

Madras High Court

Case No: None

A.R.P. Narayanan
Chettiar and Others

APPELLANT

Vs

K.P.V.R. Veerappa
Chettiar and Others

RESPONDENT

Date of Decision: Aug. 16, 1916

Acts Referred:

- Bankruptcy Ordinance - Section 80(4)

Citation: (1917) ILR (Mad) 581

Hon'ble Judges: Srinivasa Ayyangar, J; Ayling, J

Bench: Division Bench

Judgement

1. The facts are fully stated in the judgment of the Lower Court and it is unnecessary to restate them. Two points are taken for the appellant in the appeal-

2. First it is contended that the discharge of the bankrupts under Straits Settlements Bankruptcy Ordinance by the Singapore Court does not operate as a discharge from the debts in this country. It is conceded that the discharge operates as an extinguishment of the debt and not merely as a bar of the remedy so far as Singapore is concerned. The plaintiffs and the defendants are trading at Singapore. The debts were contracted there and were payable there. The plaintiffs proved their debts under the bankruptcy, received dividends and were really parties to the order of discharge. In these circumstances a release of the debt under the Bankruptcy Law of Singapore is a discharge of it everywhere. The fact that the parties have their domicile in this country and the defendants have some property here is immaterial. The rule is, we think, accurately stated in Rule 115 of Mr. Dicey's book on the Conflict of Laws.

3. The next point is equally baseless and it is this: The first defendant and his brother the third defendant were adjudicated bankrupts. The second defendant is the son of

the first and defendants Nos. 4 and 5 are the sons of the third. All the five are members of a joint Hindu family and they have some family property here. The contention is that the effect of the discharge is only to release the father from liability but that does not affect the Hindu Law liability of the sons to pay the debts of the father and that the creditor is entitled to sue the sons and recover the debt from out of their shares of the joint family property. This, it is said, follows from Clause (4) of Section 80 of the Bankruptcy Ordinance which like Section 28 of the English Bankruptcy Statute declares the effect of an order of discharge. The material portion of the clause is as follows: "An order of discharge shall not release any person who at the date of the receiving order was jointly bound or had made any joint contract with him." The question is whether a Hindu son is jointly bound with his father to pay the debts within the meaning of the section. We think not. The liability of a Hindu son to pay the debts of his father not being illegal or immoral (*Avyavaharika*) has been developed by judicial decisions from his pious obligation to save the father from sin, as laid down by the Hindu Law Texts. This liability as now developed is certainly not a joint liability, nor a joint and several liability as ordinarily understood in English Law; in fact it is difficult to bring it under any particular legal category of the English Law. In *Ramasami Nadan v. Ulaganatha Goundan* ILR (1998) Mad. 49 which for the first time settled that the son could also be joined with the father in a suit to recover the father's debt, Sir V. Bhashyam Ayyangar, in his interesting argument, repeatedly admitted that the son was not jointly liable with the father. In his judgment in the Full Bench case *Periasami Mudaliar V. Seetharama Chettiar* ILR (1903) Mad. 243 Bhashyam Ayyangar, J., treats it as settled law that the son could not be sued alone, during his father's lifetime, for recovery of a debt due by the father, though the father can be sued alone without the son. It is also settled that after the father's death a suit can be instituted on the original cause of action though judgment had been recovered against the father. These positions show clearly that a Hindu son is not jointly bound with his father.

4. The joinder of the son with the father in a suit to enforce payment of the father's debt is for the purpose of enabling the Court to exercise the power which the father had of selling family property including his son's share, to pay his own private debts provided they were not illegal or immoral, and to prevent the son from questioning the nature of the debt, in execution, in the event of the decree against the father being executed by attachment and sale of the family property including the son's share. There were also processual difficulties which have been removed by the present Code in case the father died before the execution of the decree and the son was not a party to the decree.

5. The matter may also be viewed in another way. The effect of the discharge was undoubtedly to release the defendants Nos. 1 and 3, and no suit could have been instituted against them. If, as already stated, no suit can be instituted against the sons alone, at any rate so long as the father is alive and the family undivided even though the father's liability is subsisting the present suit against the sons alone

must a fortiori be bad This, we think, is the necessary result of the extinction of the liability of the father, for it is only so long as the liability of the, father subsists that the pious obligation of the son lasts.

6. It was argued with some force that the power of the father to sell the shares of his sons for the payment of his debts is not a power which can vest in the assignee under a bankruptcy and it is hard on the creditors that they should be deprived of all remedy to make the shares of the sons available for the payment of the debts. Whether such a power would vest in the assignee or trustee in bankruptcy if the adjudication had been made by the forum of the domicil, it is unnecessary to consider, as that would depend on the language of the particular statute: *Nunna Setti v. Chidara Boyina* ILR (1902) Mad. 214 It is, however, clear that the adjudication and assignment of the bankrupt's property under the Straits Settlements Ordinance in this case does not operate as an assignment of immovables, or even of moveables in India. This is really no hardship, for presumably the Singapore creditors looked to the assets there for payment. The appeal therefore fails and must be dismissed with costs.