

[375] APPELLATE CIVIL.

The 11th November, 1881, and 23rd January, 1882.

PRESENT :

MR. JUSTICE INNES AND MR. JUSTICE KINDERSLEY.

Ramasami Mudaliar.....(Plaintiff), Appellant

and

Sellattammal and others.....(Defendants), Respondents.*

Hindu Law—Power of widow to charge estate of husband—Promissory note executed by deceased widow—No cause of action against reversioners in possession of estate.

Where a plaintiff alleged that M, the deceased widow of S, a Hindu, while administering the estate of her deceased husband, borrowed money from plaintiff for purposes binding on the estate, and executed a promissory note to secure the payment of the same, and that the first and second defendants, as reversionary heirs of S, and the third defendant were in possession of the estate of S and refused to pay the debt incurred by M :

Held that the plaint was properly rejected as disclosing no cause of action against the defendants.

Per INNES, J.—*Semble* : A suit on a promissory note made by a Hindu father would lie against sons joined in the suit with the father as defendants on an allegation that the debt was incurred for proper family purposes.

Gadeppa Desai v. Appaji Jeanrao (I. L. R., 3 Bom. 237), approved. *Ramcoomar Mitter v. Ichamoyi Dasi* (I. L. R. 6 Cal., 36) dissented from.

THIS was an appeal from the following order of TURNER, C.J., rejecting the plaint in Civil Suit No. 188 of 1881 under Section 53 of the Code of Civil Procedure.

“The plaint is rejected with costs, two sets as it discloses no cause of action against the defendants. The contract was a contract between the lady and the lender, and the persons who represent the estate were no parties to the contract. No charge is created on the estate, nor did the lady enter into the contract in a representative character.”

The plaint was as follows:—

“That one Negapatam Ponnambala Subbu Pillai died at Madras intestate on or about the 27th June 1873, leaving his widow Manickammal and the first and second defendants, the widows of his adoptive father Ponnambala Pillai deceased, him surviving, and considerable moveable and immoveable property.

[376] “That his widow Manickammal died on or about the 16th November 1875, having obtained Letters of Administration to his estate and effects,

“That the property left by the said Ponnambala Subbu Pillai was in the possession of the third defendant and one Runga Pillai, deceased, who were in such possession as executors to the will of the said Ponnambala Pillai; and they in collusion with the first and second defendants obstructed the said Manickammal in obtaining possession of the said property.

“That in Civil Suit No. 718 of 1873 on the file of this Honourable Court, to which their disputes led, the said property was declared to have been the absolute and exclusive property of the deceased Subbu Pillai at his death.

*Appeal No. 20 of 1881 from the Original Side of the High Court in Civil Suit No. 188 of 1881.

“That the opposition offered by the defendants and other persons claiming interest in the property involved the said Manickammal in continuous litigation, and she had to prosecute and defend various suits and actions in this Honourable Court and in the Small Cause Court of Madras.

“That in the course of administering to the estate of her said husband, and for purposes sanctioned by Hindu Law and binding upon the said estate, which included among other things the prosecution of the litigation in the next preceding paragraph mentioned, the said Manickammal borrowed from the plaintiff the sum of Rs. 1,000 and executed a promissory note, dated the 9th January 1878, for the said sum of Rs. 1,000 in favour of one T. Iyasawmy Mudelliar, who was only a name-lender to the transaction, and in whose name it was made for the benefit of the plaintiff.

“In renewal of the said promissory note the said Manickammal did on the 29th April 1878 execute and give to the plaintiff in his own name a promissory note for the sum of Rs. 1,000 and made it payable on demand to plaintiff, or order, with interest at 18 per cent. per annum.

“That the said Manickammal died some time in 1879, and the first and second defendants as reversionary heirs of the said Subbu Pillai deceased, and third defendant as the surviving executor of the will of Ponnambala Pillai, deceased, are in possession of the [377] said estate of Subbu Pillai and have neglected and refused to pay the debt due on foot of the promissory note herein.

“That on the 25th of April 1881 a sum of Rs. 1,538-8-0 was due for principal and interest on foot of the said promissory note, and demand for payment of the same not having been complied with, the plaintiff prays judgment as follows:—

- “(1) That it may be declared that the debt due upon the said promissory note, dated the 28th April 1878, and sued upon herein is a valid and binding charge upon the said estate of Ponnambala Subbu Pillai, deceased.
- “(2) That defendants be decreed to pay to plaintiff out of the said estate the said sum of Rs. 1,538-8-0, together with further interest on the principal sum of Rs. 1,000 from the 26th April 1881 up to date of payment at the said rate of 18 per cent per annum.
- “(3) That defendants be decreed to pay out of the said estate the costs of this suit.

Such further or other relief as to this Honourable Court may seem meet.”

The plaintiff appealed on the following grounds, *viz.*, that—

- (1) The allegations in the plaint disclose a sufficient cause of action.
- (2) It is not necessary that the defendants should have been parties to the contract. The maker of the note sued on represented the same estate that is sought to be charged and that is now in the possession of the first and second defendants as reversioners thereto, and of the third defendant who alleges his representation thereof.
- (3) The plaint distinctly alleges that the deceased made the promissory note in the course of administering the estate.
- (4) It is not necessary that a charge should have been created on the estate.

Kristnasami Chetti for Appellant.

Anundacharlu and *Sundaram Sastri* for first and second Respondents.

Mr. Norton for third Respondent.

[378] The Court (INNES and KINDERSLEY, J.J.) delivered the following Judgments:—

Innes, J.—Ponnambala Subbu Pillai died at Madras in 1873 intestate, leaving a widow Manickammal, and first and second defendants, the widows of his adoptive father Ponnambala Pillai. On the 6th November 1875 the widow, who succeeded to her husband's estate, obtained Letters of Administration to his estate and effects.

The plaintiff sues upon a promissory note, renewed in his name on 29th April 1878 by Manickammal, for 1,000 rupees borrowed by her of him on a promissory note of the 9th January 1878 to enable her to prosecute various suits in the High Court and Small Cause Court, rendered necessary by the opposition offered to her by the two widows of her husband's adoptive father and the third defendant, who had got possession of her husband's property, which was eventually declared to have been the absolute and exclusive property to the husband.

Manickammal died in 1879. The plaintiff now seeks to charge the estate in the hands of the reversionary heirs. Various pleas were raised, among which two were that there was no proper necessity for the loan, and that the property in the hands of the reversioners is not liable. The learned Chief Justice dismissed the suit without trial on the ground that no cause of action was declared.

In appeal it is contended that the plaint disclosed a sufficient cause of action in alleging that the note was made in the course of administering the estate. No doubt such a purpose in incurring the debt is alleged as would justify a Hindu widow in charging the estate, *viz.*, the purpose of recovering the estate from wrongful possessors for the purpose of administering it.

As a Hindu widow, Manickammal had only a qualified estate, terminable with her life; but the law permits a widow so situated to charge the estate for proper and necessary purposes. That is to say, she may borrow and secure the amount borrowed on the estate, and the charge so secured will enure as a charge on the estate in the hands of the reversioners. But as her estate is but for life, there must be a dealing with the estate by her by way of alienation during her lifetime to render it liable after her death. [379] If she has borrowed and failed to charge the estate, the reversioners take it as assets of her husband uncharged by debts incurred by her, however necessary and proper they may have been; and as the reversioners succeed as heirs not to her but to her late husband, they do not represent her, and there is no privity of contract or estate to render them chargeable. On the facts set out by plaintiff, therefore, he could not recover, and the suit was rightly dismissed both as against first and second defendants and as against third defendant. *Gadgeppa Desai v. Apaji Jevanrao* (I. L. R. 3 Bom., 237) is an authority in point. We were also referred to *Ramcoomar Mitter v. Ichamoyi Dasi* (I. L. R. 6 Cal., 36), but I am inclined to think the reasoning in that case is very doubtful and am not disposed to follow it.

I do not agree with the argument of Mr. *Sundaram Sastri*, founded upon the case *in re Adanson's Fibre Co., Miles' claim* (L. R., 9 Ch. App., 643) (a purely mercantile case), that in no case can any one be held answerable on a promissory note, but the actual signer or endorser of it or his representative.

A promissory note is evidence of a debt, and I conceive a suit on a promissory note made by a Hindu father would well lie against sons joined in

the suit with the father as defendants on allegation that the debt was incurred for proper family purposes.

But for the reason already given, I would dismiss the appeal with costs.

Kindersley, J.—The plaintiff sued upon a promissory note alleged to have been executed by the late Manickammal, widow of one Ponnambala Subbu Pillai. The plaint was rejected as disclosing no cause of action, the learned Chief Justice observing that “the contract was a contract between the lady and the lender, and the persons who represent the estate were no parties to it. No charge is created on the estate, nor did the lady enter into the contract in a representative character.”

I quite agree that there are cases in which the Hindu Law allows a suit to be brought on a promissory note against the son or representative of the maker. But, in the present case, it does [380] not appear that the note was made by Manickammal as representing her husband's estate. The plaint is so badly drawn that many points are left in obscurity. Thus it is vaguely intimated in the second paragraph that Manickammal obtained Letters of Administration to her husband's estate. But when, and out of what Court, such Letters were obtained, is not stated; and the third defendant is sued as surviving executor with probate of her late husband's will. The other defendants are the widows of her late husband's father. How far Manickammal was justified in proceeding to sue the executors does not appear, and we have no information as to the terms of the will. The allegation that the debt was incurred “for purposes sanctioned by Hindu Law and binding on the estate” is too general to inform the Court of any circumstances by which the estate might be bound. All that can be gathered from the plaint is that Manickammal, having at some time obtained Letters of Administration, engaged in a contest with the executors with probate of her husband's will, and for that and other purposes executed a promissory note which she afterwards renewed by the note in question. It has been found that she did not execute the note in her representative character and did not charge the estate. *Prima facie* a note is merely a personal security, and I cannot say that the plaint alleges such a state of facts as would, by operation of Hindu Law, render it binding on the defendants.

I, therefore, agree that the appeal ought to be dismissed with costs.

Solicitors for third Respondent: *Barclay and Morgan*.

NOTES,

[I. Liability of Estate on Promissory note of Hindu widow.

Madras:—May be liable, (1910) 34 Mad. 188; (1910) 33 Mad. 492 where this case explained.

Bombay:—May be liable, (1901) 26 Bom. 206=3 Bom. L. R. 738; but see (1879) 3 Bom. 237.

Calcutta:—May be liable, (1884) 10 Cal. 823; but see (1908) 12 C.W.N. 769; (1908) 13 C. W. N. 353.

Allahabad:—Not liable, (1908) 30 All. 394; (1896) 18 All. 471; (1897) 19 All. 300.

II. Promissory note—As to who are liable thereon, see (1908) 31 Mad. 343; (1906) 30 Mad. 88; (1900) 23 Mad. 597; (1906) 11 C. W. N. 139.]