

APPELLATE CIVIL.

Before Sir Arnold White, Chief Justice, and Mr. Justice Wallis.

VENKATASUBBIAH CHETTY (PLAINTIFF), APPELLANT,

v.

GOVINDARAJULU NAIDU (SECOND DEFENDANT),

RESPONDENT.*

1907
November
29.

Evidence Act, Act I of 1872, s. 91 — Oral evidence admissible to show that a contract made by a person in his own name was made on behalf of himself and his partners.

Under English Law, in an action on a written contract, oral evidence is admissible to show that the party liable on the contract contracted for himself and as the agent of his partners. Such partners are liable to be sued on the contract, though no allusion is made to them in it.

This is also the law in India as there is nothing in section 91 of the Evidence Act to show that the Legislature intended to depart from this settled rule of English Law.

SUIT to recover the amount due on a bond executed by the first defendant. The plaintiff alleged that the first and second defendants were partners, and that the money was borrowed for the partnership and for partnership purposes.

The learned Judge held that oral evidence was inadmissible to show that the second defendant was liable on the bond which was executed by the first defendant alone.

The judgment of the learned Judge is as follows:—

“I stop the case. If the claim is for money lent to the second defendant on the 25th October 1901, it is barred. If it is not for money lent, but on the bond, the first defendant alone is liable and the terms of the bond cannot be altered by oral evidence of what occurred prior to the execution of the bond.

In those circumstances, the plaintiff is entitled to a decree for the amount sued for against the first defendant with costs, etc., and the suit must be dismissed with costs against the second defendant.”

The plaintiff appealed.

S. Guruswami Chetty and *S. Venkatachariar* for appellant.

P. Anandachariu for respondent.

* Original Side Appeal No. 68 of 1906, presented against the judgment of Mr. Justice Boddam, dated 4th October 1906, in Original Suit No. 13 of 1906.

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JUDGMENT.—The plaint alleges that the first and second defendants were partners and that they borrowed from the plaintiff the amount for which the bond was given.

The bond was signed by the first defendant only. We are unable to agree with the learned Judge that it was not open to the plaintiff to give evidence of circumstances which went to show that the first defendant signed the bond on his own behalf and as the agent of his partner, the second defendant, assuming the first and second defendants were partners. The law is thus laid down in Lindley on 'Partnership,' edition 7, page 207. "If, therefore, one partner only, enters into a written contract, the question whether the contract is confined to him, or whether it extends to him and his co-partners, cannot be determined simply by the terms of the contract. For supposing a contract to be entered into by one partner in his own name only, still, if in fact, he was acting as the agent of the firm, his co-partners will be in the position of undisclosed principals; and they may therefore be liable to be sued on the contract, although no allusion is made to them in it. This was expressly decided in the well-known case of *Beckham v. Drake* (8)(1). There, *Drake, Knight* and *Sturgey* were in partnership as type founders; but *Drake* was a secret partner. A written agreement relative to the partnership business was entered into between the plaintiff and *Knight* and *Sturgey*, and for a breach of this agreement by them the action was brought. *Drake's* name did not appear in the agreement; he did not sign it; nor when the contract was made was he known to the plaintiff to be a partner. It was nevertheless held that all three partners were liable jointly for a breach of the agreement, inasmuch as the agreement itself was clearly entered into by the firm, and *Drake*, like any other undisclosed principal, was liable to be sued as soon as his position was discovered." In Roscoe's 'Nisi Prius Evidence' the law is stated thus:—

"In an action on a written contract between plaintiff and B, oral evidence is admissible, on behalf of the plaintiff, to show that the contract was in fact, though not in form, made by B, as agent of the defendant; for the evidence tends not to discharge B, but to charge the dormant principal; *Wilson v. Hart* (2), and it is

(1) 9 M. & W., 79.

(2) 7 Taunt, 295.

admissible although B named his principal at the time he entered into the contract [*Calder v. Dobell*(1)].

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In our opinion there is nothing in section 91 or section 92 of the Indian Evidence Act which is inconsistent with these decisions, since a question as to who the contracting parties are is not in our opinion one of the "terms of a contract" within the meaning of these sections. We may further remark that none of the illustrations to the sections deal with this question. It would seem therefore it was not the intention of the Legislature to depart from what would appear to be the settled rule under the English law.

We must, therefore, set aside the decree and send the case back to the Court of First Instance in order that the evidence may be admitted. Costs will abide the event.

APPELLATE CIVIL.

Before Sir Arnold White, Chief Justice, and Mr. Justice Miller.

SRIMATH DAIVASIKAMANI PANDARASANNIDHI
alias NATARAJA DESIKAR (DEFENDANT), APPELLANT,

1907.
October 18.

v.

NOOR MAHOMED ROUTHAN AND ANOTHER (PLAINTIFF),
RESPONDENTS.*

Mutt, head of.- Power to bind mutt property.—Income of mutt in the hands of successor liable for debts properly contracted.

The position of the head of a mutt in reference to the mutt is analogous to that of the manager of an infant heir. *Konwar Doorganath Roy v. Ramchunder Sen*, (L.R., 4 I. A., 52), referred to. Where debts are contracted by the head of a mutt for purposes binding on the mutt, a decree in respect of such debts may be passed against his successor charging the income of the mutt property though such debts were not expressly charged on the income of the mutt.

The plaintiffs were traders and the defendant was the head of the Kunnakudi mutt.

(1) L.R., 6 C.P., 486; Ex. Ch., 18.

* Second Appeal No. 174 of 1905, presented against the decree of M.R. Ry. W. Gopalachariar, Subordinate Judge of Madura (East), in Appeal Suit No. 244 of 1904, presented against the decree of M.R. Ry. V R. Kuppasami Ayyar, District-Munsif of Sivaganga, in Original Suit No. 56 of 1908.