

APPELLATE CIVIL.

Before Mr. Justice Miller and Mr. Justice Sankaran-Nair.

1910.
January 5.

REGELLA JOGAYYA (PLAINTIFF), APPELLANT IN SECOND
APPEAL No. 1399 OF 1907.
GUNDU AGASTESWARUDU (PLAINTIFFS), APPELLANT IN
SECOND APPEAL No. 1400 OF 1907,

v.

NIMUSHAKAVI VENKATARATNAMMA AND ANOTHER
(DEFENDANTS Nos. 2 AND 3), RESPONDENTS IN BOTH.*

*Hindu Law—Widow—Debt contracted by widow for necessary purposes binding,
though no formal charge created.*

A debt contracted by a widow as representative of the estate, for the purposes of the estate will be binding on it in the hands of the reversioners, though no formal charge on the estate is created when the creditor looks not to the personal credit of the widow but to her as representative of the estate and relies on the credit of such estate.

Ramasamy Mudaliar v. Sellattammul, [(1882) I.L.R., 4 Mad., 375], referred to.

SECOND APPEALS against the decrees of Dewan Bahadur M. O. Parthasarathy Aiyangar, District Judge of Gódvári at Rajahmundry, in Appeal Suits Nos. 53 and 54 of 1906, presented against the decrees of K. Krishnamachariar, District Munsif of Amalapur, in Original Suits Nos. 56 and 65 of 1905.

The facts are stated in the appellate judgment as follows:—

“The suit was laid on a negotiable instrument made by the first defendant, a widow, in favour of the plaintiff.

The first defendant died and the second and third defendants as daughters were brought on record as legal representatives.

“Whether the plaint note is binding on the estate of the late P. Kameswara Row, first defendant’s husband?” was framed as an additional issue, and the said issue was found against the plaintiff.

It was contended in appeal that part of the consideration for the note sued on was first defendant’s husband’s debt renewed from time to time, that to that extent at least the estate of Kameswara Row in the hands of defendants Nos. 2 and 3 should be held liable. The first defendant did not create a charge on the estate but, on the other hand, from what appears from the note

* Second Appeal Nos. 1399 and 1400 of 1907.

itself she executed the document in her personal capacity. The case reported in I.L.R., 4 Madras, 375, relied on by the Munsif appears to me to be a clear authority in favour of the respondents, and I feel bound to follow it notwithstanding the fact that other High Courts have expressed opinions tending to the contrary view. I therefore agree with the Munsif in his finding on this issue."

The Munsif passed a decree against the assets of the widow and this was affirmed on appeal with some modification in the rate of interest.

Plaintiff appealed.

T. V. Seshagiri Ayyar for appellant.

P. Narayanamurti for respondents.

JUDGMENT.—In *Ramasami Mudaliar v. Sellattammal*(1), the case by which the District Judge holds himself bound, INNES, J., no doubt held that the reversioners will not be bound to pay a debt contracted by the widow unless the debt is charged on the estate. KINDERSLEY, J., however took a different view holding that the plaint did not allege clearly that the promissory note was made by the widow as representative of the estate, and did not allege such a state of facts as would by operation of Hindu Law render the debt due on the promissory note binding on the reversioners.

Neither KINDERSLEY, J., nor TURNER, C.J., who rejected the plaint in the Original Court take the view that, as a matter of law, the reversioners cannot be bound unless the debt is formally made a charge on the estate, and there is no other authority in this Court for that view except the opinion of INNES, J.

In our opinion no distinction can be properly drawn between the case where a charge is formally created and the case in which the creditor lends for the necessary purposes of the estate to the widow as representative of the estate. In such a case though there is no formal charge upon the property forming the estate, the debt is a debt due by the representatives of the estate and recoverable from them. This seems to be the view of TURNER, C.J., and KINDERSLEY, J.

In the case before us the question whether the debts were borrowed by the widow as representative of the estate and for

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purposes binding on the reversioners, and the question whether the creditor looked only to the personal credit of the widow or lent to her as representative of the estate on the credit of the estate, have not been decided.

We accordingly reverse the decree of the District Judge and remand the case for decision according to law in accordance with the above observation. Costs will abide the result. It will be open to the District Judge to remand the case to the Court of First Instance or take evidence himself as he deems necessary.

APPELLATE CIVIL.

*Before Sir Arnold White, Chief Justice, Mr. Justice Benson, and
Mr. Justice Sankaran-Nair.*

1909.
November
26.
December 10.
1910.
February
10, 11.

SRI VENKATACHALLAPATHY SAHAYA VIYAVASAYA
COMPANY, BY ITS PRESIDENT, S. R. VENKATRAMIER
(PLAINTIFF), PETITIONER IN ALL,

v.

KANAGASABHAPATHIA PILLAI (DEFENDANT), ORIGINAL SUIT
No. 491 (RESPONDENT) IN CIVIL REVISION No. 751 OF 1908.*

*Provincial Small Cause Courts Act, IX of 1887, sch. II, art. 18.—Suits 'relating
to Trust' what are.*

Suit by a company by its President to recover from defendants Nos. 2 to 4 the subscriptions due under the Articles of Association of the Company. The first defendant was a trust; defendants Nos. 2 to 4 were the trustees of the trust and members of the plaintiff company, in their capacity of trustees. The plaintiff prayed that the moneys due may be recovered from the trust property in the first instance and, if not so recoverable, from the defendants Nos. 2 to 4 personally. The suit was instituted on the Small Cause side and the Subordinate Judge returned the plaints on the ground that the suit was one relating to a trust within the meaning of Act 18 of Schedule II of the Provincial Small Cause Courts Act and was not triable on the Small Cause side. The High Court was moved by petition under section 25 of the Act, *Held* :

Per CHIEF JUSTICE and SANKARAN-NAIR, J.—BENSON, J., dissenting :—

The suit was to enforce payment of moneys due under the Articles of Association and not one 'relating to a trust' within the meaning of article 18. The fact that issues relating to the trust and the rights and liabilities of the trustees may have to be tried will not make the suit one 'relating to a trust'.

* Civil Revision Petition Nos. 751 to 757 of 1908.