*Paul's*(1), which is referred to by Lord MACNAGHTEN in *Tailby* v. *The Official Receiver*(2), where a covenant in a lease to renew for ninety-nine years which was lawful when made was rendered illegal by subsequent statutes, it was held by the House of Lords, that, as the statutes permitted leases for forty years, specific performance by executing a fresh lease for forty years might be decreed, but in that case the original agreement was lawful, and it does not cover the present case where the transaction was illegal at the time it was entered into. As regards the second question my answer is that the transfer was clearly illegal and inoperative when it was made and did not become operative on the subsequent enfranchisement of the lands.

SANNAMMA v. RADHABHAYI.

WALLIS, C.J.

SADASIVA AYYAR, J.—I agree with my Lord in the answers to be given to the two questions referred to us.

SADASIVA AYYAR, J.

KUMARASWAMI SASTRIYAR, J.—I agree.

KUMARASWAMI SASTRIYAR, J.

N.R.

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## APPELLATE CIVIL—FULL BENCH.

*Before Mr. Justice Ayling, Mr. Justice Coutts Trotter and Mr. Justice Kumaraswami Sastriyar.*

PANDIRI VEERANNA (PLAINTIFF), APPELLANT,

*v.*

GRANDI VEERABHADRASWAMI *alias* VEERABHADRUDU (SECOND DEFENDANT), RESPONDENT.*

1917, September, 28, October 1 and 1918, February 20.

*Limitation Act* (*IX of* 1908), *ss.* 21 (2), 19 *and* 20—*Partnership—Acknowledgment of liability or payment by one partner, when binding on others.*

Direct evidence that one of several partners or co-contractors had authority to acknowledge liability or make payments so as to save limitation as against his partners or co-contractors is not necessary, but such authority can be inferred from surrounding circumstances such as the position of other co-contractors or partners.

*Valasubramania Pillai* v. *S. V. R. R. M. Ramanathan Chettiar* (1909) I.L.R., 32 Mad., 421 and *Shaik Mohideen Sahib* v. *The Official Assignee of Madras* (1912) I.L.R., 35 Mad., 142 at p. 145, considered.

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(1) (1728) 1 Bro. P.C., 240. (2) (1888) 13 A.C., 523 at p. 552.

* Appeal No. 343 of 1916.

VEERANNA v. VEERA-BHADRA-SWAMI.

APPEAL against the decree of P. C. TIRUVENKATA ACHARIYAR, the Additional Temporary Subordinate Judge, Rajahmundry, in Original Suit No. 3 of 1916.

This was a suit brought in December 1914 for Rs. 11,000 due on transactions carried on between the plaintiff and the defendants Nos. 1 and 2 (father and son) under an agreement that the plaintiff was to advance the necessary capital at 12 per cent interest to the defendants to enable them to purchase timber on their own account and to forward the same to the plaintiff for sale at 2 per cent commission. The defendants constituted a joint Hindu family and were carrying on the trade as a joint family concern and the account of the plaintiff for several years showed the names of both the defendants as the parties liable. There were several periodical settlements of accounts and acknowledgments of liability by both the defendants till March 1911. In September 1913 the first defendant alone settled accounts with the plaintiff and executed in his favour a promissory note for the balance found due and also gave a letter to the plaintiff acknowledging the joint liability of himself and his son (the second defendant) for Rs. 9,855. On these facts the plaintiff prayed for a decree against both the defendants for Rs. 11,000. The first defendant was *ex parte*. The second defendant contended *inter alia* that he had no connexion with the timber trade, that he was carrying on separately a cloth trade, that at any rate his father had no authority to acknowledge liability on his behalf and that the settlement, acknowledgment of liability, and the promissory note signed by his father were not binding on him. The Subordinate Judge held that the timber trade was an ancestral family trade of both the defendants, that both of them were liable to pay the plaintiff Rs. 11,000 from out of their family ancestral property and that the first defendant alone and not the second defendant was personally liable for the claim as the second defendant was not a party to the settlement, promissory note and the letter of acknowledgment given to the plaintiff by the first defendant.

The plaintiff preferred this appeal for a personal decree against the second defendant also on the ground that the settlement, promissory note and acknowledgment made by the father in 1913 bound the second defendant also.

*V. Ramadoss* for the appellant.

*T. Ramachandra Rao* for the respondent.

This appeal came on for hearing in the first instance before WALLIS, C.J., and KUMARASWAMI SASTRIYAR, J., who made the following ORDERS OF REFERENCE TO A FULL BENCH :—

WALLIS, C.J.—It is quite clear in this case that the first defendant and his adult son, the second defendant, carried on business as timber merchants with the joint family property. It is also clear that the advances made by the plaintiff were made to them both, and that the second defendant was personally liable on them as well as the first defendant. This is abundantly proved by the fact that the second defendant has signed the settlements in the plaintiff's books (Exhibit A), dated the 27th April, 1907, and A-1, dated the 12th September, 1909, and the promissory notes D, dated the 1st May 1907, and E, dated the 13th September, 1909. He did not sign the settlement A-2, the promissory note F, dated the 26th September, 1910, or the letter J, dated the 1st October, 1910, as he was absent, but on the 7th February, 1911, he signed the letter (Exhibit G), set out in the judgment of the Subordinate Judge, in which he stated that he and his father had been borrowing from the plaintiff, that his father had settled accounts on the 26th September, 1910, and signed in the plaintiff's book, that he had not signed as he was not present, and that subsequently they had received further advances to the extent of Rs. 4,000. In this letter he undertook to discharge both these amounts on his personal liability and added : " There subsists also my personal liability for the whole of the amount payable according to your accounts. As I did not sign in your accounts, this letter was written and given." He did not however sign the subsequent settlement A-3, dated the 7th September 1913, or the promissory-note (Exhibit H), dated the 7th September 1913, or the letter (Exhibit K), dated the 9th September 1913, by which the first defendant acknowledged the joint indebtedness to amount to Rs. 9,855 and arranged for a further advance of Rs. 1,200 for which they were to give a fresh mortgage. The plaintiff has given evidence in support of his case, and neither the first nor the second defendant has ventured to go into the box ; and the witnesses called for the second defendant to prove that he had no

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connexion with his father's business are contradicted by the documents under his own signature already mentioned. There is evidence, and it is the second defendant's case, that for the last few years he has been looking after a cloth business, and according to the plaintiff's evidence the first defendant was the manager and always wrote the letters and invoices relating to the timber business.

In these circumstances, the only question is whether the suit is barred against the second defendant personally, and this depends on whether the first defendant can be assumed to have had implied authority to sign the settlement in Exhibit A-3 and the letter Exhibit K on behalf of the second defendant as well as himself. The last acknowledgments were made by the first defendant when he was managing the joint timber business which was being carried on with joint family funds by the first and second defendants as co-contractors or partners and while the second defendant was looking after another business. According to the decisions of this Court in *Valasubramania Pillai* v. *S. V. R. R. M. Ramanathan Chettiar*(1) and in *Shaik Mohideen Sahib* v. *Official Assignee of Madras*(2), these facts are not sufficient to raise a presumption that the first defendant had authority to make an acknowledgment on behalf of the second defendant. In the latter case it was expressly decided that the fact of a partner being left in management of the business did not give rise to a presumption that he was authorized to sign acknowledgments. I have pointed out in *K. R. V. Firm* v. *Seetharamaswami*(3) that a different view has been taken by other Courts in India in the cases cited [to which may be added *Lalta Prasad* v. *Babu Prasad*(4)] and also apparently in England where the statutory provisions are substantially the same as in India. The point is fully discussed in *K. R. V. Firm* v. *Seetharamaswami*(3) and, as it is one of great importance to the commercial community, we have decided to refer to a Full Bench the question :

"Whether, in the absence of direct evidence that a co-contractor or partner has authorized his co-contractor or partner to make acknowledgments or payments saving limitation on his

(1) (1909) I.L.R., 32 Mad., 421.
(2) (1912) I.L.R., 35 Mad., 142.
(3) (1914) I.L.R., 37 Mad., 146.
(4) (1910) I.L.R., 32 All., 51.

behalf, such authority can be inferred from other circumstances such as the position of the other co-contractors or partners in the business?"



KUMARASWAMI SASTRIYAR, J.—I agree to the reference proposed by my Lord, as I am of opinion that the decisions in *Valasubramania Pillai* v. *S. V. R. R. M. Ramanathan Chettiar*(1) and in *Shaik Mohideen Sahib* v. *Official Assignee of Madras*(2) require reconsideration in the light of the decision in *K. R. V. Firm* v. *Seetharamaswami*(3) which, if I may say so with respect, gives cogent reasons for placing on section 21 of the Limitation Act a more liberal construction in conformity with the decisions of the other High Courts. There is no essential difference between the position of partners in England and India and if under section 251 of the Contract Act the act of one partner which is necessary for or is usually done in the course of the business binds the other partners there is no reason why acknowledgments of liability or payments made by one partner should not bind the others. I have rarely come across any instance where partners, while providing for authority to borrow on behalf of the firm, make any express provision for acknowledgments or payments with reference to limitation. Very often partnership agreement restricts the powers of certain of the partners to borrow, but when there is no restriction, business is conducted on the footing that one who has the power to borrow has also power to settle accounts, make payments and in general to do all things necessary to ensure the credit of the firm. It is well known that Marvadis and Nattukottai Chettis who open accounts with persons insist on periodical settlements and would make no further advances unless accounts are settled when required. The object of the settlement is to prevent disputes as to its correctness and pleas of limitation from being raised. It is difficult to see why partners who allow business to be conducted on lines which are well known to everybody should not be presumed to have given authority in the absence of evidence that the authority to borrow was limited and excluded the doing of things which are ordinarily done where accounts are opened with money-lenders.

(1) (1909) I.L.R., 32 Mad., 421. (2) (1912) I.L.R., 35 Mad., 142.
(3) (1914) I.L.R., 37 Mad., 146.

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I do not think that the wording of section 21 concludes the matter or makes any difference in the general law applicable to partners. The use of the words 'by reason only of' in the Acts of 1877 and 1908 instead of the words 'by reason of' suggests that the legislature did not intend to affect the powers of one partner to bind another by acts falling under section 251 of the Contract Act. If it is shown that one partner has been borrowing moneys, making payments and settling accounts without objection by the other partners, it may well be presumed that he was authorized to do so. There is no reason why we should go further and require an express authority treating the implied authority as useless for the purpose of section 21.

Section 21 is similar in language to section 14 of the Mercantile Law Amendment Act of 1856 which has received judicial interpretation in England so far as partners are concerned. The following passage from Lightwood's Time Limit on Actions, page 383, correctly summarizes the law in England on the subject:—

"Though the doctrine of implied agency as between co-debtors is abolished one may still be the actual agent of the other so as to bind him by payment. In the absence of evidence to the contrary one partner is presumed to be the agent of the other to make payments in respect of partnership debts [*Goodwin* v. *Parton*(1)], and though the agency is in general terminated by a dissolution of partnership [*Watson* v. *Woodman*(2)], it may, under special circumstances, be treated as continuing where for instances the retirement of a partner is kept secret and payments of interest are made in the name of the firm, *In re Tucker*(3)."

I agree with the judgment in *K. R. V. Firm* v. *Seetharamaswami*(4), which deals fully with the English and Indian statutes and decisions and which is entirely in accordance with my experience of the consciousness of the mercantile community and the course of business usually followed. The same view has subsequently been taken in *Lalta Prasad* v. *Babu Prasad*(5), and in *Abdulalli* v. *Ranchodlal*(6) and in *Karmlai Abdulla* v. *Karimji Jiwanji*(7).

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(1) (1879) 41 L.T., 91.
(2) (1875) 20 Eq., 721.
(3) (1894) 3 Ch., 429.
(4) (1914) I.L.R., 37 Mad., 146.
(5) (1910) I.L.R., 32 All., 51.
(6) (1917) 19 Bom. L.R., 86 at p. 95.
(7) (1915) I.L.R., 39 Bom., 261 (P.C.).

On this Reference—

*V. Ramadoss* for appellants.—The authority to acknowledge liability to pay or settle so as to bind partners or co-contractors need not be expressed but may be implied. Implication may be from other evidence in the case, such as that such acts are usually done by the partners: see *Valasubramania Pillai* v. *S. V. R. R. M. Ramanathan Chettiar*(1) and *Shaik Mohideen Sahib* v. *Official Assignee of Madras*(2). In section 21 (2) of the Limitation Act the words are 'by reason *only* of payment'; i.e., mere *payment* alone is not such evidence. The case of *K. R. V. Firm* v. *Seetharamaswami*(3) is *inclined* to the opinion that such authority can be inferred from other evidence. There is really no inconsistency in the three Madras cases. Section 251 of the Contract Act declares when one partner's act binds his co-partners. Such authority can be implied if the partner had authority to borrow: *Muthuswami Nadan* v. *Sankaralingam Chetty*(4) and *Chidambaram Chetti* v. *Ramaswami Chetti*(5). The fact that the person paying in this case is father of the second defendant and manager of the family is other evidence from which the authority can be inferred. See also *In re Tucker*(6) and *In re Macdonald, Dick* v. *Fraser*(7).

*T. Ramachandra Rao* for respondents.—From the mere fact of the person paying being a partner, authority to pay on behalf of others cannot be inferred. It is true that express authority to pay need not be proved. The mere fact that he is the manager or that he was generally conducting the business is not enough. There are no facts in the case from which authority can be inferred.



OPINION.—In this case the two defendants carried on the business of timber merchants as a family business, they being father and son in an undivided Hindu family. They are sued on a debt which would be statute-barred in the absence of an acknowledgment, sufficient within section 19 of the Limitation Act to take it out of the statute. There is such an acknowledgment, but it is only signed by the first defendant, the father, and the question is whether it can operate as against the son, the co-defendant also.

(1) (1909) I.L.R., 32 Mad., 421. (2) (1912) I.L.R., 35 Mad., 142.
(3) (1914) I.L.R., 37 Mad., 146. (4) (1915) 18 M.L.T., 273.
(5) (1914) 27 M.L.J., 631 at p. 634. (6) (1894) 3 Ch., 429 C.A.
(7) (1897) 2 Ch., 181 at p. 188.

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AYLING, COUTTS TROTTER AND KUMARA-SWAMI SASTRIYAR, JJ.

The learned Judges who referred the case have propounded a question about the answer to which we feel no hesitation, but it is obviously referred to us because they felt a doubt as to whether the decisions in *Valasubramania Pillai* v. *S. V. R. R. M. Ramanathan Chettiar*(1) and *Shaik Mohideen Sahib* v. *The Official Assignee of Madras*(2) did not preclude them from arriving at the conclusion which they clearly thought to be the right one.

The exact question propounded is

'whether, in the absence of direct evidence that a co-contractor or partner has authorized his co-contractor or partner to make acknowledgments or payments saving limitation on his behalf, such authority can be inferred from other circumstances such as the position of the other co-contractors or partners in the business."

Our answer is in the affirmative. We think that direct evidence of a specific authority to give acknowledgments is quite unnecessary, and that authority may be inferred from the surrounding circumstances, though it is of course quite beyond our province to indicate what circumstances should in our opinion be deemed sufficient to warrant the inference. It is important to notice the exact wording of section 21 (2) of the Limitation Act. The section does not say that a person shall not be liable on an acknowledgment signed by the partner by reason only of his being a partner but by reason only of a written acknowledgment signed by his partner; and it amounts to saying that if you have no more than a written acknowledgment signed by one defendant the fact that the other defendant is his partner cannot affect the latter's liability. You could obviously have a case where one partner signed an acknowledgment in respect of a gambling debt of his own; but for the sub-section, proof of the acknowledgment would be sufficient to fix the other partner with liability, a conclusion manifestly repugnant both to sense and justice. We see nothing in the sub-section to make it necessary to suppose that it is intended to apply to transactions conducted in the ordinary course of partnership business. We need only refer to the general principle of law embodied in section 251 of the Contract Act that partners are the agents of one another and that their acts done in the ordinary course of the partnership business bind the partnership.

(1) (1909) I.L.R., 32 Mad., 421. (2) (1912) I.L.R., 35 Mad., 142.

As regards the two decisions referred to, it is not quite easy to say whether they should properly be regarded as laying down as a condition of liability that there should be direct evidence of express authority to give acknowledgments. But at least one sentence in *Shaik Mohideen Sahib* v. *The Official Assignee of Madras*(1) lends colour to that view. WHITE, C.J., referring to the former decision in *Valasubramania Pillai* v. *S. V. R. R. M. Ramanathan Chettiar*(2), says:

"Following the principle we here *Valasubramania Pillai* v. *S. V. R. R. M. Ramanathan Chettiar*(2) lay down, we have to see in this case if there is evidence that the person who made the acknowledgment had authority to do so on behalf of his firm."

Those words are capable of the construction that what is meant is direct evidence of specific authority, and they were obviously so regarded by the learned Judges who referred this question to us. If that be so we have no hesitation in saying that they were wrongly decided and should no longer be regarded as law. Such a view is completely at variance with that taken by the other Courts of India and by the English Courts in their construction of the corresponding sections of the English Acts and would obviously put a premium on commercial dishonesty.

N.R.

## APPELLATE CIVIL.

*Before Mr. Justice Spencer and Mr. Justice Seshagiri Ayyar.*

SINGA PILLAY (PLAINTIFF), APPELLANT,

*v.*

AYYANERI GOVINDA REDDY AND ANOTHER (DEFENDANTS), RESPONDENTS.*

1917, July 16 and 27.

*Mortgage—Transferee from benamidar—Right of suit.*

A transferee-mortgagee can maintain a suit on the mortgage though the mortgagee named in the bond is only a benamidar and though the beneficial owner is not added as a party.

*Kirtibas Das* v. *Gopal Jiu* (1914) 19 C.L.J., 193, and *Parmeshwar Dat* v. *Anardan Dat* (1915) I.L.R., 37 All., 113, followed.

SECOND APPEAL against the decree of K. KRISHNAMACHARIYAR, the Subordinate Judge of North Arcot, in Appeal No. 113 of

(1) (1912) I.L.R., 35 Mad., 142 at p. 145. (2) (1909) I.L.R., 32 Mad., 421.

* Second Appeal No. 1887 of 1915.