opinion is also supported by text writers of acknowledged authority, like High, Woodroffe (page 91) and Kerr (page 167). That opinion is to the effect that the omission to obtain previous sanction (a sanction which is not a condition imposed by statutory law like the sanction mentioned in section 92 of the Code of Civil Procedure, or section 17 of the Presidency Insolvency Act, but one imposed by the common law to enforce due respect towards Courts of Justice) does not affect the jurisdiction of the Court, but is an illegality which can be effectively cured by the plaintiff obtaining the sanction during the course of the litigation.

[Their Lordships then proceeded to deal with the facts of the case and agreeing with the findings of the lower Appellate Court, dismissed the Second Appeal.]

K.R.

APPELLATE CIVIL.

Before Mr. Justice Sadasiva Ayyar and Mr. Justice Spencer.

LAKSHMINDRATHIRTHA SWAMIAR, MINOR, BY GUARDIAN RAJAGOPALACHARYA (DEFENDANT), APPELLANT,

1920, February 26.

v.

K. RAGHAVENDRA RAO (PLAINTIFF), RESPONDENT.*

Mutt, head of—Sanyasi—Simple money debts incurred by head for necessities of the mutt—Suit against successor—Liability of mutt properties—Personal liability of the debtor—Lay trustee, executor or administrator, analogy of.

In a suit to recover a simple money debt, incurred by the sanyasi head of a mutt for the necessary purposes of the mutt, the properties of the mutt can be made liable, whether the suit is brought during the lifetime of the incumbent who incurred the debt or his successor.

Cases of debts incurred by lay trustees of religious or charitable institutions, executors or administrators, distinguished.

Shankar Bharati Swami v. *Venkapa Naik*, (1885) I.L.R., 9 Bom., 422, followed.

SECOND APPEAL against the decree of L. G. MOORE, District Judge of South Kanara, in Appeal Suit No. 251 of 1918, preferred

* Second Appeal No. 648 of 1919.

LAKSHMINDRATHIRTHA SWAMIAR v. RAGHAVENDRA RAO.

against the decree of M. ANANTAGIRI RAO, District Munsif of Udipi, in Original Suit No. 521 of 1917.

The material facts are set out in the Judgment.

C. V. Anantakrishna Ayyar and *K. Sundara Rao* for the appellant.

B. Sitarama Rao and *K. Yagnanarayana Adiga* for the respondent.

SADASIVA AYYAR, J.

SADASIVA AYYAR, J.—The defendant is the appellant. The suit was brought for the recovery of Rs. 1,500, and interest due thereon, being loans of money advanced to the head of the Shirur muttam, one of the eight Udipi muttams. The swami to whom the loans were made is dead and the suit was brought against his successor, the allegation in the plaint being that the debts were incurred for the benefit and necessities of the mutt. The plaint prayed that a decree should be passed directing the defendant to pay the sum due to the plaintiff out of the estate of the God Vittalar of the defendant's muttam. The District Munsif found that, of the 76 items making up Rs. 1,500, the third item was clearly proved to have been borrowed for the necessities of the muttam. As regards the other items making up Rs. 1,000, they were borrowed from him for the ordinary expenses of the muttam, but the creditor had not shown that the means then in the hands of the madhathipathi were not sufficient to meet those expenses. He, therefore, gave a decree as regards Rs. 500 against the defendant as the representative of the muttam, to be recovered from the rents and profits of the muttam, but as regards the remaining Rs. 1,000 and interest thereon, he directed the defendant to pay it out of the assets of the predecessor in his hands, such assets, according to the District Munsif, consisting of the income which accrued due from the mutt properties during the lifetime of the defendant's predecessor but not realized by that predecessor during his lifetime. The District Munsif in forming such an opinion was guided by the view of the law as it was understood in this Court prior to *Ram Parkash Das* v. *Anand Das*(1) and *Arunachellam Chetty* v. *Venkatachalapathi Guruswamigal*(2), that view being that the head of a mutt is the private and absolute owner of the income of the mutt accruing during his lifetime.

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(1) (1916) I.L.R., 43 Calc., 707 (P.C.). (2) (1920) I.L.R., 43 Mad., 253 (P.C.).

The learned District Judge on appeal was inclined to hold that the sum of Rs. 1,000, made up of the items other than the third item, did not stand on a lower footing than the third item itself and that the District Munsif would have been 'justified in holding' that necessity had been proved for borrowing these sums also. As, however, the plaintiff had not filed any memorandum of objections in the District Court, the learned District Judge contented himself with confirming the District Munsif's decision.

In this Second Appeal several points were argued. Two of them were: (1) that in the absence of any charge created by a trustee on the trust properties for loans obtained by him the creditor cannot obtain a decree making the trust properties liable, (2) that the finding that there was necessity to borrow either the third item or the other items was erroneous. (The other points argued by the appellant's vakil need not be noticed as they do not arise if he fails on the second point, as he does, in my opinion.)

As I understand the District Judge's judgment, he did not, in arriving at his finding on the second point, lose sight of the consideration mentioned in *Nataraja Desikar* v. *Karutha Ravuthan*(1), viz., that it was not sufficient for the creditor to prove that the moneys were borrowed for the purposes of the mutt, but that it must also be found that there was an existing necessity for them incurring the debts, that is, that the necessary expenses could not have been met out of the mutt funds then available to the trustee. The learned District Judge has considered the evidence in the case, which shows that the defendant's predecessor was a prudent and honest man, and given weight to the fact that the defendant was withholding the temple accounts; and I cannot say that his finding of fact can be successfully attacked in Second Appeal.

Then the only question remaining for consideration is whether in a suit to recover simple money debts incurred by the sanyasi head of an institution, the trust itself can be made liable and, in considering this question, it is, of course, immaterial whether the suit is brought during the lifetime of the trustee who incurred

(1) (1911) 21 M.L.J., 129.

LAKSHMINDRATHIRTHA SWAMIAR v. RAGHAVENDRA RAO.

SADASIVA AYYAR, J.

it or against his successor. If his position was wholly analogous to that of an executor, or an administrator, or the lay trustee of a charitable or religious institution, the answer must be in the negative. See *Swaminatha Aiyar* v. *Srinivasa Aiyar*(1) *Chidambaram Pillai* v. *Veerappa Chettiar*(2) and *Parvathi Ammal* v. *Namagiri Ammal*(3). The principle underlying these decisions is that such a trustee, or other person in the position of a trustee, has got his personal credit to pledge, and the presumption should be that when he incurred a debt without charging the trust properties, the creditor lent the money on such personal credit and could look to that credit alone and to the principle of subrogation for recovery of his loan. I think the same principle would apply even to an ordinary trustee of a temple who is not a sanyasi. But as regards sanyasi trustees, a distinction has been suggested in *Shankar Bharati Svami* v. *Venkapa Naik*(4). I shall quote the following sentences from page 425:

"The case was said to be similar to that of an executor contracting a loan for the purposes of the estate by English Law—see *Farhall* v. *Farhall*(5); or that of the manager of a charitable institution incurring a liability for the purposes of the institution—*Strickland* v. *Symons*(6). It is sufficient for the present case to say that those decisions are, in our opinion, inapplicable to the case of the swami of a mutt, who presumably has no private property, and must, therefore, be presumed to be pledging the credit of the mutt when he borrows money for the purposes of the mutt. That being so, the bond was binding on the savasthan if the loan was for the purposes of the mutt, or the plaintiff had bona fide reason to suppose it was intended for such purposes."

Again in *Nataraja Desikar* v. *Karutha Ravuthan*(7), though the ultimate decision was in favour of the successor of the mutt who was the defendant in that case, the law laid down recognizes that the loans incurred by the head of the mutt for necessary purposes of the mutt can be treated as pledging the credit of the mutt and as justifying a decree against the mutt. I find from the back of the printed papers in that case that *Shankar Bharati Svami* v. *Venkapa Naik*(4) was cited before

(1) (1917) 32 M.L.J., 259.
(2) (1917) 6 L.W., 640.
(3) (1917) 6 L.W., 722.
(4) (1885) I.L.R., 9 Bom., 422.
(5) (1871) 7 Ch. App., 123.
(6) (1884) 26 Ch.D., 245.
(7) (1911) 21 M.L.J., 129.

the learned Judges, and though the loans in question in that case were obtained by the head of the mutt through merely signing acknowledgments of indebtedness in the plaintiff's account books, the judgment proceeds on the footing that he thereby pledged the credit of the mutt and not any personal credit of his. I am clear that a Hindu sanyasi has no personal credit whatever of a monetary or proprietary character, and that it is a contradiction in terms to state that any loan was made to a sanyasi on his personal credit. I would therefore hold that *Swaminatha Aiyar* v. *Srinivasa Aiyar*(1), and the other cases already referred to, do not apply when the question of the liability of the mutt or other institution for the debt incurred by a sanyasi as head of the institution comes into question.

In the result I would dismiss the Second Appeal with costs.

SPENCER, J. SPENCER, J.—I agree with my learned brother in thinking that cases where the head of a mutt borrows money for purposes binding on the mutt, without showing any indication that he intends to make himself personally liable, are distinguishable from cases of trustees borrowing money for purposes of their trusts upon promissory notes. In all the cases relied upon by the appellant's learned vakil—*Swaminatha Aiyar* v. *Srinivasa Aiyar*(1) and *Chidambaram Pillai* v. *Veerappa Chettiar*(2) and *Parvathi Ammal* v. *Namagiri Ammal*(3)—there were promissory notes executed by the trustees or executors concerned, and in the case of such promissory notes there is always a presumption that the promisor intended to make himself personally liable [see *Palaniappa Chettiar* v. *Shanmugam Chettiar*(4)], and this is especially so when the trust which he represents is an inanimate object which has no personal liability of itself. To the cases quoted by my learned brother I would add *Srimath Deivasikamani Pandarasannidhi* v. *Noor Mahomed Rauthan*(5). All these are cases in which the head of a mutt, either directly or by implication, pledged the credit of the mutt in incurring debts for purposes necessary for the maintenance of the institution. In such cases there is no presumption that the head of the mutt

(1) (1917) 32 M.L.J., 259. (2) (1917) 6 L.W., 640.
(3) (1917) 6 L.W., 722. (4) (1918) I.L.R., 41 Mad., 815.
(5) (1908) I.L.R., 31 Mad., 47.

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(mahant, swamiyar or whatever other title he may possess) intended to make himself personally liable. From this point of view, the decrees of the Courts below were right and the Second Appeal should be dismissed with costs.

K.R.

SPENCER, J.

APPELLATE CIVIL.

Before Mr. Justice Oldfield and Mr. Justice Seshagiri Ayyar.

1920, March 2.

SOMASUNDARAM CHETTY (THIRD RESPONDENT), APPELLANT,

v.

UNNAMALAI AMMAL AND TWO OTHERS [PETITIONER (PLAINTIFF) AND FIRST AND SECOND RESPONDENTS], RESPONDENTS *

Hindu Law—Decree for maintenance to a widow of a joint family creating a charge on family properties—Subsequent purchaser of such properties under money decree binding on family—Priority of charge.

A charge on joint family properties created by a decree for maintenance payable to the widow of a member of a joint Hindu family takes precedence over the right of a subsequent purchaser of the same properties in execution of a money decree binding on the family.

APPEAL against the order of A. EDGINGTON, District Judge of South Arcot, in Execution Petition No. 66 of 1917 in Original Suit No. 33 of 1914.

The facts are stated in the Judgment.

S. Duraiswami Ayyar and *A. Raghunatha Rao* for appellant.

S. T. Srinivasa Gopala Achariyar for first respondent.

The JUDGMENT of the Court was delivered by

SESHAGIRI AYYAR, J.

SESHAGIRI AYYAR, J.—This matter arises in execution. A suit was brought in July 1913, against the father of a debtor who was undivided from his father, for money borrowed. The son had died in March 1913. An application for attachment before judgment was obtained on 11th July 1913. There was a simple money decree against the father, executable against the assets of the son in his hands. On 30th July 1914, the widow of the son sued her father-in-law for maintenance, and claimed that it should be charged against the family properties.

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* Appeal against Order No. 90 of 1919.