APPELLATE CIVIL—FULL BENCH.

Before Sir Owen Beasley, Kt., *Chief Justice, Mr. Justice Ramesam and Mr. Justice King.*

YELURI SATYANARAYANA (DECEASED) AND TWO OTHERS (PLAINTIFF AND NIL), PETITIONERS,

1934, December 19.

v.

YELURI MALLAYYA AND THREE OTHERS (DEFENDANTS), RESPONDENTS.*

Minor—Guardian—Promissory note executed by—Liability of guardian or minor under—If and when—Promissory note, insufficiently stamped—Debt and making of note simultaneous—Right to fall back upon debt.

A promissory note was executed by the mother of certain minor members of a Hindu joint family. In the body of the promissory note the minors were described as the makers with the words "represented by their mother and guardian, Venkayamma", but she signed the same without any such description attached to her name. This promissory note was itself in renewal of an earlier promissory note by her in similar terms, which again was in renewal of a promissory note executed by the father of the minors. Two questions arose for decision, viz., (i) what was the true intention of the maker of the promissory note, and (ii) whether under the circumstances it was within the competence of the guardian by executing a promissory note to make the minors liable to the extent of the joint family property in their hands.

Held, (i) that all the surrounding circumstances should be looked into in order to find out whether the maker of the promissory note intended to exclude her personal liability as guardian but to make the wards liable; (ii) that, under the circumstances, inasmuch as the promissory note was in renewal of earlier promissory notes ultimately leading up to the liability of the father of the minors, such an intention could be inferred; and (iii) that in a proper case it is within the competence of a guardian by executing promissory notes to make a minor liable to the extent of the joint family property in his hands, and the

* Civil Revision Petition No. 1061 of 1930.

SATYA-NARAYANA v. MALLAYYA.

fact that the payee of the promissory note can succeed against the minor and his estate only if certain facts are established cannot make the liability under the promissory note one other than an unconditional personal liability, and that so long as the form of the promissory note conforms to the definition of a promissory note under the Negotiable Instruments Act, it is not the less unconditional simply because, when the matter goes to a Court of law and the defendant raises some defence, the plaintiff has got to establish certain facts before he can succeed against the minor.

The dictum to the contrary in *Swaminatha Odayar* v. *Natesa Iyer*, (1932) I.L.R. 56 Mad. 879, overruled and the opinion of the majority of the Full Bench in *Ramajogayya* v. *Jagannadhan*, (1918) I.L.R. 42 Mad. 185 (F.B.), followed.

PETITION under section 25 of Act IX of 1887 praying the High Court to revise the decree of the Court of the District Munsif of Guntur in Small Cause Suit No. 1399 of 1929.

D. Narasaraju for *N. Rama Rao* for petitioners.

P. Satyanarayana Rao for respondents.

Cur. adv. vult.

JUDGMENT.

RAMESAM J.

RAMESAM J.—This revision petition arises out of Small Cause Suit No. 1399 of 1929 on the file of the Court of the District Munsif of Guntur in which the plaintiff sought to recover a sum of money due to him evidenced by the promissory note (Exhibit A) which itself was in renewal of an earlier promissory note (Exhibit A-1). Both these notes were executed by the defendants' mother, Venkayamma. In the body of the promissory notes the minor defendants are described as the makers with the words "represented by their mother and guardian, Venkayamma", but she signed the notes without any such description attached to her name. Exhibit A-1 itself was in renewal of an earlier promissory note (Exhibit A-2)

executed by the defendants' father on 28th February 1922. According to the Hindu Law the sons are liable to pay their father's debt to the extent of the joint family properties received by them from their father or other assets inherited by them from him. The District Munsif held that on a construction of the suit promissory note it was not intended to make the defendants liable. Referring to *Subbanna* v. *Subbarayudu*(1), the learned District Munsif observed that

> "the liability on a promissory note must be determined on the wording of the note and, in each case, the question is whether the instrument has been so drawn in form as to make the executant liable personally or only in his capacity as agent, guardian, etc."

He then thought that the mother did not intend to make the sons liable because she had used the feminine gender in the operative part of the note. This seems to be scarcely relevant as one finds it difficult to conceive in what other form the promissory note can be drawn up. Finally, purporting to follow the decisions in *Ramaswami Mudaliar* v. *Muthuswami Ayyar*(2), *Subbanna* v. *Subbarayudu*(1) and *Muthusami Naicken* v. *Somasundaram Mudaliar*(3), he dismissed the suit. The plaintiff has filed this revision petition.

The revision petition first came on for hearing before SUNDARAM CHETTI J. The respondents did not appear. Following the decision in *Ramajogayya* v. *Jagannadhan*(4) and *Meenakshisundaram Chetti* v. *Ranga Ayyangar*(5), the learned Judge set aside the lower Court's decree and passed a decree in favour of the plaintiff as sued for.

(1) (1925) 50 M.L.J. 125.
(2) (1915) 30 I.C. 481.
(3) (1927) 53 M.L.J. 814.
(4) (1918) I.L.R. 42 Mad. 185 (F.B.).
(5) (1931) 35 L.W. 397.

SATYA-NARAYANA v. MALLAYYA. — RAMESAM J.

Afterwards the respondents applied to set aside the *ex parte* decree by showing sufficient cause for their non-appearance. The *ex parte* decree was accordingly set aside and the petition came up for disposal before our brother VARADACHARIAR J. The learned Judge referred the matter to a Bench of two Judges who referred it to a Full Bench.

In *Subbanna* v. *Subbarayudu*(1) the question in a similar case was whether the guardians were personally liable. It was held that they were not, as it was clear on the note that they intended to exclude personal liability. Whether the minor was liable or not did not arise in that case. But, as it must have been intended to bind somebody and as it was held that the guardians were not liable, probably it would have been held that the minor was liable if the question had arisen. A portion of the case related to executors and the conclusion was different. This case does not therefore support the District Munsif's conclusion.

The decision in *Muthusami Naicken* v. *Somasundaram Mudaliar*(2) is a decision of a single Judge.

The case of *Ramaswami Mudaliar* v. *Muthuswami Ayyar*(3) was decided in 1915 and is similar to the case of *Muthusami Naicken* v. *Somasundaram Mudaliar*(2). So far as the form of the promissory note and the intention of the maker are concerned, the case before us is similar to *Subbanna* v. *Subbarayudu*(1). The intention of the makers of the note was to exclude the personal

(1) (1925) 50 M.L.J. 125. (2) (1927) 53 M.L.J. 814.
(3) (1915) 30 I.C. 481.

liability of the guardian and to make the wards liable.

One must look at all the surrounding circumstances in inferring the intention. Seeing that the note was in renewal of earlier promissory notes ultimately leading up to the father's liability, I think this is the proper inference to draw.

But the further question arises whether in such circumstances it is within the competence of the guardian by executing a promissory note to make the minors liable to the extent of the joint family property in their hands. On this point it was held in some of the early cases that the minors may be liable under such circumstances; see *Subramania Ayyar* v. *Arumuga Chetty*(1), *Krishna Chettiar* v. *Nagamani Ammal*(2) and *Venkitaswami Naicker* v. *Muthuswamy Pillai*(3).

The matter came up before a Full Bench in *Ramajogayya* v. *Jagannadhan*(4). WALLIS C.J. held that a guardian cannot make personal covenants in the name of the ward so as to impose personal liability upon him, relying upon *Waghela Rasanji* v. *Shekh Masludin*(5). But SESHAGIRI AYYAR and AYLING JJ. held that such a wide proposition was not intended to be laid down in *Waghela Rasanji* v. *Shekh Masludin*(5) and they were of opinion that the liability of a minor under the Hindu Law is not affected by the fact that the promissory note was made by a guardian. They referred to a number of decisions of this and other High Courts which are in accordance with that view. This decision has always been

(1) (1902) I.L.R. 26 Mad. 330. (2) (1915) I.L.R. 39 Mad. 915.
(3) (1917) 34 M.L.J. 177. (4) (1918) I.L.R. 42 Mad. 185 (F.B.).
(5) (1887) I.L.R. 11 Bom. 551 (P.C.).

SATYA-NARAYANA v. MALLAYYA.

RAMESAM J.

followed in this Court as settling the law, and I do not think that anything has happened since to induce me to depart from that decision. Its effect, as stated by CURGENVEN J. in *Zamindar of Polavaram* v. *Maharaja of Pittapuram*(1), is that any liability to which the minor would be subject under the Hindu Law is not the less a liability because it was incurred by his guardian on his behalf. See also *Ramakrishna Reddiar* v. *Chidambara Swamigal*(2) and *Meenakshisundaram Chetty* v. *Ranga Ayyangar*(3).

In *The Imperial Bank of India, Madras* v. *Veerappan*(4) our brother PANDRANG ROW J. observed :

> " The appellant bank can succeed in fixing the liability on the minor in respect of the promissory notes only if it is shown that the bank believed in good faith that there was a real necessity for the execution of the promissory notes, or that the agent was acting for the benefit of the minor's business."

In that case it was found that this was not shown, and hence the bank failed. There is no such difficulty in the present case. That decision implies that minors may be liable on a promissory note under such circumstances.

But the decision in *Meenakshisundaram Chetty* v. *Ranga Ayyangar* (3) has been doubted in *Swaminatha Odayar* v. *Natesa Iyer*(5). In the latter case, the promissory note was executed by a person who was not the lawful guardian at all, but, at page 883, REILLY J. proceeded to observe :

> " How can any guardian impose a liability upon a minor by executing a promissory note on his behalf ? If a promissory note is to effect anything, it must create an unconditional personal liability."

---

(1) (1930) I.L.R. 54 Mad. 163.
(2) (1927) 27 L.W. 322.
(3) (1931) 35 L.W. 397.
(4) (1934) 67 M.L.J. 573, 580.
(5) (1932) I.L.R. 56 Mad. 879.

The doubt seems to arise because of the fact that the payee of the note can succeed against the minor and his estate only if certain facts are established. This is true. But I do not think this fact makes the liability under the promissory note one other than an unconditional personal liability. What is meant by that phrase is that the liability mentioned in the note should not be made contingent on some event, for, if it is so made conditional or contingent upon the happening of some event, it will not conform to the definition of a promissory note. But, so long as the form of the promissory note conforms to the definition of a promissory note under the Negotiable Instruments Act, it is not the less unconditional simply because when the matter goes to a Court of law and the defendant raises some defence, the plaintiff has got to establish certain facts before he can succeed against the minor. The truth is that in no transaction entered into by a guardian on behalf of a minor can the opposite party succeed, if challenged, without establishing some facts such as that the transaction was for the benefit of the minor or some such other fact. That such a fact has got to be established does not, in my opinion, make the liability under the promissory note a conditional liability. On the doubt entertained by REILLY J. it follows that a promissory note on behalf of a minor is impossible. Such a view is opposed to the trend of all the decisions in all the High Courts including the Full Bench decision of *Ramajogayya* v. *Jagannadhan*(1). I am unable therefore to agree with the doubt suggested by REILLY J. The actual conclusion in the case

(1) (1918) I.L.R. 42 Mad. 185 (F.B.).

SATYA-NARAYANA v. MALLAYYA.

RAMESAM J.

before him rested on the fact that the promissory note was not executed by a lawful guardian at all. Otherwise, that decision must be regarded as overruled.

It was suggested that in such a case the suit should be on the debt and not on the note. But this seems to be a merely verbal distinction and not one of substance ; *Krishna Chettiyar* v. *Nagamani Ammal*(1). A note is only evidence of a debt. It is true that in the case of insufficiently stamped promissory notes parties are not allowed to fall back upon the debt where the debt and the making of the note were simultaneous. Such a principle is necessary to protect the interests of public revenue. It is not necessary to extend the principle beyond such a case. In my opinion, therefore, the plaintiff is entitled to a decree. This is also the view of SUNDARAM CHETTI J. and of VARADACHARIAR J.

I would therefore set aside the decree of the District Munsif and give a decree to the plaintiff as prayed for with costs throughout.

BEASLEY C.J.—I agree.

KING J.—I agree.

G.R.

(1) (1925) I.L.R. 39 Mad. 915.