

APPELLATE CIVIL.

Before Mr. Justice Varadachariar and Mr. Justice
Abdur Rahman.

MOTTAI MEERA *alias* SHEIK ABDUL KADIR
ROWTHER (APPELLANT), PETITIONER,

1938,
November 25.

v.

CHINNA SHEIK ABDUL KADIR ROWTHER
AND TWO OTHERS (RESPONDENTS), RESPONDENTS.*

Madras Agriculturists Relief Act (IV of 1938), ss. 4 (f) and 9—"Debt" within meaning of Act—Co-owner's liability to the other co-owners for interest on amounts collected by him on their account if—Applicability of sec. 4 (f) of Act to obligations declared in Ch. X of Indian Trusts Act (II of 1882)—Sec. 9 of Madras Act (IV of 1938)—Scope of—Liability arising under decree of Court—Applicability of section to.

On the death of a Muhammadan leaving three sons and a daughter, the first defendant, his eldest child and a major at the time, entered into possession and management of the deceased's property and held and managed it for some years on behalf of all the co-owners. During the period of his management, the first defendant collected outstandings due to the father's estate and the income due from the common property of the family. In a suit for partition subsequently instituted by the plaintiff, another son of the deceased, the trial Court held the first defendant liable to pay to the plaintiff and to defendants 2 and 3, the third son and the daughter of the deceased, a sum representing (i) amounts collected by the first defendant on their account and (ii) interest thereon, his liability for interest being based on the ground that he had realised interest by investment of the common funds. The decree of the trial Court also directed payment of interest on the aggregate amount at six per cent per annum from the date of the institution of the suit to the date of payment. The High Court on appeal confirmed the decree of the trial

* Civil Miscellaneous Petition No. 2932 of 1938.

MOTTAI MEERA Court. On an application made by the first defendant for relief under the Madras Agriculturists Relief Act (IV of 1938) with reference to his liability for payment of interest,

v.
ABDUL KADIR.

held: (i) The liability for interest on the amounts collected by the first defendant on account of the plaintiff and defendants 2 and 3 was not covered by Madras Act IV of 1938 as it was not a "debt" within the meaning of that Act and the first defendant was not entitled to relief in respect of it.

Section 4, clause (f), of Madras Act IV of 1938 is applicable to obligations declared in Chapter IX of the Indian Trusts Act.

(ii) The liability to pay interest subsequent to the date of the trial Court's decree was governed by section 9 of Madras Act IV of 1938 and that decree must be varied by limiting the award of six per cent interest up to the date of that decree and providing for payment of interest at five per cent per annum from that date up to date of payment.

Section 9 of Madras Act IV of 1938 refers not only to contractual liability but even to liabilities arising under law, custom or decree of Court. The first defendant's liability for interest subsequent to the date of the trial Court's decree is a liability imposed upon him by the decree and does not rest on the same basis as the original liability to pay over the interest realised by him.

PETITION praying that in the circumstances stated in the affidavit filed therewith the High Court will be pleased to amend the decree of the High Court, dated 26th August 1938, in Appeal No. 246 of 1934 (Original Suit No. 16 of 1930, Sub-Court, Madura) as regards interest, in accordance with the provisions of the Madras Agriculturists Relief Act IV of 1938.

B. Sitarama Rao for *R. Ramasubba Ayyar* for petitioner.

V. Ramaswami Ayyar for *K. Rajah Ayyar* and *N. G. Krishna Ayyangar* for respondents.

The ORDER of the Court was delivered by VARADACHARIAR J.—This is an application for relief under

Madras Act IV of 1938, filed by the first defendant in a suit for partition in a Mahomedan family.

MOTTAI MEERA

v.
ABDUL KADIR.VARADA-
CHARIAR J.

It was found in the main case that the first defendant who was the eldest child of his father and a major at the time of the father's death entered into possession and management of the father's property at his death and that, as he had a minor brother and a minor step-brother and step-sister, he was found to have held and managed the property on behalf of all the co-owners. In 1925 there were disputes in the family and the first defendant left the family house and lived elsewhere. It was also found that, during his period of management, the first defendant had collected outstandings due to the father's estate and the income due from the common property of the family. In 1929 the plaintiff who is the first defendant's step-brother instituted a suit for division and recovery of his two-sevenths share. A decree was given in the plaintiff's favour and also in favour of defendants 2 and 3 for their respective shares. With respect to the outstandings and the income realized by the first defendant during the period of his management, the lower Court found that the other co-sharers were entitled to claim payment of interest thereon, as it had been shown that the first defendant had been investing all the moneys in his hands and that many of the promissory notes taken by him bore interest at twelve per cent per annum. The lower Court accordingly held that the first defendant was liable to pay to the plaintiff and to defendants 2 and 3 a sum of Rs. 14,480 (representing amounts collected by him on their account) and Rs. 8,700 for interest thereon. It also directed payment of interest on the aggregate amount at six per cent per annum from the date of the institution of the suit to the date of payment.

MOTTAI MEERA
v.
ABDUL KADIR.
VARADA-
CHARIAR J.

On appeal to this Court, we allowed certain deductions claimed by the first defendant in his favour. In other respects we confirmed the decree of the lower Court. The first defendant's liability to pay interest was challenged before us but we affirmed the lower Court's decision on this point. It is with reference to this liability for payment of interest that the present application for relief under Madras Act IV of 1938 has been filed.

We are of opinion that the main liability is not covered by Act IV of 1938 as it is not a "debt" within the meaning of the Act. Our judgment itself and the cases dealing with the point proceed on the footing that ordinarily the relation between co-owners, when one of them is in possession of common funds, is not that of creditor and debtor but that the liability to pay interest will arise in cases in which it is shown that the person in possession of the common funds has realised interest by their investment. In this class of cases, the liability to pay interest seems to us to rest on one of two bases: one, that each co-owner is entitled to claim a share in the common property *as it stands at the time of the division* and that in the case supposed the common property liable to be divided consists not only of the original realisations but of the interest earned by their investment as well. If this be the true basis, we see no justification for denying the co-sharer his share in the full extent of the property which on this theory will consist of the original amount plus its accretion. Another possible view is that the co-owner who has realised interest by the investment of the common funds is governed by section 90 of the Trusts Act and that by virtue of section 95 of that Act he incurs a liability to pay interest under section 23 of that Act. This is the view

taken by VENKATASUBBA RAO J. in *Peer Mohideen Rowther v. Aisa Bivi*(1). If this be the true basis, the case will be taken out of the operation of the Madras Act IV of 1938 by clause (f) of section 4 of that Act. We are not prepared to accede to the contention that section 4, clause (f), ought not to be held to apply to obligations declared in Chapter IX of the Trusts Act.

MOTTAI MEERA
v.
ABDUL KADIR.

VARADA-
CHARIAR J.

So far however as the liability to pay interest *subsequent* to the date of the lower Court's decree is concerned, we think there is some justification for the petitioner's contention that that is governed by section 9 of Act IV of 1938. This is a liability imposed upon him by the decree and does not rest on the same basis as the original liability to pay over the interest realised by him. The word "incurred" in the opening sentence of section 9 no doubt suggests the idea of a liability voluntarily incurred but the terms of clause 1 of that section seem to indicate that the section refers not only to contractual liability but even to liabilities arising under law, custom or decree of Court. In this view the decree of the lower Court must be varied by limiting the award of six per cent interest up to the date of the lower Court's decree and providing for payment of interest at five per cent per annum from 31st March 1934 up to date of payment.

A.S.V.

(1) (1934) 67 M.L.J. 563.
