

Gomathi Ammal Vs. Avu Ammal

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Court : Chennai

Decided On : Feb-21-1933

Reported in : (1933)65MLJ355

Appellant : Gomathi Ammal

Respondent : Avu Ammal

Judgement :

Horace Owen Compton Beasley, Kt., C.J.

1. The suit out of which this Civil Revision Petition arises was upon a promissory note executed by the defendant's deceased husband and dated the 17th August, 1923. The suit was filed in 1928. On the 16th August, 1924, the defendant's husband made a payment of Rs. 5 in respect of the promissory note. This had the effect of extending the period of limitation to the 16th August, 1927. The suit having been filed in 1928, the plaintiff's claim would be barred by limitation but it was claimed that the debt had been kept alive by an acknowledgment of it made by the defendant. This acknowledgment is, it is alleged on behalf of the plaintiff, to be found in an admission made by her in a petition which she put in to get herself appointed guardian of her husband who had then become insane. The petition is O.P. No. 38 of 1926. The petition was made under the Indian Lunacy Act to have her husband declared to be insane and for the appointment of herself as guardian of his person and manager of his property. It is conceded that the defendant's husband must have been found to be insane as a result of an enquiry under the

Act because an order was made on the defendant's petition appointing her guardian and manager on furnishing security. She failed, however, to furnish the security ordered and in the meantime her husband died and she was in fact never appointed his guardian and the manager of his property. For the purpose of her petition, she had to set out her husband's assets and liabilities and she included in the latter the suit promissory note debt. It was contended in the Lower Court that this was an acknowledgment by the defendant within Section 19(1) of the Indian Limitation Act and that the defendant was her husband's 'agent duly authorised in this behalf'. This contention the learned District Munsif upheld in the following words:

The defendant's husband being insane and he being divided from his brothers, the natural and de facto guardian was his wife who was major even then, and she also put in the Original Petition. P.W. 1 further states that it was she who was managing her husband's property. Thus she, as the actual manager of the estate and the de facto and the legal guardian under Hindu Law, has acknowledged the suit debt in the said Original Petition. Wife's acknowledgment where she is accustomed to conduct her husband's business is sufficient she being regarded as a duly authorised agent. Rustomji on Limitation, 4th Edition, p. 244. Thus the defendant's acknowledgment in the said Original Petition is sufficient to give a fresh starting point of limitation for the suit promissory note.

2. For the petitioner it is argued that she was not the lawful guardian of her insane husband and that therefore she was not her husband's 'agent duly authorised in this behalf' in Section 19 as defined in Section 21(1) of the Limitation Act which reads as follows:

The expression 'agent duly authorised in this behalf in Sections 19 and 20 shall, in the case of a person under disability, include his lawful guardian, committee or manager, or an agent duly authorised by such guardian, committee or manager to sign the acknowledgment or make the payment.

3. That section therefore deals with persons who are under disability such as the defendant's husband here. If at the time when the acknowledgment was made the defendant had been appointed the committee or manager of her insane husband's

property, then she clearly would have come within the provisions of Section 21(1) of the Limitation Act as Section 75 of the Indian Lunacy Act permits every manager of the estate of a lunatic appointed under the Act to pay all just claims, debts and liabilities due to or by the estate of the lunatic; but she never was so appointed. It is argued that she was not his lawful guardian either and that the section as regards guardianship can have no application to majors and that, even as regards minors, a de facto guardian has no power to acknowledge a debt so as to bind a minor and *Ramaswami Pillai v. Kasinatha Aiyar* (1927) 108 I.C. 529 is relied upon. In that case at p. 536 Kumaraswami Sastri, J., says:

Section 21 of the Limitation Act says, 'the expression 'agent duly authorised' referred to in Sections 19 and 20 shall, in the case of a person under disability, include his lawful guardian, committee or manager to sign the acknowledgment or to make the payment'. It can hardly be said that a person who takes upon himself the management of property without being the legal guardian under Hindu Law or a guardian duly appointed by authority can be said to be a lawful guardian under Section 21.

4. It is very difficult to see how any question of guardianship arises at all in the case of a major person. If that person comes under disability by reason of insanity, then, in my opinion, anybody, even if it is his wife, who does any acts on his behalf without being clothed with authority conferred by the Indian Lunacy Act does not do such acts as the lawful guardian of the person under disability and is almost in the position of an intermeddler. Upon the question as to whether the de facto guardian of a minor can acknowledge debts so as to bind the minor, there is a considerable conflict of opinion. That a de facto guardian can alienate family property so as to bind the minor there is clear authority for, if such alienation is for necessity or for the benefit of the minor. But it is difficult to see how the acknowledgment of a debt can be of benefit to a minor and in this case we are not dealing with a minor at all but with an insane person. There is a decision of *Bakewell, J., Ganjayya v. Ramaswami* : (1913)24MLJ428 in which it was held by him that the natural mother of a minor, when acting for the benefit of the minor, was a lawful guardian within the meaning of Section 21 of the Limitation Act. This case however is not in agreement with *Ramaswami Pillai v. Kasinatha Aiyar*

(1927) 108 I.C. 529. An executor appointed under the will of a deceased person can by the inclusion of a debt due by the deceased in the form of valuation filed with the petition for the grant of letters of administration make an acknowledgment of that debt within the provisions of the Limitation Act because he is the man to acknowledge liability in his capacity of legal representative of the deceased. This arises from his position of executor who derives his title from the will and immediately upon the testator's death his property vests in the executor for the law knows no interval between the testator's death and the vesting of the property. In *Raja Rama v. Fakuruddin Sahib* (1929) 58 M.L.J. 210 it was held that the position of an administrator is very different and that he derives his title wholly from the Court and has no title until letters of administration are granted and the property of the deceased vests in him only from the time of the grant. In my view, the defendant had no authority to acknowledge the suit debt on her husband's behalf. She certainly had no direct authority and I cannot see that she had any implied authority to do so. It is true that a wife has an implied authority to pledge the credit of her husband for necessities and that this implied authority is not taken away or diminished by reason of her husband's insanity. But it is a limited authority and limited only to necessities. But it is contended on behalf of the respondent that as it was necessary for the defendant to put in a petition to get herself appointed guardian and manager under the Indian Lunacy Act and as it was necessary for that purpose to set out the assets and liabilities of her insane husband, the admission she is alleged to have made was a necessary one and that she was in fact an agent of necessity. But I do not think that she was an agent of necessity or that it follows that she had any implied authority to acknowledge the debt on behalf of her insane husband. It is further contended on behalf of the respondent that the Lower Court has found that the respondent was managing her husband's business and that as manager of his business she had authority to pledge his credit and acknowledge his debts. I take the finding to be that the defendant was only managing her husband's business after he became insane and not before. But she certainly could derive no authority from her husband to manage his business as he was insane. In my opinion the District Munsif was wrong in holding that the suit debt had been acknowledged. This Civil Revision Petition must therefore be allowed with costs, the Lower Court's decree set aside and the plaintiff's suit

dismissed with costs.

Bardswell, J.

5. I agree.

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