

Kothanda Naidu and ors. Vs. M. Kuppayya Naidu and anr.

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Court : Chennai

Decided On : Nov-09-1959

Reported in : (1960)1MLJ329

Appellant : Kothanda Naidu and ors.

Respondent : M. Kuppayya Naidu and anr.

Judgement :

Anantanarayanan, J.

1. This is an appeal instituted in forma pauperis by the plaintiffs in the lower Court (minors represented by their next friend) against the judgment and decree of the learned Subordinate Judge of Vellore, granting a preliminary decree for partition and making provision for the payment of certain debts binding upon these minor coparceners. It is sufficient here to state that the plaintiffs are the minor sons of the first defendant, that the first defendant was adjudged an insolvent in I.P. No. 10 of 1953 and that the second defendant is the Official Receiver, North Arcot, representing the estate in insolvency.

2. The main contention of the appellants with regard to the debts proved in suit, for which provision was made by the Court in passing the preliminary partition decree, was that their father (first defendant) led a reckless, improvident and immoral life and that these debts are clearly avyavaharika debts not binding on the appellants. We think it is sufficient for us to state that there was not an iota of evidence

adduced at the trial to prove either that the first defendant led an immoral life, or that the debts were tainted, in the sense that some connection was apparent between them and certain immoral purposes relating to the private life of the father (the first defendant). On the contrary, upon a scrutiny of the evidence, the learned Subordinate Judge himself observes that the witnesses examined on behalf of the defendants had something to say against the wisdom or prudence of the first defendant as a man of business. But 'all of them agreed that he is good family man'.

3. We think it is sufficient here to set forth the relevant passage from Mulla Principles of Hindu Law, twelfth edition (1959), page 455, Section 295 (2):

The burden which lies upon the sons to prove the immorality of the debt is not discharged by showing that the father lived an extravagant or immoral life; there must be a direct connection, between the debt and immorality set up by the sons.

The learned author supports this dictum by very many citations of case-law of all the High Courts, which we do not think it necessary to reproduce here, since the principle itself is very well-known.

4. In the present case even apart from the fact that no such connection was established it is not even proved that the father led any immoral life, or that he indulged in vices which led him to extravagance. This ground of appeal must, consequently fail in entirety.

5. It is now further urged before us that the statement filed by the Official Receiver does not make specific reference to two debts, which are not decree debts, and which might have been time-barred for all that the minor plaintiffs (appellants) know. Firstly, we do not think that it is open to persons in the position of the appellants (minor plaintiffs) to plead minority as an excuse for ignorance upon essential matters, upon which they should have necessarily gathered full particulars before litigating in Courts of law. While minors have certain rights in law protecting them, where the burden lies upon them to allege and establish certain facts, that burden is not lessened by virtue of mere minority, so long as they are parties, to the suit. Next, even apart from this, we have not the slightest ground for

assuming that these two debts were time-barred on the date of the presentation of the petition for adjudication in insolvency, which is admittedly the relevant date. Again, we have not the slightest ground for the presumption that the Official Receiver has improperly admitted these debts, when they were so time-barred on the relevant date. If that is actually a fact the appellants are perfectly at liberty, under the provisions of the Provincial Insolvency Act, to agitate for expunging these time-barred debts from the schedule, in appropriate proceedings.

6. The appeal fails and is dismissed with costs. The Court-fee due to Government will be recovered from the appellants.

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