PETITIONER:
ANTHONYSWAMY

Vs.

RESPONDENT:
M. R. CHINNASWAMY KOUNDAN (DEED) BY L. RS. & ORS.

DATE OF JUDGMENT:
06/10/1969

BENCH:
RAMASWAMI, V.
BENCH:
RAMASWAMI, V.
SHAH, J.C.
GROVER, A.N.

CITATION:
1970 AIR 223 1970 SCR (2) 648
1969 SCC (3) 15
CITATOR INFO :
R 1978 SC1791 (14A,25)

ACT:
Hindu Law-Christians governed by Hindu Mitakshara law-Whether doctrine of pious obligation applicable.
Promissory-note-When endorsee could sue non-executant coparceners on the debt.

HEADNOTE:
The appellant filed a suit for declaring that certain execution proceedins resulting in the sale of the suit properties were invalid, and for partition of his share therein. The claim was based inter alia on : (1) that the appellant's family were Tamil Vannian Christians governed in the matter of inheritance and succession by the Hindu Mitakshara law including the doctrine of right by birth, but not by that of pious obligation; and (2) that the debt was incurred on a promissory note and that the endorsee of the note was not entitled to obtain a decree against the non-executant coparceners for sale of the family properties.
HELD: (1) The doctrine of pious obligation is not merely a religous doctrine but has passed into the realm of law. It is an integral part of the Mitakshara school of the Hindu law. wherein, the sons, from the moment of their birth acquire along with their father an interest in the joint family Property. It is a necessary and logical corollary to the doctrine of right by birth and the two conceptions are correlated. The doctrine is in consonance with justice, equity and good conscience and is not opposed to any principle of Christianity. Therefore, the doctrine of pious obligation is applicable to the Tamil Vannian Christians who were governed by the Mitakshara law in matters of inheritance and succession. [653 G-H; 654 G-H]
Girdharee Lall v. Kantoo Lall (1874) 1 I.A. 321 Suraj Bansi Koer v.Sheo prasad, (1980) 6 I.A.88, Muttayan v. Zamindari of Sivagiri (1883) 9 I.A. 128, Abraham, 9 M.I.A. 199, 243, Brij Narain v. Mangal Prasad 51 I.A. 129 and Balakrishnan v. Chittoor Bank A.I.R. 1936 Mad. 9137, referred to.
(2) The endorsement in the present case was not a mere endorsement but it has been so worded as to transfer the,

debt also. Therefore, the endorsee was entitled to bring a suit against the non-executant coparceners on the ground of their liability under Hindu Law. [655 G-H; 656 B-C]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2020 of 1966.

Appeal from the Judgment and decree dated July 13, 1960 of the Kerala High Court in Appeal Suit No. 251 of 1956(E).

V. S. Desai and R. Gopalakrishnan, for the appellant.

S. T. Desai, C. H. Subramanya Iyer and S. Balakrishnan, for respondent No. 5.

The Judgment of the Court was delivered by

Ramaswami, J. This appeal is brought by certificate from the judgment of the High Court of Kerala dated July 13, 1960

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in Appeal Suit No. 251 of 1956. By its judgment the High Court allowed the appeal of the deceased M. R. Chinnaswamy Goundan, 1st defendant, reversing the judgment and decree of the Subordinate Judge of Chittur in O.S. No. 131 of 1950 which the appellant had filed on March 31, 1949 in forma pauperis for declaring that certain execution proceedings resulting in the sale of suit properties were invalid and for partition of one-fourth share therein. The appellant also claimed in the alternative a decree for payment of Rs. 30,000/- as damages sustained by him on account of fraud and collusion in the execution proceedings.

The plaintiff is the son of the 8th defendant and the 9th defendant is the brother of the 8th defendant. The plaintiff and defendants 8 and 9 are Tamil Vannian Christians of Chittur Taluk who are governed in the matter of inheritance and succession by Hindu Mithakshara law. The plaintiff has acquired a right by birth in the ancestral properties and during the life-time of his father the son has a right to claim partition. The plaint properties belonged to the family of plaintiff and defendants 8 and 9 which yield an annual profits of 4000 paras of paddy and Rs. 1,5001-. After the death of his father Kanakappa Koundan, the 8th defendant became the manager of the family. He led an immoral life and incurred debts for immoral purposes. He hypothecated the family properties to the 5th defendant and obtained money. The 5th defendant sued upon the mortgage bond in O.S. No. 75 of 1107 (M.E.) of the Trichur District Court and impeaching the validity of the debts, the 9th defendant who was a minor at that time filed a suit for partition of his half share in O.S. 65 of 1107 (M.E.) in the same District Court. During the pendency of the two suits the 5th defendant applied for the appointment of a receiver and the Court appointed the 7th defendant, a friend of the 5th defendant, as receiver with a direction to pay Rs. 40/- per mensem to the 9th defendant as maintenance till the disposal of the suit. The plaint properties were committed to the possession of the 7th defendant as receiver in those suits.

The suit for partition was dismissed on November 14, 1933 as by this date the equity of redemption had been sold in execution of simple money decree against defendants 8 and 9 in O.S. 203 of 1107 (M.E). The 8th defendant for himself and as guardian of his younger brother executed a promissory note on 11.10.1105 (equivalent to May 1930) to one Somasundara Swamiyar for Rs. 1,500 the consideration for which was paid partly in cash and partly in discharge of an earlier promissory note dated 11th Vaisakhi 1104 (June,

1929). The promisee endorsed the note to Ramachandra lyer on 24th Thulam 1107 (equivalent to November, 1932). Ramachandra lyer filed a suit on this note, O.S. 213 of 1107 on 6.5.1107 (1931) against
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the 8th and 9th defendants. The suit was decreed and the decreeholder executed the decree. The disputed properties were attached. The properties at that time were in the possession of the 9th defendant for sometime as receiver and then in the hands of a vakil appointed by the Court in his place. In execution, one Harihara Subramania lyer purchased the equity of redemption on 31st Karkata in 1108 (July-August, 1933). The auctionpurchaser was duly put in possession on 22.3.1109 (1933). The, mortgagee Sadasiva lyer who had obtained a decree on one of the mortgages on 29-3-1109 (M.E), purchased the property from the auction purchaser on 5-5-1109 (1934). As possession had already been taken by the auction purchaser in execution of the decree passed against them, the 9th defendant did not press the partition suit O.S. 65 of 1107. In 1938 Sadasiva lyer was adjudged insolvent and the official receiver took possession. He sold the property in auction and the deceased 1st defendant became the purchaser for Rs. 24,000. Exhibit XIV is the sale deed executed by the Official Receiver on 13-7-1116 (1941). The appellant thereafter brought the present suit for partition. The claim of the appellant was based on the allegation that Vannia Tamil Christians living in Chittur Taluk were governed as a matter of custom by the Mitakshara School of Hindu law. It was said that joint family relationship subsisted as between father and sons and where the father has inherited properties from his father, they became ancestral properties in his hands and so his sons acquired a right therein by birth including the right to claim the property by survivorship. It was also said that the decree debt in O.S. No. 213 of 1107 ME was not incurred for legal necessity but was incurred for immoral purposes and so the mortgage debts were not binding on the appellant. The appellant was, therefore, entitled to one-fourth share in the properties and to partition of his one-fourth share. The deceased, 1st defendant, contested the suit. He claimed to be a bona fide purchaser for value of the entire interest in the property from the Official Receiver in whom the properties had vested on the insolvency of Sadasiva lyer. It was said that he had no notice of any vgitiating circumstance affecting the title at public auction conducted by the Official Receiver. After the sale, defendant no. 1 became the absolute owner of the properties and was in full possession and enjoyment of the same. It was also contended that the plaintiff could not claim any interest in the properties during the life-time of his father. There was no customary right of birth in the community to which the plaintiff belonged and even if such right existed the plaintiff was bound to pay off his father's debts on the doctrine of pious obligation before claiming any partition in respect of the properties. It was also said that the debt which Was the basis of the decree in O.S. 213 of 1107 ME was not tainted by illegality or immorality.
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The Subordinate Judge came to the following findings : The plaintiff has established the custom that Vanniya Tamil ,Christians of Chittur Taluk were governed in the matter of inheritance and succession by Hindu Mitakshara law. The plaintiff has acquired right by birth in the ancestral properties and was entitled to claim a share therein and the

properties acquired with the aid of income from ancestral properties also became joint family properties. The Manager of the family for the time being cannot alienate the properties except for legal necessity but the doctrine of pious obligation imposing a liability on the son to discharge his father's debts not incurred either for illegal or immoral purposes did not apply to the community to which the plaintiff belonged. The decree made on the promissory note by defendant no. 8 could not be executed against the plaintiff's share because the right of an endorsee of a promissory note executed by the managing member of a joint Hindu family was limited to the note unless the endorsement was so worded as to transfer the debt as well. In the present case there was an ordinary endorsement and there was no transfer of the debt and, therefore, the endorsee cannot sue the non-executingcoparcener on the ground of his liability under the Hindu law.Exhibit F on which the decree was obtained was for immoralpurposes and thedecree cannot bind the plaintiff and his share in the disputed properties cannot pass in execution sale. The mortgage decreeholder contrived to get the assignment of the promissory note debt and had a suit brought on it, brought the properties to sale and got the properties purchased for his own benefit. The execution. proceedings were collusive and fraudulent and not binding on the plaintiff. On these findings the Subordinate Judge granted a decree for partition and recovery of possession in favour of the plaintiff subject to the mortgages on the property created before his birth. Aggrieved by the decree of the Subordinate Judge the 1st defendant preferred an appeal to the High Court of Kerala which allowed the appeal and dismissed the suit. The High Court held that the Vanniva Tamil Christians of Chittur Taluk are governed by the Mitakshara School of Hindu law in regard to inheritance and succession. The son of a member of auch community gets by birth an interest in ancestral property owned by the father. The doctrine of pious obligation applies and the son is bound to discharge his father's debts not tainted by illegality or immorality. The debt which resulted in the execution sale was not so tainted. The question whether the debt was incurred for legal necessity was not decided. The High Court held that the execution proceedings and the sale in auction are not vitiated by fraud or collusion.

The first question to be considered in this appeal is whether the doctrine of pious obligation according to the Mitakshara school of Hindu law is applicable to Vanniya Tamil Christians Sup CI-11
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of Chittur Taluk. In para I of the plaint the law applicable to the community is stated as follows :

> "The plaintiff and defendants 8 and 9 are Tamil Christians residing in Chittur Taluk, the plaintiff being the son of the 8th defendant and defendant 9 being the younger brother of the 8th defendant. The plaintiff and defendants 8 and 9 are of the Vanniya Caste and in the matter of property r
> ights of inheritance and succession alone they are governed by the Hindu Mitakshara Law. (The plaintiff by birth is entitled to a share in the ancestral property and that even during the lifetime of his father the son has every right to demand his share in the ancestral property and recover the same even by a suit.

> In the community to which the plaintiff belongs the properties of a man became on his death ancestral properties in the hands of the sons and thereafter it continues for ever to be family ancestral property and therein the son has by his birth a right to a share, even during the life time of the father. This custom is a very ancient one and is adopted as the law from time immemorial, and governs the community. The above is the customary law of the plaintiff's community accepted and followed by them from ancient times."

In 4 Select Decisions 485 the Chief Court of Cochin held that the Tamil Vanniya Christians of Chittur Taluk were govemed by the rules of Hindu law in matters of inheritance and succession. The decision was followed some 35 years later in 34 Cochin 881. The report of the Cochin Christian Succession Bill Committee stated that "as to the Tamil Christians of the Chittur Taluk, the evidence shows that they follow the Hindu law of succession and inheritance" and recommended that they should be excluded from the proposed legislation. The recommendation was accepted by the Maharajah of Cochin. Section 2(2) of the Cochin Christian Succession Act (VI of 1097) provided that nothing therein contained shall be deemed to affect succession to the property of "the Tamil Christians of Chittur Taluk who follow the Hindu Law." In this state of facts it was not contended on behalf of the appellant that the Tamil Vannia Christians of the Chitture Taluk were not governed by the Mitakishra law in matter of inheritance and succession. But it was argued that the doctrine of pious obligation originated in Hindu religious belief and was opposed to the tenets of Christianity. It was said that the doctrine was not applicable to Tamil Vannia Christians of Chittur Taluk. We are unable to accept this argument. It is not a correct proposition to state that the doctrine of pious obligation is of religious character or is inextricably connected with Hindu religious belief. It is true that

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according to Smriti writers the non-payment of a debt was a sin the consequences of which will follow the debtor into the next world. But the doctrine as developed by the Judicial Committee in Girdharilal's case(1); Surajbansi's case (2) and Brij Narain v. Mangal Prasad(3) was different in several important respects.

Under the Smiriti texts there was only a religious and not a legal obligation imposed upon the sons to pay the debt of their father. Also the obligation of the son to pay the debt arose not in the father's lifetime but after his death. The text of Narada says that fathers desire male offspring for their own sake reflecting "this son will redeem me from every debt due to superior and inferior beings". Therefore, a son begotten by him should relinquish his own property and assiduously redeem his father from debt lest he fall into a region of torment. If a devout man or one who maintained a sacrificial fire die a debtor, all the merit of his devout austerities or of his perpetual fire shall belong to his creditors. (I Dig. Higg. Edition 202.) The text of Vishnu states : "If he who contracted the debt should die, or become a religious anchoret, or remain abroad for twenty years, that debt shall be discharged by his sons or grandsons but not by remoter descendants against their will" (I Dig. Higg. Edition 185). Brihaspati also states "the sons must pay the debt of their father, when proved, as if it were their own, or with interest. the son's son must pay

the debt of his grandfather but without interest and his son or the great grandson shall not be compelled to discharge it unless he be heir and have assets. But the Judicial Committee held in the Sivagiri case (4) that the obligation of the son was not a religious but a legal obligation and the rule would operate not only after the father's death but even in the father's lifetime. Under the old texts of Hindu law only the son and grandson are liable to pay the ancestor's debt but the obligation is personal and independent of any assets derived from the joint family. The Judicial Committee, however, extended the doctrine to the great grandson but confined the liability to the extent of coparcenary property. From the son's duty to pay his father's untainted debt the Judicial Committee deduced the proposition that the father had the right to alienate his son's interest to pay such a debt and this right was also made available to the creditor of the father.

It is evident therefore that the doctrine of pious obligation is not merely a religious doctrine but has passed into the realm of law. The doctrine is a necessary and logical corollary to the doctrine of the right of the son by birth to a share of the ancestral property and both these conceptions are correlated. The liability imposed on the son to pay the debt of his father is not a Gratuitous

(1) 1. A. 321.
(3) 51 I. A. 129.
(2) 61. A. 88.
(4) 91. A. 128.

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obligation thrust on him by Hindu law but is a salutary counterbalance to the principle that the son from the moment of his birth acquires along with his father an interest in joint family property. It is, therefore, not possible to accept the argument addressed on behalf of the appellant that though the community is governed as a matter of custom by the Mitakshara School of Hindu law the doctrine of pious obligation was not applicable. In Balkrishnan V. Chittoor Bank(1) the question arose whether among the Ezhava community of Palghat though they follow Makatayam Law and not Marumakatayam Law, the sons are liable for the debts of their father not incurred for illegal or immoral purposes irrespective of any question of family necessity. It was held by Varadachariar J., that the sons were so liable and it was observed that there was no warrant for introducing one portion of the Hindu law in governing a certain community without taking along with it the other portions which form an integral part of the whole system. In this connection reference may be made to the following passage the _judgment of the Judicial Committee in Abraham v. Abraham(1) :

> The profession of Christianity releases the convert from the trammels of the Hindoo law, but it does not ,of necessity involve any change of the rights or relations of the convert in matters with which Christianity has no concern, such as his rights and interests in, and his powers over, property. The convert though not bound as to such matters, either by the Hindu law or by any other positive law, may by his course of conduct after his conversion have shown by what law he intended to be governed as to these matters. He may have done so either by attaching himself to a class which as to these matters had adopted and acted upon some particular

> law, or by having himself observed some family usage or custom; and nothing can surely be more just than that the rights and interests in his property, and his powers over it, should be governed by the law which lie has adopted, or the rules which he has observed."

For the reasons already given we are of opinion that the doctrine of pious obligation is not merely a religious doctrine but has passed into the realm of law. It is an integral part of the Mitakshara School of Hindi,. law wherein the sons from the moment of their birth acquire along with their father an interest in the joint family property. The doctrine is in consonance with justice, equity and good conscience and is not opposed to any principle of Christianity It follows that the High Court is right in its conclusion that the doctrine of pious obligation is applicable to the community of Tamil Vanniya Christians of Chittur Taluk.

(1) A. I. R. 1936 Mad. 937.

(2) 9 M. I. A. 199,

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The next question to be considered is whether the liability of the son was excluded because at its inception the debt was tainted by immorality. The evidence adduced on behalf of the plaintiff to establish the immoral character of the debt consists of the testimony of P.Ws 19 and 20. P.W. 19 deposed that the plaintiff 's father was keeping a married woman called Thankammal., that Thakammal was residing opposite to his house at Alambadi with her husband, that he had seen the plaintiff's father frequenting her house, that plaintiff's father executed a promissory note in favour of Somasundara Swamiyar, payee under Ex. F and out of the consideration a sum of Rs. 1,000/- was paid to Thankammal. P.W. 20 gave evidence to a similar effect. P.Ws. 19 and 20 are not ,he attesting witnesses of the promissory notes. They were mentioned the plaintiff for the first time in the supplemental list of witnesses dated 12-11-1954. The High Court has disbelieved the evidence of P.Ws 19 and 20 and held that the allegation of the appellant that the debt was tainted by immorality was not established. We see no reason to differ from the view taken by the High Court on this point.

We proceed to consider the next question arising in this appeal, that is, whether the endorsee of the promissory note is entitled to obtain a decree against the defendants personally and for sale of the family properties upon the original debt. The contention of the appellant was that the 4th defendant was not the payee under Ex. F but was an endorsee of the promissory note and was not hence entitled to obtain a decree against the non-executant coparceners and to proceed against the joint family properties. In support of this proposition reliance was placed upon a decision of the Full Bench of the Madras High Court in Maruthamuthu Naicker v. Kadir Badsha Rowther(1) in which it was held that an indorse of a promissory note executed by the managing member of a Hindu family was limited to his remedy on the promissory note, unless the endorsement was so worded as to transfer the debt as well and the stamp law was complied with and, therefoere in the case of an ordinary endorsement , the indorsee cannot sue the non-executant coparcerners on the ground of their liability under the Hindu law. Where the indorsement is in blank it only operates to transfer the property in the instruement and not as an assignment of debt. It is not however necessary for us to examine this argument. The reason is that the

endorsement in the present case made by the 8th defendant in favour of the 9th defendant is not a mere endorsement but it has been so worded as to transfer the debt also. The indorsement reads as follows :

> "As the principal and interest as per this proiiiissorv note is, received in cash todav to (my) satisfac-
> (1) A.I.R. 1938, MaD. 377.
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> tion from,Ramchandra lyer, son of Subbarama lyer, Thekkegramam, Chittur, the above principal and interest together with the future interest thereon is to be paid to the above Ramehandra lyer or to his Order.
> Dated 24th Thulam 1107 Somasundara Swamiyar."

It is apparent that the endorsement is so worded as to convey the transfer of the debt as well and it follows that Ramchandra lyer, defendant no. 4 was entitled to bring a suit against the non-executant coparceners on the round of their liability under the Hindu law. We accordingly reject the argument of the appellant on this aspect of the case.

Finally counsel on behalf of the appellant contended that the sale in execution proceedings in O.S. 213 of 1107 ME was vitiated by fraud. The Subordinate Judge took the view that defendants 4 to 7 had committed fraud and the decree in execution in O.S. 21 1 of II 07 ME was void and liable to be set aside. But the High Court has upon a review of the facts found that the 4th defendant and 6th defendant and P.W. 23 Srilala Iyer had actively assisted the 5th defendant to get possession of the property as quickly as possible but there was no proof that defendants 4 to 7 either collectively or individually transgressed the limits of law or were gulity of fraud. Upon the evidence adduced in the case we are satisfied that the finding of the High Court is correct.

For these reasons we hold that this appeal fails and must be dismissed with costs.

V.P.S. Appeal dismissed.

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