

A.P.R.S. Chinniah Chetty by Agent, Kalyasundaram Iyer Vs. Tikkani Ramaswami Chetty and anr.

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Court : Chennai

Decided On : Sep-24-1915

Reported in : 31Ind.Cas.317

Judge : Srinivasa Aiyangar, J.

Appellant : A.P.R.S. Chinniah Chetty by Agent, Kalyasundaram Iyer

Respondent : Tikkani Ramaswami Chetty and anr.

Judgement :

Srinivasa Aiyangar, J.

1. This, is a suit on a promissory note executed by defendants Nos. 1 and 2, and the other defendants Nos. 3 and 4 are sought to be made liable on the ground that the debt borrowed by the defendants Nos. 1 and 2 was borrowed for the purposes of the joint family of which all the defendants' are 'members. The lower Court has given a decree against the defendants Nos. 1 and 2 and has declined to give a decree against defendants Nos. 3 and 4, on the ground that as the note was a negotiable note, defendants Nos. 3 and 4 who did not execute it ought not to be made liable. I think the lower Court is wrong in so holding. The Full Bench decision in Krishna Ayyar v. Krishnasami Ayyar 23 M.k 597, really concludes this matter. The mistake that is made is in supposing that persons other than the party who executes the note, are sought to be made liable on the contract itself. The other persons are sought to be made liable on account of the debt which is contracted by the managing member or managing members. It is a liability imposed on them by the Hindu Law apart from the contract entered into by the other members. The decree of the lower Court is, therefore, modified, and there will be a decree against defendants Nos. 3 and 4 also; but they would not be personally liable on the note, but the plaintiff will be entitled to attach the family property in execution. I make no order as to costs.