Madras High Court
Kotla Venkataswamy vs Chinta Ramamurthy And Ors. on 16 January, 1934
Equivalent citations: AIR 1934 Mad 579
Author: Curgenven
JUDGMENT Curgenven, J.

1. The plaintiff, who appeals, sued to enforce a mortgage bond for Rs. 1,000 purporting to have been executed on behalf of a company calling itself the South Indian Agricultural and Industrial Improvement Co, Ltd., to one Venkamma, who assigned her interest to the plaintiff. The company subsequently went into voluntary liquidation and the mortgaged property was sold and eventually purchased by defendant; 4. The mortgage deed was signed by the Working Director and by the Secretary to the company (defendants 1 and 2). The plaint avers that the debt was regularly contracted in accordance with the powers and authority possessed by the said director and secretary under the articles of the said company and the special resolutions passed from time to time.

2. Defendant 4 in his written statement says that he does not admit that the document was executed by and on behalf of the company, defendants 1 and 2 not being competent to contract loans, much less to charge the property of the company. Objection is taken to the form of this statement, the contention being that it is not enough to say that a fact is not admitted in order to put the plaintiff to the proof of it and an English case Rutter v. Tregent (1879) 12 Ch.D. 758 is cited. But I have not been shown what are the terms of the rule which was in question in that case, and it is clear that Order 8, Rule 5, Civil P.C., provides for the traversal of a statement in the plaint in this form. There is a decision to this effect in Rajagopalachariar v. Bhashyachariar 1924 Mad. 838.

3. The main point in dispute is whether the mortgage bond was validly executed so as to make the company liable. Both the Courts below have answered this in the negative. It has been sought to raise two further questions here assuming that it was not so valid. It is said in the first place that the company subsequently ratified the instrument and secondly, that if the money was applied to the company's purposes the creditor would have an equitable charge for the debt upon the company's property. Neither of these two matters was made the subject of an issue at the trial. The additional Subordinate Judge, as he says at the end of para. 9 of his judgment, thought; that he was concerned only with the validity and the binding nature of the mortgage deed, and although some traces of these alternative positions are to be found in the plaint, it is clear that no issues were sought in regard to them. Whether or not the subsequent action of the company amounted to ratification is clearly a question of fact. It is also a question of fact whether defendant took a sale of the property in such circumstances as would qualify the plaintiff to take advantage as against him of any equitable charge which might exist over it. Since no satisfactory explanation is forthcoming for the failure to bring these questions to trial, I do not feel justified in entertaining them in second appeal. Article 15, of the Company's Articles of Association provides as follows:

All deeds, hundies, cheques, certificates and other instruments hall be signed by the Managing director, the Secretary and the working Director on behalf of the Company, and shall be considered valid.

4. The suit document, as has been said is signed only by the Secretary and the working Director, and not also by the Managing Director. It is said, but not very satisfactorily proved, that the Managing Director had been dismissed and was under prosecution on a criminal charge at the time the document was executed. The mortgage in fact recites that part of the money was wanted for the costs of this case. The mere fact however that the services of the Managing Director were no longer available to the Company will not make execution by the remaining officers any the more valid. It is suggested that this requirement in the Articles of Association relates only to the formal process of signing and not to the power of sanctioning exercisable on behalf of the company. I do not agree with this. In the absence of any specific provision, Section 67, Companies Act, then in force (6 of 1882) provides that a contract by law required to be in writing signed by the parties may be made on behalf of the company in writing signed by any person acting under the express or implied authority of the company, and Rule (55) of the rules framed under the Act for the regulation of a limited company (applicable in the absence of specific rules made by the company itself) vests such a power in the directors. Unless therefore Article 15 is intended to authorize the three officers named to execute deeds on behalf of the company that power must reside only in the body of directors as a whole. I have net doubt therefore that the Secretary and the Working Director by themselves were not legally competent to execute the mortgage deed. Some attempt appears to have been made to show that the company had specially authorized these two officers to borrow money, but the learned District Judge has found this not proved and this finding being one of fact is final.

5. It is further argued that even if the execution of the bond was marked by irregularity, yet the mortgagee is entitled to enforce it upon the general principle that there was every reason to believe that the officers who execrated it had authority to do so. This point has been discussed by the learned District Judge and I think the view which he has taken of the law is correct. There are undoubtedly cases in which the, principle just referred to has been recognized, the leading case being Royal British Bank v. Turquand 119 E.R. 474. In that case as between the directors and the share-holders the directors exceeded their authority, but this was not known to the plaintiffs and no illegality appeared on the face of the bond, nor were the share-holders prejudiced. If an illegality does appear on the face of the bond, the plaintiff will not be thus protected. What are the obligations of a person dealing with a company will be found given at length in Palmer's Company Law, Edn. 14, p. 38. He must be taken to have read the Companies Act and the Articles of Association of the company he is dealing with, and thus to have had constructive notice of their contents : see Charnock Collieries Co. Ltd. v. Bholanath Dhar (1912) 39 Cal. 810.

6. Now it is evident in the present case that if the mortgagee had so informed herself she would have discovered that a deed such as she took requires execution by the three specified officers of the company and she would have refrained from advancing her money upon a bond executed as is the suit bond. In place of the vague recital of authority which the mortgage bond contains reference would properly have been made to the article empowering the signatories to act in this respect. Notwithstanding therefore that the mortgagee may have acted in good faith and that her money may have been applied to the purposes of the company I find it impossible to differ from the view taken that the bond is nevertheless invalid, and that the plaintiff cannot recover upon it, and since this is the only substantial issue which was properly tried, the only course was, I think, to dismiss the suit. The second appeal is dismissed with costs of respondent 4. The memo of objections is dismissed.