

D. Subbiah Alias Devarayan Chettiar Vs. Alagappa Chettiar and ors.

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Court : Chennai

Decided On : Jul-17-1961

Reported in : AIR1962Mad223; [1963]33CompCas29(Mad); (1962)1MLJ372

Judge : Ganapatia Pillai and ;Kailasam, JJ.

Acts : Negotiable Instruments Act

Appeal No. : App. Nos. 154 and 569 of 1956

Appellant : D. Subbiah Alias Devarayan Chettiar

Respondent : Alagappa Chettiar and ors.

Judgement :

(1) These two appeals arise out of the common judgment of the learned Subordinate Judge of Devakottai, disposing of two suits, O. S. No. 7 of 1952 and O. S. No. 20 of 1952. O. S. No. 7 of 1952 out of which A. S. No. 154 of 1956 arises was instituted by one Annapoorni Achi for recovery of money due to her on a deposit voucher executed by the first defendant as one of the partners of a money lending Nattukottai Chettiar firm of Palladam. She died during the pendency of the suit and her adopted son has been brought on record as the second plaintiff. Defendants 1 to 3 along with the father of Annapoorni Achi above mentioned were the partners of the Palladam firm.

(2) The case in the plaint was that Stridhanam and Seermural money belonging to Annapoorni Ache was originally deposited with two firms and subsequently in 1921

the money came to the deposited with the Palladam firm (YPRL, firm). Fourth defendant is the undivided son of the first defendant and the fifth defendant is the undivided son of the third defendant. Sixth defendant is the husband of Annapoorni Achi, the first plaintiff. Sixth defendant was impleaded as party to the suit on the allegation that the deposit voucher dated 16-2-1921 was taken on his order. The document itself recites that the money deposited was the Stridhanam of Annapoorni Achi and it was deposited through the marital of her father Kasinathan Chettiar and the money was payable to the order of the husband of the lady. Sixth defendant, though he did not file a written statement, went into the witness box and supported the case of his wife, the first plaintiff, and disclaimed any interest in the money and proclaimed his readiness to consent to a decree being passed in favour of the first plaintiff for the sum due.

The main contest raised by defendants 1 to 5 who were the contesting defendants centered round three questions. The first was that the transaction was a loan and not a deposit and consequently its recovery was barred by limitation. The second was that the first plaintiff Annapoorni Achi had no right of suit in herself but the suit ought to have been brought by the sixth defendant. In support of this plea they relied on the rule that a stranger to a contract could not sue on the contract for the benefit secured to that stranger. The third defence related to a question of fact namely the guarantee alleged to have been given by the first plaintiff in Devakottai for repayment of money due by her husband to the first defendant and an agreement for adjustment of such borrowings made by her husband from out of the Stridhanam amount due to her. Following up his plea it was specifically said that a sum of Rs. 4341 due to the first defendant on a promissory note executed by the husband of Annapoorni Achi had been so adjusted.

The other suit, O. S. No. 20 of 1952 was instituted by the first defendant in the litigation O. S. No. 7 of 1952 (Alagappa Chettiar). That suit was laid against the sixth defendant in the prior litigation that is the husband of Annapoorni Achi as the first defendant, Annapoorni Achi herself as the second defendant, and her adopted son as the third defendant. That suit was laid on the promissory note, Ex. B. 1, dated 14-1-1937, executed by Theivarayan Chettiar, husband of Annapoorni in favour of the plaintiff in that suit. The question in issue in that suit was really the

defence raised by Annapoorni namely that she should not be made liable for any part of the sum due on the promissory note of her husband. Both the suits were by consent of parties, tried together and the learned Subordinate Judge came to the following conclusion or findings.

(3) According to him the transaction sued upon in O. S. No. 7 of 1952 was a deposit and not a loan. Secondly he held that the first suit, O. S. No. 7 of 1952, was not barred by limitation. On the plea raised by first defendant in O. S. No. 7 of 1952 regarding the specific contract of guarantee or adjustment between himself and Annapoorni the learned Judge disbelieved the case of the first defendant and held there was no such contract or agreement. On the question of giving a decree to Annapoorni for the money due to her, the learned Judge held that she had no right of suit as she was a stranger to the deposit transaction and dismissed the suit. Against that decree the second plaintiff in O. S. No. 7 of 1952 has preferred the first mentioned appeal, A. S. No. 154 of 1956 in forma pauperis.

(4) In O. S. No. 20 of 1952 the learned Judge gave a decree for the sum claimed against the first defendant alone, namely, the husband of Annapoorni and dismissed that suit against Annapoorni Achi and her adopted son (defendants 2 and 3). Against the decree dismissing the suit against defendants 2 and 3, the plaintiff in that litigation has preferred the second mentioned appeal.

(5) Mr. Ramamurthi, on behalf of the appellant in A. S. No. 569 of 1956 did not seek to controvert the finding that the transaction with the Palladam firm, which would be the compendious name by which we would refer to it hereafter, was really a deposit and not an ordinary loan. We need therefore say no more about it. On perusing the records the fully agree that the learned Subordinate Judge was right in coming to that conclusion on the materials before him. On this finding no question of limitation arises.

(6) The two questions upon which Mr. Ramamurthi centered his attention were (1) a question of fact, the truth of the agreement pleaded in the written statement of the first defendant in O. S. No. 7 of 1952 whereby Annapoorni is said to have guaranteed repayment of her husband's borrowing from the first defendant and agreed to adjustment of such repayments against the deposit amount due to her.

The second question is a question of law, namely, whether, in the circumstances of the case (O. S. No. 7 of 1952) Annapoorni Achi had a right of suit and whether the learned Subordinate Judge could have granted a decree in her favour or in favour of her son, the second defendant for the sum due on the deposit transaction.

(7) We shall take up the question of fact first. The promissory note Ex. B. 1 executed by Theivarayan Chettiar, husband of Annapoorni, in favour of first defendant in O. S. No. 7 of 1952 is dated 14-1-1937. The amount for which it is executed is Rs. 2166-10-9. It is common ground that this sum was not lent in a lump on one day but it represented the accumulations of several loans given by the first defendant to Theivarayan Chettiar for a number of years from 1927. Apart from the fact that the first defendant did not call upon Annapoorni Achi to join the execution of this promissory note, if his case of agreement between himself and Annapoorni were true, there is unimpeachable documentary evidence to show that the agreement could not be true. The learned Judge has referred to the letters Exs. A. 14 to A. 21, as establishing this reference. Mr. Ramamurthi read these letters to us. He argued that far from any such inference being deducible from these documents, these were neutral in character. We do not accept that contention. The point which the learned judge in the court below made was that if the agreement were true, it would have been referred to in some one of these letters at least, which were written by the first defendant to Annapoorni's husband between the period 2-11-1927 to 30-11-1937.

In some of these letters a demand is made for repayment of the money and in other of these letters there is demand for execution of a document or security for the loan. On these occasions at least, it must have struck a person like the first defendant to refer to the agreement under which the loan was granted to the husband of Annapoorni. It is unnecessary for us to refer to many other circumstances appearing from, the evidence pointing to the same conclusion. For instance, in the account books maintained by the first defendant there is no mention of any guarantee by Annapoorni for repayment of this loan. The learned Subordinate Judge has discussed the whole question threadbare and referred to other pieces of relevant evidence and we do not think it necessary to repeat the

process except to say that we are in entire agreement with the learned Subordinate Judge on his finding that the agreement in question was not true and was really an after-thought and possibly a false plea set up to get over the difficulty by having to pay the wife her stridhanam money without being able to set it off against the debt due by the husband.

(8) We now go to the question of law. Mr. Ramamurthi conceded that there was no direct authority on the point which he was trying to press on us. He relied on the analogy of the rule of law by which a banker who lends money to one of his customers is entitled to set off that loan against that customer's money in his hands on another account. That is a special rule applicable to banking law where two essential ingredients must co-exist, namely, both the funds must belong exclusively to the same customer and the lending to the customer should have been made partly on the strength of the deposit of funds of the customer with the bank. In this case that rule cannot be invoked because even treating the first defendant (Alagappa Chettiar) as a banker he was fully aware that the money due under the deposit arrangement was not money which belonged to Theivarayan Chettiar, the husband of Annapoorni. The deposit receipt itself as well as the correspondence that passed between Kasinathan Chettiar the father of Annapoorni and the first defendant at the time when the deposit was made and shortly before the receipt was executed amply show the knowledge of the first defendant of the ownership of the money.

Certainly it would be too much for counsel to argue that a banker, knowing that though the deposit receipt stood in the name of a particular, individual, the ownership of the money vested in another, could still exercise what Mr. Ramamurthi calls the right of adjustment of lien for money due to him from his customer. That would be doing violence to equity in this case especially because it was well known to people like the first defendant that ladies belonging to the Nattukottai Chettiar families usually have stridhanam funds which are kept by firms having custody of them for improvement and the decisions of this Court have even gone to the length of holding that such monies in deposit with Nattukottai Chettiar firms could give rise to the relationship of trustee between that firm and the lady who is the owner of the money.

(9) Lastly Mr. Ramamurthi contended that Annapoorni being not a party to the contract and being really not a party to the contract this case falls under the ruling in Subbu Chetti v. Arunachalam Chettiar, ILR 53 Mad 270 : (AIR 1930 Mad 382) (FB). That leading case dealt with the rights of a beneficiary under a contract to sue for such benefit in his or her own name. The head note to the case reproduces correctly the rule laid down there :-

"Where on a contract between A and B, B agrees to pay a sum of money to C and to more circumstances appear, C being a stranger to the contract cannot sue B for the money, though all the parties to the contract are parties to the suit. This is a general rule, though some exceptions to the rules arise under the following circumstances."

The four exceptions to the rule are thereafter set down which it is not necessary for our purpose to notice. This is not a case where Annapoorni is trying to recover money as though it is a benefit conferred upon her under a contract. Really this is a case where the owner of property is seeking to recover that property from the person in possession of it. A deposit transaction is really a transaction whereby one person keeps in deposit the property or money of another for a consideration and it implies a promise to repay whenever called upon Mr. Ramamurthi attempted to show by reference to some authorities that in the case of people in whose name property is put nominally the law places certain restrictions upon the real owner suing for recovery of such property. But it is well known that except in the case of some branches of the law like Negotiable Instruments Act or purchases in court sales the law has never frowned upon real owners filing suits in their own names for recovery of their property.

In Deva Row v. Ventesa Achariyar, 1 Mad HCR 452, was a case where a suit was laid for recovery for money on a bond. Dujai v. Shyam Lal, ILR 38 All 122 : (AIR 1916 All 36 (2)), was a case where the suit was laid for recovery of money due on a mortgage deed. In both these cases though the deed stood in the name of one individual the real owner came forward with the suit for recovery of the money and were allowed to sue in their own name. It is therefore too late in the day now to say in a deposit transaction the real owner could not maintain a suit in her own

name. Especially so in this case where the nominal owner is also made a party to the suit. The presence of the maraldar is really unnecessary as even under the decisions of this Court he has no more right to receiver the money though of course he has some control over the operation of the account. That question does nor arise here because the account had not been operated upon at any time either by Kasinathan or by the husband of Annapoorni. Ever since the date of deposit once in every six months interest has been calculated, added upto the principal and the money has always stood to the credit of the deposit account without any drawings made therefrom.

Mr. Narayanaswami Iyer made a point that the account books of the Palladam firm had not been produced after 1922. Of course on this circumstance he is entitled to ask us to assume that the entry in the account books produced before that date was repeated in the subsequent books kept by that firm. That shows that the amount was retained by the firm for the purpose of improvement knowing full well that the money belonged to Annapoorni Achi as her stridhanam amount.

In our opinion the case does not fall within the rule of law laid down in ILR 53 Mad 270 and we hold this suit by Annapoorni Achi in the presence of her husband to whose order the deposit amount was payable was valid and competent. What surprises us is that the learned Subordinate Judge thought of dismissing the suit altogether even on his finding that Annapoorni Achi could not maintain it as a plaintiff. He obviously overlooked that the only two parties who could have maintained that suit were either Annapoorni Achi or her husband and both of them were before the Court. But the husband went into the box and deposed on oath that the money did not belong to him and that he had on objection to the decree being passed in favour of his wife. In these circumstances it should have been clear to the learned Subordinate Judge that even though he took the view that the suit could not have been instituted by Annapoorni Achi in her own name, the other circumstance namely the presence of the person who could have instituted the suit as a party defendant, and his willingness on oath to a decree being passed in favour of his wife which would be sufficient discharge in law for the debtor to pay the debt to the plaintiff presented to obstacle to a decree being granted to Annapoorni Achi.

(10) The decree of the learned Subordinate Judge dismissing O. S. No. 7 of 1952 is therefore clearly wrong. It is hereby set aside. There will be a decree in that suit in the terms of the prayer in paragraph 14 of the plaint. The costs of the plaintiff in that suit would be paid by defendants 1 and 2 personally. Costs of the appeal also will be similarly paid by respondents 1 and 2. In view of our finding that the case set up by first defendant in O. S. No. 7 of 1952 (plaintiff in O. S. No. 20 of 1952) regarding the arrangement between himself and Annapoorni, which according to him amounted to a contract of guarantee and an agreement for adjustment, is not true the finding of the learned Subordinate Judge on this point is correct. A. S. No. 569 of 1956 is dismissed. No costs in this appeal. The court-fee due on the appeal memorandum in A. S. No. 154 of 1956 will be paid by respondent 1 and 2.

(11) Appeal allowed.

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