

Annamalai Chetti and anr. Vs. Annamalai Chetti

Annamalai Chetti and anr. Vs. Annamalai Chetti

SooperKanoon Citation : sooperkanoon.com/793978

Court : Chennai

Decided On : Jan-29-1919

Reported in : 52Ind.Cas.456

Judge : Abdur Rahim and ;Spencer, JJ.

Appellant : Annamalai Chetti and anr.

Respondent : Annamalai Chetti

Judgement :

Spencer, J.

1. The plaintiff and defend-ants Nos. 1 to 10 represent a firm which was started in Mandalay under the style of A. L. A. M. for doing money-lending business, which, for brevity may be referred to as the Mandalay 'firm In 1908, the 8th defendant in this suit brought a suit in the District Court of Mandalay for dissolution of the partner-ship of this firm and obtained a decree in which the proportionate shares of the partners were defined, seven in number and the plaintiff in the present suit was declared to be the owner of one share While the suit was pending and before the partnership was dissolved, a sum of Rs. 35,239 and odd was collected by one Arunachalla Chetty, who was the agent of the Mandalay firm, and this sum was deposited at interest with a firm consisting of defendants Nos. 1 to 7 and a stranger who is the 11th defendant in this suit which may be briefly referred to as the Rangoon firm. It may be seen that defendants Nos. 1 to 7 are common

partners in both the Mandalay and Rangoon firms. The present suit was brought to recover 1/5th share of the money deposited with the Rangoon firm and the temporary Subordinate Judge of Sivaganga has given the plaintiff a decree accordingly. Defendants Nos. 3 and 4 appeal and they attack the correctness of the Subordinate Judge's judgment upon two points: (a) that the suit as framed is not maintainable, and (6) that it is time-barred

2. The grounds for saying that the suit is not maintainable are stated in full in grounds Nos. 27 to 29 of the appeal memorandum. Although in the written statement of the 1st defendant the objection was simply raised that the suit could not be maintained without giving reasons, it appears from the appeal memorandum that the reasons are that the plaintiff's only remedy was to work out the claim as an item of asset in the winding up proceedings of the Mandalay firm under the decree of the District Court, which is Exhibit IV (a), and was confirmed on appeal to the Judicial Commissioner by his judgment Exhibit IV (c), Ground No. 28 is that 'the money having been advanced as a whole and there having been admittedly no division or apportionment among the several partners, it was not competent for the plaintiff to maintain a suit for the recovery of his share alone,' and ground No. 29 is that 'the plaintiff cannot evade the equities arising out of the state of the account between himself and his partners of the Mandalay firm as a whole.' It goes on to state that either a suit should have been brought on behalf of all the partners of the Mandalay firm for recovery of the entire loan or the plaintiff should have taken proper proceedings in execution of the decree of the Mandalay Court.

3. Now, on this point, there is no doubt that in England an action may, in the present state of the law, be brought in some cases by one firm against another, although they may have a common partner or partners, or on behalf of a firm to recover a debt due by one of the partners of that firm. See Lindley on Partnership (8th Edition), page 323. In India, Order XXX, Rule 9, of the Civil Procedure Code recognises the maintainability of suits between firms and one or more partners of such firms and also suits between firms having one or more partners in common. But a suit does not ordinarily lie if brought by one partner to recover money lent by him to a firm of which he is a member [see *Rustomji v. Purshotamdas* 25 B.P 606 :

3 Bom. L.R. 227 the reason being that the advance made by one partner would be only one item in the partnership account; nor can one firm sue another when the sole partners of the first firm are partners along with others in the second firm and the claim is to recover as plaintiff's share certain advances made to the second firm before it ceased to do business--see *Kathinath Kedari v. Ganesh Hari Narkar* 26 B.P 739 : 4 Bom. L.R. 525, the reason being that, without taking a general account, it would be impossible to do justice between the parties. It was held in *Karri Venkatareddi v. Kollu Narasayya* 1 Ind. Cas. 384 : 4 M.L.T. 456 that in certain circumstances one partner can sue another for a partial account. Those circumstances are that the granting of the relief asked for by the plaintiff would not involve the taking of general accounts and would not work injustice to the other partners. In the same Volume of the I.L.R. Madras seri page 203 another case, *Sadhu Narayana Aiyangar v. Ramaswami Aiyangar* 3 Ind. Cas. 486 : 32 M.P 266 : 4 M.L.T. 475 is reported in which it was held that a partner, who has been compelled after dissolution of the partnership to pay a debt due by the partnership, may bring a suit for contribution; but in such a suit it was laid down that the defendant must be given an opportunity of showing, if he can, that on a settlement of accounts the amount payable by him as contribution has been wiped out or reduced. In *Gottipatichina Kondiah v. Gottipatinanasappa Naidu* 22 Ind. Cas. 947 : 26 M.L.J. 221 to which decision I was a party, a partner was allowed to sue for his share of the collections made by another partner after dissolution of the partnership, on the condition that the defendants were given an opportunity of showing that, if a general account of the partnership transactions were taken, the plaintiff would not be entitled to the share which he claimed. But in another case decided by a different Bench to which my learned brother was a party, *Lakshmanan Chetty v. Nagappa Chetty* 45 Ind. Cas. 86 : 34 M.L.J. 408, where the plaintiff sued to establish a certain liability against the defendants on the basis of accounts and he did not ask for accounts to be taken, it was held that the suit was not maintainable. What are the rights of persons in a firm inter se has been clearly set out in *Lindley on Partnership* at page 659, 8th Edition. One of these is to have the partnership assets applied in liquidation of the partner-ship debts and to have the surplus assets divided. This result is usually obtained by the process referred to at page 614 of having a Receiver appointed. The share of a partner to

which he is entitled is his proportion of the partnership assets that have been realized and converted into money after all the partnership debts and liabilities have been paid and discharged--see page 402.

4. No partner has a right, at least in the absence of a special agreement, to take any portion of the partnership property and to say that it is his exclusively either during the existence of the partnership or after it has been dissolved. The decision in *Lakshmanan Chetty v. Nagappa Chetty* 45 Ind. Cas. 86 34 M.L.J. 408 proceeds upon this principle--see page 410. The plaintiff in this suit cannot legally assert any right to a specific portion of the deposit made by his partners with the Rangoon firm. His only right is to take steps for an account being taken of the liabilities and assets of the Mandalay firm and to claim his proportionate share of the balance so arrived at.

5. A partner cannot be allowed to take one item of the firm's assets, divide it into equal shares according to the number of partnership shares, and ask to be given one share without first having an account taken of the partnership liabilities and deducting the sum total of them from the aggregate assets of 'the firm. This is what the plaintiff has done hers. In the plaint there is no prayer for accounts nor has he since applied to amend hid plaint. In paragraphs Nos. 1 and 3 of the 1st defendant's written statement an objection was taken to the maintainability of the suit in its present form, without specifying that the suit would have been maintainable if it had been framed differently so as to include a prayer for taking accounts and ascertaining the net assets of the firm Under Order VIII, Rule 2, Civil Procedure Code, it was the duty of the defendants to state how the plaintiff's suit was not maintainable, but under Order VII, Rule 7, a duty is cast upon the plaintiff in the first instance to state specifically what relief he claims, and he must bear the consequences of his failure to ask for the only thing that he is entitled to get when that thing is not of the nature of general relief. It was for want of a prayer for accounts that the suit concerned in *Lakshmanan Chetty v. Nagappa Chetty* 45 Ind. Cas. 86 : 34 M.L.J. 408 was held to be not maintainable, and as that appears to be sound law, I think, we should follow the decision. It makes no difference whether the plaintiff is, as he was in that case a member of the defendants' firm or whether as here, the defendants or some of them are members of the plaintiff's firm, when

in either case the obvious remedy open to the plaintiff is to get the business (in this case the affairs of the Mandalay firm) wound up by getting a Receiver appointed to collect the partnership assets, to adjust the liabilities of the partners inter se and to distribute the nett proceeds after paying the partnership debts. In *Sokkanadha Vannimundar v. Sokkanada Vannimundhar* 28 M.P 344 and *Thiruvengada Mudaliar v. Sadagopa Mudaliar* 7 Ind. Cas. 811 : 34 M.P 112 : 20 M.L.J. 987 : (1910) M.W.N. 486 : 8 M.L.T. 231 plaintiffs were allowed to sue for their share of assets received by a co-partner after the dissolution of a partnership, but this was not without the defendants being at liberty to re open the whole accounts of the business. *Sadhu Narayana Aiyangar v. Ramaswami Aiyangar* 3 Ind Cas. 486 : 32 M.P 266 : 4 M.L.T. 475 dealt with a suit by one partner, who had been com-pelled to pay the whole of a partnership debt, for contribution against his co-partners. It was not, like this, a suit to recover a share in a partnership debt from the debtors including members of the plaintiff's firm, but it partook of the nature of a suit for contribution, pure and simple, The circumstances of those cases were thus different from those of the present suit. The 3rd and 4th issues must now be decided against the plaintiff.

6. The question of limitation is more difficult. It stands in this way. The sum of Rs. 35,289 and odd were placed with the Rangoon firm on August 20th, 1908. This suit was instituted on October 5th, 1915. The Subordinate Judge has found that plaintiff attained majority on October 6th, 1912. If the date, October 20th, 1908, when repayment of the money became due according to the Thavanai be taken as the starting point for limitation and if the plaintiff's minority is not treated as entitling him to exception, the suit is time-barred. It would equally be barred if 3 years were to be calculated as running from March 15th, 1909, the date of the Mandalay District Court's decree defining the plaintiff's share in the assets of the firm.

7. The Subordinate Judge held that the suit was in time as it was brought within 3 years of the plaintiff attaining majority. It is now argued by Mr. K. Srinivasa Ayyangar that the plaintiff cannot claim under Section 6, Limitation Act, that time does not begin to run against him till he attained majority as any one of the adult members of the Mandalay firm was competent to give a discharge of the debt without his concurrence and thus the first part of Section 7 of the Act is applicable.

He also attacks the Subordinate Judge's finding on the question of fact. The plaintiff in his plaint gives the date of his birth as October 8th, 1891. This would make him 21 on October 8th, 1912, as a guardian of his property was appointed by the District Court of Madura in Civil Miscellaneous Petition No. 411 of 1900, which had the effect under the Indian Majority Act of extending the attainment of his majority till he completed his 21st year.

8. The Subordinate Judge has accepted October 6th, 1891, which was also the date given by the plaintiff as the date of his birth in another suit Original Suit No. 257 of 1912 (compare the plaint Exhibit EI) as correct. I see no sufficient reason to differ from this finding. The evidence of P. W. No. 1 who prepared the plaintiff's horoscope, as to the statement made by plaintiff's father about the date of his son's birth, is admissible under Section 32 24 Ind. Cas. 852 : 37 MP 175 Evidence Act, as it was the date of the commencement of a relationship [vide *Oriental Government Security Life Assurance Company, Limited v. Narasimha Chari* 25 M.P 183 : 11 M.L.J. 379 and *Amir Ali's Evidence Act*, page 359]. No doubt Exhibits II and V throw some doubt on the correctness of the age given in the later proceedings to which the plaintiff was a party, but there is no reason for supposing, in the absence of evidence to that effect, that Exhibit D related to another person of the same name as plaintiff. His statement as D. W. No. 2 that he was not aware, at the time when Exhibits II and V were drawn up, that a guardian had been appointed by Court during his minority has not been contradicted or shown to be false. If it is taken to be true, it sufficiently explains the circumstances under which he was treated on those occasions as having attained majority earlier than in 1912.

9. The Subordinate Judge's finding on the point must, therefore, be confirmed. On the question of law we must allow the Full Bench ruling in *Mannava Annapurnamma v. Uppala Akayya* 19 Ind. Cas. 12 : (1913) M.W.N. 328 : 24 M.L.J. 333 and the decision in *Palaniappa Chettiar v. Veerappi Chettiar* 44 Ind. Cas. 466 : 41 M.K 446 : 34 M.L.J. 41 and pronounce in favour of the competence of one of several joint promisees or of one member of a partnership to give a valid discharge of debt due to the joint tenancy or to the firm even after it has been dissolved.

10. Mr. A Krishnaswami Ayyar, for the respondent, has endeavoured to support the lower Court's finding on the 2nd issue, which relates to limitation by arguing that the money in the defendants' hands was a fixed deposit in a bank and that Article 60, under which time begins to run from the date when a demand is made for payment, is the article of limitation applicable to the case. In the plaint it is asserted that demands were made in December 1914 and at the beginning of September 1915, and this assertion is not denied in the defendants' written statements.

11. In *Balakrishnuda v. Narayanasawmy Chetty* 24 Ind. Cas. 852 : 37 M.P 175 the learned Chief Justice of this Court, when sitting on the original side, traced the history of Article 60 of the Limitation & Act and showed its application to so called fixed deposits and other deposits with bankers and other bodies doing similar business, if they are repayable on demand and whether they carry interest or not, even if they are of the -nature of loans. In a series of subsequent decisions, this Court was repeatedly presumed, in the absence of evidence as to the terms on which the money was handed over, that deposits made with Nattukkottai Chetties, who are the Indian bankers of this part of the country, are payable on demand and come within the definition of deposits under Article 60. [See *Ramanathan Chetty v. Subramaniyam Chetty* 28 Ind. Cas. 688 : 28 M.L.J. 372 : 17 M.L.T. 266, *Narayanan Chettyar v. Vellayappa Chettyar* 34 Ind. Cas. 347 : 19 M.L.T. 237 : (1916) 1 M.W.N. 206 *Vellayappa Chettiyaar v. Unnamalai Achi* 42 Ind. Cas. 573 : 6 L.W. 687 : (1917) M.W.N. 858 *Muthiah Chettiar v. Ramanatham Chettiar* 43 Ind. Cas. 972 : 7 L.W. 330 : (1918) M.W.N. 242 and *Chellappa Chetty v. Subramania Chetty* 47 Ind. Cas. 948 : 8 L.W. 221 : (1918) M.W.N. 564 : 24 M.L.T. 264

12. If there is evidence that the money was payable without demand, Article 57 or Article 115 would be applicable, according as it was payable at any time after it was lent or after a fixed period. If either of these articles governs this case, the suit is out of time. In this case there is such evidence. Although the terms on which the money was deposited with the Rangoon firm were not embodied in a bond or promissory note, we have the oral evidence of D. W. No. 1 that in this Thavanai arrangement the investor was not entitled to demand the money till the Thavanai date but when that date arrived, the person with whom it was invested was bound

to repay it immediately and that it was the custom to pay it without any demand being made. There is no other evidence as to the nature of the transaction. The Subordinate Judge has accepted the evidence of this witness on this point and has found that the money was payable without demand.

13. This issue must, therefore, be decided against the plaintiff. The appeal is allowed and this suit is dismissed with costs in both Courts.

14. Appellants (defendants Nos. 3 and 4) are entitled to recover their costs in both Courts from the plaintiff. The defendants who have not appealed will bear their own costs in the lower Court.

Abdur Rahim, J.

15. I agree in the conclusions which my learned brother has arrived at in the judgment prepared by him.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com