

Chokalinga Chettiar Vs. Muthuswami Chettiar

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Court : Chennai

Decided On : Nov-27-1924

Reported in : AIR1925Mad768

Appellant : Chokalinga Chettiar

Respondent : Muthuswami Chettiar

Judgement :

1. This Second Appeal by the defendant arises in connection with a preliminary decree passed by the District Munsif of Tanjore in a suit instituted by the plaintiff for the recovery of the amount found due to him on settlement of accounts on the ground that he has been an agent under the defendant in a trade which the latter had been carrying on, on the understanding that his remuneration was to be one-fourth of the total profits of each year. The suit was for the recovery of one-fourth share in the profits deducting out of it Rs. 488-3-6 due by the plaintiff to the defendant. The defendant-appellant, contended amongst other things, that the plaintiff was not an agent, that the plaintiff and one Natesa Chetty not a party to the suit had been trading in partnership business, that plaintiff was entitled to one-fourth share of the profits only on the footing of a partner, that he was bound to bear a proportionate share of the losses like any other partner and that the accounts should be examined on that basis.

2. The main issue for decision is whether the plaintiff is a partner along with the defendant and another as alleged by the defendant, or whether the plaintiff was

only an agent as alleged by him in the plaint. The learned District Munsif, on an examination of the evidence, oral and documentary in the case, came to the conclusion that the plaintiff was a partner entitled to one-fourth share of the profits after bearing his due share of the losses of the firm and that the amount due to the plaintiff should be found out on an examination of the accounts of the firm on that basis. In that view he passed a preliminary decree directing the appointment of a Commissioner to examine the accounts and settle the amounts due to the several partners.

3. On appeal the learned District Judge in a very short judgment came to the conclusion that the plaintiff was not a partner but only an agent of the firm and that the accounts should be examined on the basis that he as an agent was entitled to one-fourth share of the net profits. He, therefore, set aside the decree of the District Munsif and remanded the suit to the lower Court for passing a final decree in accordance with his finding.

4. In this Second Appeal only one question has been argued, viz., whether the plaintiff is a partner of the defendant or simply an agent. The learned vakil for the appellant has contended before us that the conclusion of the learned District Judge that the plaintiff is only an agent is based upon a misconstruction of the accounts of the firm and a misreading of the documentary evidence in the case. As the question is one of mixed fact and law, we are entitled to test the correctness of the learned Judge's conclusion by an examination of the relevant evidence in the case and this is what has been done in the course of the arguments by the learned vakil, appearing for both the parties.

5. An arrangement to share in the profits does not necessarily show that the person who shares such profits is a partner of the firm; but this fact will have to be considered along with the evidence relating to other characteristics of a partnership, such as sharing of losses, etc., in arriving at a conclusion whether the parties intended to carry on business in partnership. Apart from the oral evidence which is not very conclusive, two sets of documents have been referred to in this case -

(1) income-tax papers, especially Exs. K and X, and

(2) the accounts of the firm. As regards the income-tax papers, it may be said that they do not help the case of the plaintiff very much and are at best only inconclusive. Ex. K, a copy of the income-tax appeal petition preferred by the defendant, no doubt says that he alone carried on his trade individually but the K Form notice was issued in the three joint names of the plaintiff, Appavoo Chetti and the defendant. In Ex. X, which is a statement in writing given before the Tahsildar by the plaintiff, he describes himself as a partner of Chockalinga Chettiar, the defendant, and says, 'We have been carrying on business in partnership for the last six or seven years.' This document is dated the 26th of October, 1918, and the plaintiff has clearly stated in it that he has been carrying on a joint trade. As already stated, these income-tax papers and Ex. J, relied on by the learned vakil for the respondent do not enable us to express an opinion one way or the other definitely; but a perusal of the accounts filed in this case conclusively shows that the plaintiff was a partner with the defendant and not his agent. Three settlements of accounts in this case have been brought to our notice :

(1) At the end of the first year accounts were settled and the profits were divided between the plaintiff and the defendant;

(2) in the second year there was no division of the profits :

(3) Ex. II shows the settlement of accounts for three years excluding the first year. These settlements of accounts show that amounts are carried forward from one year to another year and that, in doing so, interest charged on outstandings is taken into consideration as also the value of the stock on hand. What is most important is that the adjustment shows that in making a division of profits, the profits allotted to each share are set off and adjusted towards the prior debit. It is not satisfactorily explained as to why the plaintiff has been debited with loss. His own case was that the loss of any year should not be taken into consideration against him : but we find that at least one debit for loss had been made to the plaintiff and this has not been satisfactorily explained. The plaintiff is nowhere described as 'Kariyam' in the accounts. It appears to us that the learned District Judge has not interpreted the accounts correctly. A perusal of these accounts

shows that the plaintiff must have been a partner and not an agent of the defendant.

6. We therefore set aside the order of the District Judge directing the Commissioner to take an account on the basis that the appellant is an agent entitled to one-fourth share of the profits and remanding the suit to the lower Court for passing a final decree on that basis. We agree with the District Munsif that the accounts should be examined on the basis that the plaintiff is a partner. We, therefore, restore the preliminary decree passed by him. The appellant will get his costs here and in the Court below.

A.A.O. No. 385 of 1923

7. The District Munsif, after the passing of the preliminary decree, heard objections and passed a final decree. As that preliminary decree was modified by the District Judge, he set aside the final decree and remanded the suit for a fresh final decree. As we have now set aside his decree passed in appeal against the preliminary decree passed by the District Munsif, the District Judge will have to hear the appeal filed against the District Munsif's final decree and dispose of it according to law. We, therefore, set aside his order for passing a fresh final decree and direct him to hear the appeal against the final decree. We make no order as to costs in this Civil Miscellaneous Appeal.

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