

Mahaboob Sir Frajvanu Sree Rajah Parthasaradhi Appa Row Savaji Aswa Row Bahadur Zemindar Garu Vs. Turlapati Subba Row and ors.

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Court : Chennai

Decided On : Apr-02-1924

Reported in : 84Ind.Cas.276

Judge : Phillips, J.

Appellant : Mahaboob Sir Frajvanu Sree Rajah Parthasaradhi Appa Row Savaji Aswa Row Bahadur Zemindar Garu

Respondent : Turlapati Subba Row and ors.

Judgement :

Phillips, J.

1. The plaintiff in this case employed one Sobhanadri, father of the defendants, as his Vakil in revenue suits, and he has now brought the present suit after Sobhanadri's death against defendants as legal representatives for an account of their father's agency. The learned Subordinate Judge has found that Sobhanadri acted as plaintiff's agent in each of the suits in which he appeared as Vakil and has held that the plaintiff's claim is barred except in respect of suits, the proceedings in which terminated less than three years before the suit.

2. The first point taken in appeal is that the Subordinate Judge is wrong in treating Sobhanadri's agency as being an agency in respect of each of the suits, and it is argued that he was a general agent for the plaintiff. In respect of all revenue litigation. The order appointing him is Ex. B-2 under which he was appointed by the plaintiff to conduct revenue suits in the District Munsif's Courts and before Revenue Officers, but this document does not in itself constitute Sobhanadri as agent, for Sobhanadri could not appear as such agent without a vakalat in each suit. It was an appointment as standing Vakil, and until a vakalat was given to the Vakil there was no agency distinctly constituted. There was no contract which bound him to appear in each and every suit, nor was there any contract binding the plaintiff to appoint him in every suit, and it is in evidence that the plaintiff employed several other Vakils for similar litigation. There can, therefore, be no question of general agency, but the agency was merely in respect of each individual suit. In this connection I may refer to *Saffron Walden Second Benefit Building Society v. Rayner* (1880) 14 Ch. D. 406 : 49 L.J. C.L. 465 : 43 L.T. 3 : 28 W.R. 681 where it was sought to treat a Solicitor who was appointed for trustees as agent of those trustees in receiving a notice and I would quote a passage at page 415 Page of 14 Ch. D.-Ed: 'As Lord Justice James said, there is no such thing as a standing relation of a Solicitor to a man. A Solicitor does not stand in a permanent relation to his client as a chaplain does to a nobleman or body having a chaplain. A man is a Solicitor for another only when that other has occasion to employ him as such. That employment may be either to conduct a suit or to advise him about some matter in which legal advice is required; but there is no such general relationship as that of Solicitor and client of a standing and permanent character upon all occasions and for all purposes.' These remarks are, in my opinion, strictly applicable to the present case if we

merely substitute the word 'Pleader' for 'Solicitor.' The Subordinate Judge was, therefore, right in rejecting the plea that the agency was one and indivisible.

3. The next question relates to the period of limitation and it is argued that the plaintiff having come into Court within three years of the death of the defendant's father, his suit is within time as regards all the agencies. Reliance is placed on several cases in the Allahabad and Calcutta Courts. *Kali Krishna Pal Chowdhury v. Srimati Jagatara* 2 B.L.R.C.J. 139 : 11 W.R. 76 *Bindraban Behari V. JamunaKunwar* 25 A.P 55 : A.W.N. (1902) 191 and *Rao Girraj Singh v. Rani Raghbir Kunwar* 2 Ind. Cas. 118 : 31 A.P 429 : 6 A.L.J. 667. In the first of these cases the agent died before his agency terminated and it was held that as against his legal representatives, the Article of Limitation applicable was 120, but the question is not discussed in any detail. In *Bindraban Behari v. Jamuna Kunwar* 25 A.P 55 A.W.N. (1902) 191 the plaintiff sued to recover a definite sum of money which was in his agent's hands and which he said passed to his legal representatives the defendants in the suit. Here also it was held that Article 120 was applicable. A similar case is the one reported in *Gurudas Pyne v. Ram Narain Sahu* 10 C.P 860 : 11 I.A. 59 : 8 Ind. Jur. 322 : 8 Ind. Jur. 322 : 4 Sar. P.C.J. 548 : 5 Ind. Dec. (N.S.) 575 and these two cases were followed in *Rao Girraj Singh v. Rani Raghbir Kunwar* 2 Ind. Cas. 118 : 31 A.P 429 : 6 A.L.J. 667. It will be seen that in none of these cases was there really a suit for an account, but they were suits to recover certain monies in the agent's hands for which that agent was liable to account. It is true that the Courts seem to hold that the cause of action against the agent is a distinct cause of action from that against his legal representatives. This may possibly be based on the idea that the sons under Hindu Law are only liable for their father's debts after the father's death, but it is now well-settled law that a son's liability to pay his father's debts arises even before the death of the father and consequently their estate would 'be liable equally with their father's estate.

4. In *Shape] Hunnessa Bibi v. Bama Sundari Choudhurani* 16 Ind. Cas. 414 : 16 C.W.N. 1042 : 16 C.L.J. 288 it was held that a suit for an account lies against the legal representatives of a deceased agent, but it was held that Article 115 applied because 'After the agent's death the law presumes that there is always an implied contract by which the heirs of the deceased agent are bound to give an account of whatever they may have received from the agent at the time of his death.' It was held, therefore, that defendants committed a breach of this contract by not rendering accounts. But if an implied contract is the basis of the cause of action, with all respect it would appear to be the contract referred to in Article 89, i. e., that of an agent to render account. Article 89 would then be applicable. In *Kumeda Charan Bala v. Asutosh Chattopadhyaya* 16 Ind. Cas. 742 : 17 C.W.N. 5 : 16 C.L.J. 282 it was held that a similar suit was really one to recover money misappropriated by the deceased agent, but the Article of Limitation applicable was not definitely decided. It is rather difficult to understand how the cause of action against the legal representatives is a different one to that against the agent and it appears to me that at any rate in cases where the cause of action had accrued before the agent's death the mere fact of his death would not give a fresh starting point of limitation against the sons and in this view I am supported by the decision of this Court in *Arunachellam Chetty v. Raman Chetty* 27 Ind. Cas. 807 : 16 M.L.T. 614. There *Sankaran Nair, J.*, remarked as follows: 'It. is then argued that though the claim against the father may be barred, it is not barred against the sons. This argument proceeds on the basis that the cause of action against the sons is different. The decisions are against the appellant. The defendants are sued as the representatives of their deceased father and as the suit would be barred against him if he had lived, it is also barred against the defendants.' *Spencer, J.*, also remarked: 'There is no reason why Art. 120 of the Limitation Act should be applied to a suit brought against the representatives of a deceased agent when the Article applicable to a suit against the agent for acts committed during the continuance of his agency would be Article 89 and limitation would run from the termination of his agency; and the Article applicable in respect of money payable by him after the termination of his agency would be Article 62.

5. This decision is binding on me and with all respect I agree with the views therein expressed, for I do not see how the mere fact that the father has died and that his assets have legally passed to his representatives can give the plaintiff any new cause of action against the defendants, unless it is alleged that the defendants wilfully misappropriated a definite sum of money left by their father to be given to plaintiff. This being so, the

cause of action accrued before the father died and consequently time having begun to run would expire at the same time whether the father had died or not. In this view the lower Court's decision is correct and this second appeal must be dismissed with costs.

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