
(1931) 10 MAD CK 0014
In the Madras High Court

A.M.M. Murugappa Chettiar

APPELLANT

Vs

Arangaraja Kumaranandaswami and Another

RESPONDENT

Date of Decision : 30-10-1931

Acts Referred:

Citation : AIR 1932 Mad 247 : (1932) ILR (Mad) 541 : 137 Ind. Cas. 622 :
(1932) 35 LW 150 : (1932) 62 MLJ 281

Hon'ble Judges : Cornish, J

Bench : Division Bench

Judgement

1. These are appeals from a judgment of Kumaraswami Sastri, J., decreeing the suit under appeal in favour of the plaintiff. The plaintiff is a

pandaram, the 1st defendant is a banker carrying on business in Madras and the 2nd defendant is a minor defending by his mother and guardian

and the son of one S.M.R.M. Ramanathan Chettiar of Pallathur who died some years ago. The plaintiff is the founder and head of a mutt at

Karaikal known as the Sriman Swami Mutt. With a view to create an endowment for that mutt, the plaintiff collected subscriptions from several

persons and the amounts so collected were paid to the makers of four hundis in favour of the plaintiff. The aggregate sum of those four hundis is

Rs. 11,996-7-6. In December, 1925, the plaintiff endorsed those four hundis to the 2nd defendant's father Ramanathan Chetty with instructions to

him to realise the amount thereof and invest the amount so collected on the plaintiff's behalf and account with a respectable Nattukottai Chetti firm

in Madras for interest according to the Madras Nadappu rate for six months" tavanai. Ramanathan Chetty, it is alleged in the plaint, acting on

behalf of the plaintiff, endorsed the hundis in favour of the 1st defendant who agreed to collect the amounts of the hundis for the benefit of the

plaintiff. The plaintiff, accordingly, having without success made demands upon the 1st defendant for payment of the money so collected and

thought by him to be standing in his account with the 1st defendant, sued the 1st defendant for that amount.

2. The 1st defendant filed a written statement in which he set up the case that Ramanathan Chetty delivered the hundis to him with instructions to

collect the amounts thereof and credit them to his own account and that accordingly he collected the amounts and duly credited them to the

account of Ramanathan Chetty. He contended that the hundis in question were delivered to him as the property of Ramanathan Chetty and that

according to his instructions they were dealt with on the footing that they were his property. He pleaded that there was no privity of contract

between him and the plaintiff and contended that the plaintiff's remedy, if any, was against Ramanathan Chetty or his heirs. In consequence of this

written statement, 2nd defendant by his guardian was brought upon the record as a defendant; and in the 2nd defendant's written statement the

case put forward was that the plaintiff did not collect the money represented by the hundis as a trustee of the mutt but that he did so at the request

of Ramanathan Chetty who gave him letters of recommendations to his friends and that the money collected was collected for Ramanathan Chetty

who was the trustee of the money to be applied by him for the purposes of the mutt though the case was subsequently developed at the trial that he

was the trustee of the mutt. The 2nd defendant's case, therefore, was that Ramanathan Chetty was the trustee of the money and that the plaintiff

had no right whatever to the funds beyond merely the collection of them on Ramanathan Chetty's behalf. It was admitted that the money realised

on the hundis was credited to Ramanathan Chetty's account with the 1st defendant. The 2nd defendant also denied that the plaintiff was the

founder or head of any mutt or charities in the name of Sriman Swami in Karaikal. In the last paragraph of his written statement the 2nd defendant

pleaded that the Court had no jurisdiction to entertain the suit as no part of the cause of action as against the 2nd defendant arose in Madras and

that even if a part of the cause of action had arisen in Madras, no leave of the Court to sue in Madras had been obtained.

3. The learned Trial Judge after a very careful trial of the suit gave judgment in favour of the plaintiff holding that he had collected the money in

question as the head of the mutt and on behalf of the mutt, that the 2nd defendant's contentions that Ramanathan Chetty was the trustee for the money and that the plaintiff was making collections on his behalf and under his directions were untrue and that the 1st defendant was liable to have the suit decreed against him because Ramanathan Chetty was in a position of trust to the plaintiff and enjoying that fiduciary relationship and in breach of his trust had paid the money into his own account and the plaintiff was therefore entitled to follow it and -get it from the 1st defendant. It is not clear from the very careful judgment of the Trial Judge whether he intended to do more than make the 2nd defendant liable as a pro forma defendant. The 2nd defendant, it is quite clear, was made a party only because of the defence raised by the 1st defendant in his written statement. It seems to have been thought necessary by the plaintiff's legal advisers to make the 2nd defendant a party to the suit so that the rights of all the parties could be properly determined; and the right of the plaintiff even in the absence on the record of the 2nd defendant to follow the money into the hands of the 1st defendant under the circumstances of the case appears not to have been appreciated by the plaintiff's legal advisers. Consequently, both in the Trial Court and before us a great deal of time was taken up by a discussion of the question of the jurisdiction of the Court to entertain a suit against the 2nd defendant. Mr. S. Doraiswami Aiyar, however, did not take up the position that it was necessary to have the 2nd defendant before the Court, his contention being firstly that on the evidence the relationship between the plaintiff and Rama-nathan Chetty was a fiduciary one and secondly that Ramanathan Chetty was guilty of a breach of trust in putting the money realised on the hundis into his own account and therefore the legal position was that the plaintiff was entitled to get the money back from the 1st defendant. Accordingly we think it quite unnecessary to decide the point as to jurisdiction. That was decided in the Lower Court in favour of the plaintiff; but in view of the fact that Mr. Doraiswami Aiyar did not support that finding, it only remains for this Court to say that it would appear that the Lower Court had no jurisdiction to entertain the suit as against the 2nd defendant. Therefore, so far as the 2nd defendant's appeal is concerned, it must be allowed though it must be observed that the 2nd defendant took no steps whatever to have the decree, when drawn up, posted "to be spoken to on

minutes" before the learned Judge, to set right any errors or doubt therein but has come straight here instead. In view of the fact that most of the

time in the Court below was taken up in a consideration of the case set up by the 2nd defendant which was found to be; untrue, in my opinion, the

2nd defendant is not entitled to his costs either here or in the Court below. Since, however, the decree as it stands makes the 2nd defendant liable

to pay costs, that part of it will be amended and the order substituted that the 2nd defendant will bear his own costs.

4. It is now necessary to consider the 1st defendant's appeal and whether the learned Trial Judge was right in coming to the conclusion that the

relationship between the plaintiff and Rama-nathan Chetty was a fiduciary one. The learned Trial Judge has obviously given the most careful

consideration to this aspect of the case as indeed he has to the case in its other aspects and, in my opinion, it would be impossible to come to a

different conclusion. There is not a single document in the case which in any way supports the 2nd defendant's case set out in his written statement

that Ramanathan Chetty was the trustee of the money. There is not a single document either which supports his case subsequently developed at the

trial, namely, that Ramanathan Chetty was the trustee of the mutt. On the contrary, the documentary evidence is strongly in favour of the plaintiff's

claim. Some letters written by the plaintiff to Ramanathan Chetty were made use of by the 2nd defendant, it being contended that the language

employed by the plaintiff therein showed him to be a person who was the servant of Ramanathan and collecting the money in question under his

instructions. As the learned Trial Judge with his great knowledge of the people in these parts points out, no particular significance can be placed

upon such words as ""Uttiravu (order)"" and ""Adiyan (my humble self),"" words used by the plaintiff in the letters in question. As he says:

Nobody who knows the way of these pandarams and the generally obsequious tone that is adopted by persons who want the favour of well-to-do

persons whom they approach and the generally hyperbolical language in which a person who addresses another seeks to demean himself and exalt

the other person can have any difficulty in arriving at the conclusion that no such inference can be drawn from the formal language of a person who

addresses himself as a servant that he is really a servant.

5. Nor can it be said that these letters show that the collections were being made by the plaintiff on Ramanathan Chetty's behalf. On the contrary, when the money collected in Rangoon by the plaintiff--he travelled there amongst other places for the purpose of collecting money--was brought by him to India, it was invested with the S.M.V. Firm; and whilst there, there is no suggestion that anybody else had any interest in that money. It is credited there as the plaintiff's money. Nobody else used that money. Payments were made to the plaintiff and when the money was transferred to another firm the transfer was made at the instance of the plaintiff. It is clear from the letters in the case that the plaintiff had had a great deal of trouble in getting the money out of the hands of the S.M.V. Firm and was writing to Ramanathan Chetty in order to get Ramanathan Chetty to use his influence in order to make the S.M.V. Firm pay the money out. It is quite unnecessary to go into the evidence on this part of the case in any detail because it has been so very carefully discussed in the judgment of the learned Trial Judge. It is sufficient to say, as I have already before stated, that it is impossible to differ from the learned Trial Judge's conclusions on this part of the case and to add that the 2nd defendant's case is obviously a false one. It is clear, therefore, that the plaintiff was collecting money for the mutt at Karaikal, that having collected this large amount, he got four hundis in which he was named the payee, endorsed them over to Ramanathan Chetty not so as to give Ramanathan Chetty any right to the money but because Ramanathan Chetty was to negotiate the hundis for the plaintiff and pay the money into the plaintiff's account which Ramanathan Chetty was to open with some respectable firm in Madras. The money was entrusted to Ramanathan Chetty for that purpose and in putting the money into his own account he was guilty of a breach of trust and any difficulty there might have been in identifying this money after it got into the hands of the 1st defendant is removed by reason of the fact that Ramanathan Chetty had two accounts with the 1st defendant, viz., a tavanai account and a tanathu account. The latter was an account of Ramanathan Chetty's own dealings. The former account was opened in order to pay into it the realisations from the hundis and there the money remained. The legal position is perfectly clear. The first case to which reference must be made is *Burdick v. Garrick* (1870) 5 Ch. App. 233. There an agent, who was a solicitor in London, held a power of attorney from his

principal in America to sell his property and invest the proceeds in his name. The agent received certain moneys under the power and paid them

into his own bankers to the general account of his firm. The principal died in 1859 intestate. In 1867 his widow took, out administration to his

estate, and in 1868 she filed a bill against the agent for an account. The Statute of Limitations was pleaded but it was held that the agent held the

money in trust for his principal, and therefore the Statute of Limitations was no bar to the suit. On page 240 Lord Hatherley, L.C., says:

In the present case we have an agent who is entrusted with those funds, not for the purpose of being remitted when received to the principal, but

for the purpose of being employed in a particular manner, in the purchase of land or stock; and which moneys the factor or agent is bound to keep

totally distinct and separate from his own money; and in no way whatever to deal with or make use of them. How a person who is entrusted with

funds under such circumstances differs from one in an ordinary fiduciary position I am unable to see.

6. It is clear from this decision that Ramanathan Chetty stood to the plaintiff in a fiduciary relationship. Next it has to be seen whether money

placed by a person in fiduciary relationship in breach of that trust in the hands of another can be got back from that other person; and here we have

the authority of the well-known case of *In re Hallett's Estate*. *Knatchbull v. Hallett* (1880) 13 Ch.D. 696, where it was held that if money held by

a person in a fiduciary character, though not as trustee, has been paid by him to his account at his bankers, the person for whom he held the money

can follow it, and has a charge on the balance in the bankers' hands. In a later case *Sinclair v. Brougham* (1914) A.C. 398, the principle in *In re*

Hallett's Estate (1880) 13 Ch.D. 696 was applied. It is quite clear that the plaintiff was entitled in the Lower Court to succeed in his claim against

the 1st defendant and therefore the 1st defendant's appeal must be dismissed with costs.

Cornish, J.

7. I concur.