

(1947) 09 MAD CK 0037
In the Madras High Court

A.R.M.M. Meyyappa Chettiar and Another	APPELLANT
Vs	
P.N.M.M. Palaniappa Chettiar and Others	RESPONDENT

Date of Decision : 02-09-1947

Acts Referred:

Citation : (1948) 61 LW 243 : (1947) 2 MLJ 589

Hon'ble Judges : Horwill, J

Bench : Division Bench

Judgement

Horwill, J.—The suit filed in the Court of the Subordinate Judge, Devakotta arose out of a partnership between the first plaintiff and the first defendant, who will be hereafter called the plaintiff and the defendant. The other parties to the suit, with the exception of the fourth defendant, were impleaded because of their relationship to the principal parties, who are the managers of trading families. The second plaintiff is the son of the first plaintiff. The second defendant is the adopted son of the first defendant and the third defendant is the son of the second defendant. The fourth defendant is the holder of a decree against the plaintiffs and defendants 1 and 2.

2. The plaintiff and the defendant admittedly entered into a partnership and began a money-lending business at Taiping in the Federated Malay States early in 1920. The share-capital was \$ 12,125 of which the plaintiff was to contribute \$2,000 and the defendant the rest. They, were also to contribute like amounts as menpanam which, unlike the share-capital, was to carry interest. Accounts were opened with regard to the share capital and the menpanam. There were also separate ledgers for the personal transactions of the plaintiff and the defendant with the firm. The defendant throughout the relevant period was living in India ; but the plaintiff worked in the Federated Malay States, though not in Taiping. It was because the plaintiff was in the Federated Malay States and was therefore able to superintend the business that the defendant was anxious to have him as a partner. They appointed an agent Palaniappa to directly manage the business ; and he continued in management from 26th January, 1920, to 3rd April, 1923. It

is the custom of the Nattukottai Chetti community, to which the parties belong, to appoint agents for a period of three years and at the termination of that period to calculate profits and pay the agents a commission on the profits. The parties knew at the termination of Palaniappa's agency that a loss had been sustained, but they did not know exactly what that loss was ; because during the course of the money-lending business they had been compelled to acquire property, presumably in execution of decrees against defaulting debtors. Ordinarily, a fresh agent is appointed at the end of the three years ; and in accordance with practice, Nagappa was then appointed as the agent for a term of three years. He continued in management from 3rd April, 1923, to 8th May, 1925. The business ended in a loss during his period also, and again no exact calculation was made of the loss sustained. The third agent was one Devarayan, who continued in that capacity from 8th May, 1925, to February 1927, when he died. As the loss continued, the defendant began to be anxious, and decided that it was necessary to examine the accounts thoroughly and to have the assets of the firm evaluated, so that the partners might know their exact financial position. Upon the death of Devaraya, Venkatachala was appointed as the agent on 22nd April, 1927 ; and he continued in management while enquiries were being made to estimate the loss that had resulted. Early in 1928, the plaintiff came to Karaikudi in India, when the plaintiff and the defendant examined the accounts together in order to estimate the loss up to the end of Devaraya's agency, calculating interest on advances up to 15th September, 1928. It is the plaintiff's case that the partnership then terminated and that the defendant continued thereafter to manage the business himself.

3. Venkatachala had borrowed money for the firm from A.L.A.R. Arunachalam Chettiar of Kothamangalam; and a suit was filed in 1938 in the Court of the Subordinate Judge, Devakotta, to recover this debt. The suit was finally numbered as O.S. No. 80 of 1939 on the file of the Subordinate Judge, Ramnad ; and a decree was obtained against the first and second plaintiffs and the first and second defendants jointly. In execution of that decree, the property of the plaintiffs was attached and sold and the decree debt in part realised. The plaintiffs were also obliged to execute a security bond for the remainder of the decree amount. The plaintiff thereupon filed the present suit for recovery of the amount paid, on the ground that he had ceased to be a partner in 1928, before the debt which was the subject-matter of O.S. No. 80 of 1939 was incurred. He also prayed for an injunction and other reliefs with regard to the remainder of the decree debt. The lower Court dismissed the suit, holding that the plaintiff continued to be a partner until O.S. No. 80 of 1939 had been filed and that he could not bring a suit for contribution, his only remedy being to file a suit for dissolution of partnership and accounts.

[After discussing the evidence their Lordships continued :]

4. We are satisfied on the above evidence that the plaintiff had not ceased to be a partner in 1928 as alleged by him. If he ceased to take any interest in the

business some years later, it was only because he saw that there was no hope of the business earning any profit and because he was trying to avoid liability for a share of the loss that the business had sustained. It is not the plaintiff's case that he ceased to be a partner later on when the business was being wound up in 1932 or 1933, or in the years when he ceased to assist the defendant in winding up the business.

5. The plaintiff's next contention is that even though he has failed to prove that he ceased to be a partner in 1928 and so is liable for a share of the decree debt which he eventually discharged in full after the filing of the suit, yet he is entitled to recover from the defendants their proportionate share of the partnership debt. The law relating to the recovery of partnership debts is briefly summarised in 7 Halsbury, Hailsham Edition (Paragraph 378), as follows:

Where partners are under a joint liability in respect of a particular transaction arising out of and connected with a partnership, and one of them is compelled to pay more than his share of such joint liability, the Court will not enforce his right of contribution in respect thereof against his co-partners, except in an action for a general partnership account.

6. This High Court was at one time inclined to take the view that this rule is not a strict one and that a suit for contribution would be maintainable, though in such a case equity might demand that the partnership accounts should be looked into to ascertain whether any liability existed after taking into account all the partnership transactions. The decisions of this High Court were, however, overruled by the Privy Council in *Bhaidas Shivdas v. Bai Gulab*. In that case, the plaintiff first brought a suit for dissolution of partnership and for accounts, which was dismissed on the ground that it was barred by time. The plaintiff thereupon brought another suit for a share in a certain asset, realised within the period of limitation. The plaintiff's claim was allowed, following earlier decisions of this Court in *Sokkanadha Vannimundar v. Sokkanadha Vannimundar* I.L.R.(1904) Mad. 344 and *Sadhu Narayana Aiyangar v. Ramaswami Aiyangar* I.L.R.(1908) Mad. 203. Their Lordships laid down this general rule:

If a partnership has been dissolved and the accounts have been wound up and each partner has paid what he has to contribute to the debts of the partnership and received his share of the profits, the mutual rights and obligations having been thus all discharged, and then it turns out afterwards that there was some item to the credit of the partnership which was either forgotten or treated as valueless by reason of the supposed insolvency of the debtor or for any other cause, which item afterwards becomes of value and falls in, it ought to be divided between the partners in proportion to their shares in the original partnership. There is no reason why one should have it more than the other.

7. They then went on to say:

If on the other hand no accounts have been taken and there is no contest that the partners have squared up, then the proper remedy when an item falls in is to

have the accounts of the partnership taken ; and if it is too late to have recourse to that remedy, then it is also too late to claim a share in an item as part of the partnership assets, and the plaintiff does not prove and cannot prove that upon the due taking of the accounts he would be entitled to that share. It might well be the case that one of the reasons why no final balancing of accounts took place was that A owed the partnership so much money that it was anticipated that B would hereafter receive a particular item which would operate substantially to balance the claim.

8. One would have thought that this decision had made the matter clear ; and indeed in many cases full application was given to the principles laid down by their lordships in this case. In *Arunachalam Servai v. Nottam Beer Vavu Rowther* (1928) 27 L.W. 597 there was a dissolution of partnership but no accounts had been taken. The learned Judges, following *Gopala Chetty v. Vijayaraghavachariar* (1922) 43 M.L.J. 305 : ILR Mad. 45 pointed out in many places during the course of their judgment that whether the claim of the plaintiff relates to an asset or to a liability, the only remedy is by way of a suit for accounts, except in special cases. In two unreported cases, *Muniratna Mudali v. Natesa Mudali* S.A. No. 392 of 1925 and *Duraiswami Reddi v. Rangaswami Reddi* A.S. No. 100 of 1923 the principles laid down in *Gopala Chetty v. Vijayaraghavachariar* (1922) 43 M.L.J. 305 : ILR Mad. 45 were applied to claims for contribution. In *Muniratna Mudali v. Natesa Mudali* S.A. No. 392 of 1925 the plaintiff had paid off a mortgage debt and he claimed contribution though the partnership had been dissolved. *Gopala Chetty v. Vijayaraghavachariar* (1922) 43 M.L.J. 305 : ILR 45 Mad. 378 (P.C.) was applied and the plaintiff's suit was dismissed. In *Duraiswami Reddi v. Rangaswami Reddi* A.S. No. 100 of 1923, there was a decree debt, with regard to which the plaintiff filed a suit for contribution. It was held that since a suit for accounts was barred by time, the suit for contribution was not maintainable. In other High Courts claims for contributions under similar circumstances were dismissed by applying the principles laid down in *Gopala Chetty v. Vijayaraghavachariar* (1922) 43 M.L.J. 305 : ILR Mad. 378 vide *Mussammat Jagapati Kuar v. Firm Damri Sahu Halkori Ram* ILR Pat. 811 and *Debesh Chandra Mukerjee v. Benoy Krishna Banerjee* (1939) 43 Gal.W.N. 1214 though in the latter case *Gopala Chetty v. Vijayaraghavachariar* (1922) 43 M.L.J. 305 : ILR 45 Mad. 378 (P.C.) was not referred to. The learned Judges there laid down the general rule that a separate claim for contribution would not ordinarily lie in the absence of a prayer for general accounting ; but they seemed to consider that a suit for contribution might lie if no inequity would result from it ; e.g., if the accounts were before the Court and it appeared from them that the plaintiff was justly entitled to contribution towards the liability that he had met.

9. The only case since *Gopala Chetty v. Vijayaraghavachariar* (1922) 43 M.L.J. 305 : ILR 45 Mad. 378 (PC) which assists the plaintiff is *Chockalingam Chettiar Vs. Meyappa Chettiar and Others*, in which there was a difference of opinion between Madhavan Nair, J., and Stone, J., as to the plaintiff's right to claim contribution from the defendant after a partnership had been dissolved. The case

was referred by the Bench to a third Judge ; and Pandrang Row, J., held (sic) contribution from a suit for a share in a particular asset collected, such as was the basis of the claim in *Gopala Chetty v. Vijayaraghavachariar* (1922) 43 M.L.J. 305 : ILR 45 Mad. 378 (PC). The learned Judge held that a right to contribution was an equitable right that existed apart from the partnership and could not ordinarily be defeated. He said:

Where the partnership relation no longer exists, and where there is no likelihood of any restitution being necessary, there is no reason in my opinion to apply the rule prohibiting actions for contribution as between persons who were once partners but have ceased to be such. When the. reason for the rule does not apply, the rule itself does not apply... Coming to the right of contribution as between co-judgment-debtors, there is. in my opinion, no reason why the right to sue for contribution which accrues to a co-judgment-debtor as such should be denied or mttde subject to any equities arising out of a contract of partnership many years after the partnership became dissolved and a suit for general account became barred and the relation of partnership came to an end.

10. This reasoning seems to us to conflict with that adopted by their Lordships in *Gopala Chetty v. Vijayaraghavachariar* (1922) 43 M.L.J. 305 : ILR 45 Mad. 378 (PC). The learned Judge cited *Sadhu Narayana Aiyangar v. Ramaswami I.L.R.* (1908) Mad. 203 and *Sokkanadha Vannimundar v. Sokkanadha Vannimundar I.L.R.*(1904) Mad. 344 where the learned Judges pointed out that if a decree were given for contribution, inequity might well result; because an equal or even a larger sum might be due from the plaintiff to the defendant on the partnership. So Pandrang Row, J., added:

So far as his action was concerned, it would not have been governed by the law of partnership. It is the defendants who seek to rely upon their rights as partners as a defence to the action for contribution. Whether such a defence is open to them or not, namely whether they can insist upon an account being taken even when an action for accounts would be barred, does not arise for decision by me, as that point is not included in the question referred to me.

11. It was just this argument in *Sadhu Narayana Aiyangar v. Ramaswami Aiyangar I.L.R.*(1908) Mad. 203., that was not approved of by their Lordships in *Bhaidas Shivdas v. Bai Gulab* . The learned Judges in *Sadhu Narayana Aiyangar v. Ramaswami Aiyangar I.L.R.*(1908) Mad. 203. said:

The fact that neither partner has thought fit in proper time to secure a settlement of accounts does not, it is therefore pointed out, afford a reason why one partner should be enabled to secure an advantage over the other. Justice is done if the defendant is allowed to show that on a settlement of accounts he would not be liable.

12. Their Lordships, dealing with this line of arguments accepted in the Madras and Bombay cases cited observed in *Bhaidas Shivdas v. Bai Gulab*

With great deference this reasoning begs the question. How is it to be known that some of the partners would exclusively benefit by the realisation of assets which come in after dissolution ? To meet this objection the learned Judges assume that accounts may be taken and they have done enough for the ex-partner who is sued in saying that he may have the accounts taken. But if the policy of the law be that after the period of limitation no accounts shall be taken, for the excellent reason that materials for taking such accounts may have disappeared, it is not legitimate to say to the person sued, "either pay on the footing that accounts have been taken which we know have not been taken and on the footing that all matters have been squared up between you and your partners when we have no knowledge that there has been any such squaring up, or submit to that taking of accounts against which the legislature has protected you.

13. We cannot but conclude, therefore, that the decision in Chockalingam Chettiar Vs. Meyappa Chettiar and Others, is not only against the current of recent decisions in this High Court, but also against the principles laid down by the Privy Council in Bhaidas Shivdas v. Bai Gulab .

14. We have discussed the above question at considerable length, because the matter has been argued fully before us ; but no such relief as is now prayed for during the arguing of this appeal was claimed in the plaint. The suit is based on the allegation that the partnership had come to an end in 1928 and that since the plaintiffs were not partners of the firm when the decree was passed against them, they were not liable in any way. A suit for contribution must be based on the allegation that both the plaintiff and the defendant were liable for the debt, that the plaintiff had paid the whole of it, and that the defendant is therefore liable to contribute his share. The appeal would therefore have to be dismissed even on this ground.

15. It has been argued that the case of the second plaintiff is much stronger than that of the first plaintiff, in that he was not a partner of the firm. The learned advocate for the plaintiffs has cited passages from the judgment of Pandrang Row, J., and Stone, J., in Chockalingam Chettiar Vs. Meyappa Chettiar and Others, , in which case the plaintiffs were the representatives of the deceased partner. The judgment of Pandrang Row, J., does not seem to suggest that legal representatives are more strongly placed than the deceased partner himself would be ; but Stone, J., seemed to argue that since they were not partners they had nothing to do with the partnership and that since they had been compelled to pay the whole debt, the defendants had to pay a part. With due respect, we are unable to distinguish the cases of a partner and his representatives ; for the representatives can certainly file a suit for accounts ; and the reasons which their Lordships of the Privy Council adopted in Bhaidas Shivdas v. Bai Gulab would apply equally to representatives and to partners. Reference was made in the judgments in Chockalingam Chettiar Vs. Meyappa Chettiar and Others, to the pious obligation theory ; but the case against the second plaintiff is much

stronger than any based on the pious obligation theory ; for the plaintiffs are members of a Nattukottai Chetty trading family in which the manager is entitled to utilise the assets of the family for conducting a family business ; and every member of the family becomes liable in respect of his share of the family property for the trade debts of the family. The position has been summarised by Mayne (10th Edition, paragraph 308-A) thus:

To the creditors of the business they will be liable to the extent of their share of the family property embarked in the business. In the case of families whose hereditary occupation is trade, there is ordinarily no distinction between their family properties and their trade assets, and the whole of their joint family property will therefore be assets of the business, in the absence of any special arrangement to the contrary by which particular properties are validly set apart. For, the business is conducted on the credit of the whole family property, and that property is swelled by the profits of the business and it would be impossible to say that any particular portion of the family property, less than the whole, is to be regarded as specifically allotted to the business.

16. It may also be mentioned that no special case has been put forward in the plaint on behalf of the second plaintiff. He would in any case have to prove that his father's debt was a personal one and that the second plaintiff's share in the family property had been wrongly sold for this personal debt. He has made no attempt to prove these things.

17. The appeal is dismissed with costs. (One set to the first defendant and Rs. 50 as advocate's fee to the fourth defendant).