

(1910) 05 MAD CK 0001
In the Madras High Court

A.S. Guruva Chetty

APPELLANT

Vs

A.S. Ragammal

RESPONDENT

Date of Decision : 02-05-1910

Acts Referred:

Citation : 7 Ind. Cas. 534

Hon'ble Judges : Sankaran Nair, J

Bench : Single Bench

Judgement

Sankaran Nair, J.—One Cundaswamy Chetty, the plaintiff's son, died on the 18th December 1898, intestate and without any issue, leaving

his widow the defendant as his legal heir and representative. The defendant took out letters of administration and continued in possession of his

property. The suit is now brought by the plaintiff, as the next reversioner, to remove her from the management of the estate and to appoint a

Receiver on account of gross mismanagement and malversation by her. In her application for letters of administration and in her affidavit, the

defendant stated that her husband's estate would be worth Rs. 143,873-10-7 besides the immovable property which was stated to be worth Rs.

10,800 and the debts due by the estate was stated to be about Rs. 15,785. The net amount realised by her has not been proved. But it is

conceded that it was not less than Rs. 1,02,953-5-4 (See Exhibit L. 3). Up to December 1907 the interest that she received appears from her

accounts to be not less than Rs. 23,085 and the stock of twist and other yarn, which belonged to the estate, realised about Rs. 5,330 and the

deceased had about Rs. 400 cash in hand. Thus the widow received a sum of not less than Rs. 1,30,000; out of this property when the suit was

brought, she had Rs. 28,000 lent to one Appavu Mudaliar, Rs. 6,000 on Government securities and Rs. 2,000 invested in certain mills besides

immovable property and jewellery which is said to be worth about Rs. 6,000. She owes a debt of Rs. 10,000 to her brother and a sum of Rs.

4,000 to a firm of which her brother is the principal partner. It will thus appear that an estate which was worth over a lakh of rupees has shrunk to

a little over Rs. 20,000. It is obvious, therefore, that prima facie the plaintiff has made out a case which would entitle him to take steps to prevent

the property now with the defendant from being dissipated.

2. I now proceed to consider the evidence in the case. It appears that letters of administration were ordered to be issued to the defendant on the

18th April 1899 on condition of her furnishing sureties for a sum of three lakhs of rupees. Her maternal uncle one Subbaraya Chetty and one

Appavu Mudaliar stood sureties for her, her maternal uncle having bound himself in the sum of Rs. 88,000 and Appavu Mudaliar in the sum of Rs.

2,25,000. It appears to have been a condition in the contract between the sureties and the widow that the sureties must be allowed to manage the

estate and that the defendant should entirely abide by the advice given to her by the agents. She accordingly executed a general power-of-attorney

in favour of Subbaraya Chetty and at his instance also in favour of her own brother Venkatasubba Chetty. She executed another power-of-

attorney in favour of Appavu Mudaliar. It is now the defendant's case that she had to pay a commission of Rs. 2,000 to her own uncle Subbaraya

Chetty to persuade him to stand as a surety and a sum of Rs. 5,500 to Appavu Mudaliar and another sum of Rs. 2,000 to another man, one

Ramaswamy Mudali, who was her clerk to persuade these two men to stand as sureties. Besides this payment to them for being sureties she had

to pay a commission of 5 per cent. which is stated to have amounted to Rs. 4,600. Her brother was to get 1½ per cent., Subbaraya Chetty was

to get 1½ per cent. and Appavu Mudaliar was to get 2½ per cent. It is remarkable that the defendant stated on a previous occasion that the

arrangement was only to pay a lump sum of Rs. 5,500 as commission only to Appavu Mudaliar and that, Subbaraya Chetty her maternal uncle

was not to take any commission for himself and that therefore, it was a misappropriation by him of the sum of Rs. 2,000 when he credited himself

with the said amount in the accounts of this estate. With reference to the payment to Ramaswami of the sum of Rs. 2,000 though she, no doubt, admitted the payment of Rs. 2,000 was for arranging with the sureties, she also stated that it was her maternal uncle, Subbaraya Chetty who arranged everything about the sureties and at that the payment of commission to Ramaswami himself was arranged by him. I have very little doubt that she left everything at that time in the hands of Subbaraya Chetty and Subbaraya Chetty did with the estate what he liked and made as much out of it as he could. Whether this payment was in fact made to Ramaswami and whether at that time there was arrangement to pay Subbaraya Chetty a commission of Rs. 2,000 does not appear clearly from the evidence. The statement in the account book by itself cannot be safely relied upon as I shall presently show.

3. From 1899 till 1902 though ostensibly all these three were the managers, Subbaraya Chetty seems to have been the real manager. Appavu

Mudaliar, one of the agents, states that Subbaraya Chetty was really managing and he was only supervising. Defendant states that she never

seriously concerned herself with the management of the estate of Subbaraya Chetty. She did not get herself informed of what accounts were kept

and she did not know whether any accounts were kept or how they were kept. She admits now that she never meddled with the management of

Subbaraya Chetty. She did not care to enquire whether the expenditure was out of capital or out of the income. At the end of 1901 Subbaraya

Chetty retired from the management. According to the defendant the reason was that he was himself entirely in the hands of one Ramaswami who

began to behave towards her arrogantly and disrespectfully. He then brought a suit to be released from his obligation as a surety but that suit was

dismissed. From 1902 according to the defendant Appavu Madaliar and her brother Vencatasubba Chetty were in management. Even there she

admits that she left the management entirely in their hands and did not enquire whether the expenditure was out of the capital or out of the income.

Appavu Mudaliar states that after Subbaraya Chetty left the management, he did not look into the accounts. He did not satisfy himself whether the

accounts were properly kept, though he states that he protested to her about the way in which the estate was managed. On the other hand,

Vencatasubba Chetty, the other agent, states that it was Appavu Mudaliar who managed, though he has been receiving commission all the time, he states that so long as Subbaraya Chetty was in management, as he was his maternal uncle he left everything entirely in his hands. And after 1901 though both he and Appavu Mudaliar were the recognised managers, he never did anything himself without consulting Appavu Mudaliar. His evidence leaves the impression in my mind that he wanted to exculpate himself and throw the entire blame of the management, if any, on Appavu Mudaliar. He states expressly that he did not know anything about the items of expenditure. He admits, however, that Appavu Mudaliar lived at Mylapore and that he used to come to their place once in 2 or 3 days while he himself was a neighbour. He did not notice whether the account showed an excess of expenditure over the income. He never balanced the accounts himself nor did his sister do so. He says he did not think it necessary to look into them. The accounts were never checked by himself. On a few occasions he says he was present when Appavu Mudaliar checked the accounts while Appavu Mudaliar too totally denies that he ever looked into the accounts after Subbaraya Chetty left. It will be seen, therefore, that from 1901 up to this the defendant and her agents Appavu Mudaliar and her brother Venkatasubba Chetty all disclaim having anything to do with the management of the estate. She leaves the responsibility to her agents and each of them shifts the responsibility one to the other. So far then as to the management.

4. It is clear, in my opinion, that this by itself is sufficient to show that the estate cannot be safely left in the possession of the defendant. This conclusion is farther strengthened when we find that she admits that there is a debt of about Rs. 15,000 due by her. Of this a sum of Rs. 11,000 is due to Venkatasubba Chetty himself personally. This debt is certainly not proved. Much less is it proved that it was incurred for any purpose that would be binding on the reversioner. As to the other debt, the defence 1st witness, who became a partner with her brother Venkatasubba Chetty in the year 1907, is only able to say that the defendant used to send a gumashta to them for money and that they paid the money. The purpose of the loan is not entered in their books. They satisfied themselves with the statement of the gumashta that it was for Court expenses. Venkatasubba

Chetty states that monies were lent to this widow from time to time and payments were also occasionally received from her. He says that he lent the money after consulting Appavu Mudaliar. This I disbelieve. He is now instructing the defendant's Vakils. Besides being her brother and agent, he was also as a creditor in a position to lend money. It was his duty, therefore, to see with reference to both the debts that it was absolutely necessary for the widow's estate to contract them and when he advanced monies himself, it was his business to see that these monies were appropriated by the widow, i c, by himself as her agent for proper purposes valid and binding on the family. Yet the books admittedly do not show for what purpose they were incurred. There is no letter from the widow, no voucher, from Appavu Mudaliar, his co-agent, for the payment of the money, to show for what purpose the debts were required. I think it is unnecessary to go further into the matter except to say that there is absolutely no evidence in the case which will support the claim of a creditor as against a widow, Venkatasubba Chetty's account book for his private debt was tendered in cross-examination but it does not carry the case further as he admitted the purpose of the loan was not stated in any of them. The widow herself knows nothing about the debts and she is not able to state the purpose for which the debts were contracted nor is she able to show that it was necessary to contract debts. Venkatasubba Chetty is only a witness in the case. He is not a party. But as the evidence now stands I have not the slightest hesitation in holding that there is no reliable evidence in the case. I might even go further and say there is no evidence in the case to show that the debts are binding debts. In these circumstances it is impossible to leave the estate in her hands who is absolutely under the control and guidance of her brother, Venkatasubba Chetty.

5. There is not the slightest doubt that if she is able to do so, she will allow what remains of this estate to be appropriated by him ostensibly for the discharge of his duties. I may add that a large sum of money Rs. 4,000 odd due to the firm, of which he is the partner, was contracted after the 27th May 1907.

6. I will now refer to the evidence adduced by the defendant herself as to the expenditure. I have already referred to the remuneration of the sureties and the commission to the agents. It is clear that so far as the agents

are concerned, Appavu Mudaliar, who received Rs. 5,500 first time as surety and Rs. 2,000 as agent's commission, practically did very little and he is responsible for a good deal of the loss sustained by the estate in having allowed others to do what they liked with it.

7. As to the other man, defendant's brother, Venkatasubba Chetty, he expressly states in so many words that he cannot say what it was that he did for drawing his commission as agent. And if his evidence is to be believed that payment to him also was absolutely a waste of money.

8. Another item of Rs. 2,000 for funeral expenses of Cundaswami Chetty is now admitted to have come out of another account and that it ought not to be debited against the estate. For charity alone she alleged to have spent about Rs. 8,000 and to construct a choultry about Rs. 6,500 and

for what is called Karmavimochanam ceremony a sum of Rs. 2,000 in addition to the expenses incurred for annual ceremonies coming to Rs.

4,661.

9. It may be that in the accounts there are entries showing that these sums were spent. But I place no reliance on them.

10. Neither the defendant nor her two agents who have been examined make themselves responsible for these items of expenditure and it has not

been proved that this expenditure was necessary or really incurred. There is very little doubt that the disbursements are grossly exaggerated. I do

not believe that the agents ever spent for charity Rs. 8,000. And considering the condition of the estate, it is quite clear she was not justified in

doing so. Her husband in his life-time was only spending from Rs. 20 to Rs. 25 a month on charity. I do not think it necessary to enter into the

various items picked out from the accounts and which were attempted to be shown by the plaintiff's pleader to be false entries.

11. For these reasons, I am satisfied that it is unsafe to leave the estate in the hands of the defendant who is entirely under the control of her

brother and that it is necessary in the interests of the reversioner that a receiver should be appointed. As fraud or any intention to defraud has not

been proved, she will be paid the surplus income.

12. After the judgment was ready, Mr. Tirunarayana Chariar has handed to me a list showing how the amount withdrawn from Appavu Mudaliar

was invested ; only Rs. 11,700 is invested under registered instruments of

mortgage; Rs. 2,335 is stated to be cash in hand. I regard this very unsatisfactory. Mr. Ramaswami Iyer wanted to show that the investments are made on insufficient security. I do not consider this necessary as it will not affect the result. I accordingly appoint Mr. K.C. Desika Chariar as receiver. He will be paid a commission of 5 per cent. on the gross monthly income and $1\frac{1}{2}$ per cent on the investments. He will be appointed receiver on his own bond for Rs. 5,000. The defendant will deliver to him possession of all the properties in her possession. She will have the right of residence in the house. The receiver will pay to her the net monthly income on the 5th of each succeeding month. Parties will be at liberty to apply for further directions. The plaintiff's costs will be paid out of the estate.