

(1938) 03 MAD CK 0017
In the Madras High Court

K.P.S. Karuthan Chettiar and Another	APPELLANT
Vs	
P. Ct. Chidambaram Chettiar (died) and Another	RESPONDENT

Date of Decision : 04-03-1938

Acts Referred:

Citation : AIR 1938 Mad 725 : (1938) 48 LW 237 : (1938) 2 MLJ 79

Judgement

1. Appeal No. 411 of 1933 with Memorandum of Objections: - The appeal, and memorandum of objections arise out of a suit by the appellant

against his agent for an account of his agency and recovery of the amount found due on the taking of the accounts. The agent died after filing the

memorandum of objections and the legal representative has not chosen to appear. The memorandum of objections fails for that reason and the

questions raised by the appeal are whether as held by the trial Court the agent is entitled to

(1) a commission of four per cent, for collecting old outstandings;

(2) ten per cent, of the net profits earned during the agency towards what is known as "samans".

2. The claim was based on agreement and custom but as found by the trial Judge there is no satisfactory evidence of any agreement or custom to

pay any commission for collecting old outstandings. The salary chit Ex. A fixes the remuneration of the agent and it requires him to carry on the firm

business according to the directions of the principal. The collection of the outstandings is certainly a part of the firm business and in the face of the

salary chit the agent cannot refuse to collect them if required. The decision in Ramaswami Chetti v. Alagappa Chetti (1914) 28 M.L.J. 199 deals

with the liability of the agent for old outstandings and not his duty to collect

them if directed and the observation of the trial Judge that it is well settled that it is not part of the duty of an agent to collect old outstandings of the firm is unwarranted. He is bound to collect them if required by the principal and the evidence of the agent shows that no commission was paid to him for collecting old outstandings during any of the previous periods of his agency. There is according to him no fixed rate either and the view of the trial Judge that independently of any agreement or custom the agent is entitled to some commission for collecting old outstandings is untenable. The claim for commission for collecting old outstandings must therefore be disallowed.

3. As regards the share of the profits claimed towards samans the evidence of D.W. 4 shows that it is customary among Nattukottai Chetties to pay ten per cent, of the net profits to the foreign agent as samans and the custom has been recognised by this Court in Appeal No. 412 of 1925 and Section A. No. 467 of 1937. It is also mentioned in page 100 of the Madura District Gazetteer and the objection was not seriously pursued.

The claim for samans is thus well founded and the appeal fails to that extent.

4. The decree of the lower Court will therefore be modified by disallowing the claim for commission for collecting old out-standings and the parties will bear their respective costs in this appeal. The memorandum of objections is dismissed and the appellant will have his costs out of the estate of the agent in the hands of the legal representative.