

(1914) 09 MAD CK 0026
In the Madras High Court

Krishna Iyer

APPELLANT

Vs

Ramaswami Iyer and Another

RESPONDENT

Date of Decision : 08-09-1914

Acts Referred:

Citation : AIR 1915 Mad 71 : 25 Ind. Cas. 669 : (1914) 1 LW 818 : (1914) 27 MLJ 447

Judgement

1. The question raised in this second appeal is, whether the defendants, managers of a chit fund, were entitled to refuse certain security offered by the plaintiff in respect of his purchase of a second instalment. The amount for which he was liable to give security was Rs. 2,700. The lower appellate Court has valued the security at Rs. 3,000 and holding that the defendants acted as reasonable men in the position of trustees in declining to accept the security, dismissed the suit. The suit was to recover from the defendants personally interest on the chit amount at the rate of 3 per cent. per mensem. The amount itself was deposited in Court with the written statement and the security accepted as by that time the liability of the plaintiff had been decreased and the defendants were therefore then prepared to accept the security as sufficient.

2. In his able argument before us Mr. T. R. Venkatrama Sastri put the case as one in which under the agreement the only requisite was that the security should be satisfactory. But on our pointing out that under its terms the security had to be to the satisfaction of the agents, he endeavoured to establish that the agents were bound to accept what a Court would think a reasonable man should accept and that the lower appellate Court having applied a wrong test of sufficiency, this Court should itself decide on the propriety of the agent's action. We are not satisfied that the lower

appellate Court has applied a wrong test. The Court does not say that the Trusts Act applies to the case although the learned Judge does speak of

the defendants as trustees. The language used is, "" applying the principle of the Trusts Act "" and we are not clear that he was not entitled to do so.

This appeal might therefore be dismissed on the ground that his finding on the question of the propriety of the agent's action was a finding of fact

with which this Court would not interfere. We have, however, heard the case fully argued on the supposition that we could interfere; and we are

satisfied that it is not for the Courts to decide what was in their opinion "reasonable" in the circumstances, but whether there is evidence that the

agents acted capriciously and unreasonably. It was argued that the agents had not an arbitrary power of rejection and that that being so, the Courts

could interfere, We accept the first proposition, but that does not carry with it the alternative put forward.

3. The leading case on the point is *Braunstein v. Accidental Death Insurance Co.* (1861) 121 E.R. 904. This authority was relied upon by the

appellant in support of his proposition, but in our opinion it does not help him. In that case proof of death had to be given to the satisfaction of the

Directors of the Company. The plaintiff pleaded that the Directors acted capriciously in rejecting the proof offered and the defendants demurred to

that plea. The Court held the demurrer was bad stating the law to be that if they unreasonably and capriciously required evidence that was not

necessary to satisfy them on any reasonable view of the Case that was not justified by the Clause (Vide p. 909)

4. Reference is made in that case to *Dallman v. King* (1887) 4. Bing. N.C. 105; 132 E.R. 729 which was also relied upon by the appellants. This

was a case of a repairing lease containing a clause that the repairs were to be inspected and approved of by the lessor and to be done in a

substantial manner. The Court held that the gist of the agreement was that the work should be done in a substantial manner and that the other

words of the clause could not be read so as to impose a higher liability but should be treated as a clause enabling the lessor to ascertain whether

the work had been so done. That case is therefore no authority in favour of the appellant. Accepting the authority of *Braunstein v. Accidental*

Death Insurance Co. (1861) 121 E.R. 904. We hold that the true test is whether the defendants have been shown to have acted capriciously.

5. The appellant, as a second line of argument asked the court to return the case for a specific finding on this point urging that the District Munsiff

had given a finding against the defendants. On this while the lower appellate Court said nothing about it, we are not prepared to take this course.

We have no doubt that the District Munsiff's view was sought to be supported in the lower appellate Court and we must read the District Judge's

finding as negating it. Further than that, the finding of the District Munsif was clearly based on facts which were not alleged in the plain and have

been misunderstood by the District Munsif. We agree with the lower appellate Court that it has not been shown that the defendants did not act

reasonably still less did they act capriciously; and it is immaterial whether a court might have thought the security offered reasonable in the

circumstances urged by the appellant. In this view the appeal must be dismissed.

6. On the question of costs we cannot accept the view of the lower appellate Court that the defendants should be deprived of their costs because

the agreement contains unsatisfactory clauses. Such clauses are not uncommon as appears from the decisions and that is no ground for saddling the

defendants, who are sought to be made personally liable, with costs.

7. The appeal will therefore be dismissed with defendants' costs throughout. On the memorandum of objections we are clearly of opinion that the

District Judge was in error in treating the defendant's claim of part discharge to the extent of Rs. 200 as a set off. We accept his finding that the

amount thus paid was Rs. 117 not Rs. 200. This amount must be deducted from the amount decreed, and the memorandum allowed with costs.