

(1949) 09 MAD CK 0043
In the Madras High Court

M. Maniappa Pillai

APPELLANT

Vs

I. Anthonisami Mudaliar and Others

RESPONDENT

Date of Decision : 14-09-1949

Acts Referred:

Trusts Act, 1882 — Section 88, 90

Citation : (1949) 2 MLJ 725

Hon'ble Judges : P.V. Rajamannar, C.J

Bench : Division Bench

Judgement

P.V. Rajamannar, C.J.—The plaintiff appeals against the decree and judgment of the Subordinate Judge of Madura dismissing the suit filed by him on "the following allegations. The plaintiff appellant, and defendants 1 and 2, who are respondents 1 and 2, were trading in partnership from 1941, under the name and style of C. Innasimuthu Mudaliar Sons, Madura. The partnership was dealing in mill piecegoods, yarn, handloom goods, towels, bedsheets, carpets, and other textiles. They were also exporting such goods to Ceylon. In this partnership the plaintiff" was entitled to a six annas share, the first defendant, to eight annas share, and the second defendant, to two annas share. On 14th April, 1943, these three persons entered into a formal deed of partnership in which it was recited that the partnership had commenced from 7th June, 1942. The partnership continued in pursuance of the terms set out in this deed till 15th June, 1944. On that date a deed of dissolution was executed by and between them and it was duly registered on 27th June, 1944. It was provided in and by the said deed that in respect of licences for exporting mill piecegoods, handloom goods, towels, bedsheets, carpets, etc., to Ceylon from India and in respect of such goods for business in India and in the quotas allotted by Government under such licences in future the plaintiff should be entitled to and obtain a fourth share and the remaining three-fourth share should be taken by the first defendant. The plaintiff in pursuance of this provision attempted to submit a memorandum to the Export Trade Controller under the joint signatures of himself and defendants 1 and 2 but he could not do so because defendants 1 and 2 would not sign the

memorandum. The plaintiff was therefore obliged to apply to the Export Trade Controller for the issue of a quarter share of the quota allotted to him. The first defendant raised various objections to this application. The Export Trade Controller thereupon directed the reservation of a fourth share, claimed by the plaintiff out of the quota and required the accounts of the partnership for the years 1941-1942 and 1942-1943. In spite of repeated demands, the first defendant refused to give the accounts to the plaintiff. The first defendant further sent a notice to the plaintiff denying the right of the plaintiff to a quarter share of the quota in breach of the express provision in the deed of dissolution. Subsequently, the Export Trade Controller ordered defendants 1 and 2 to produce the concerned accounts. The accounts were produced, it is alleged with manipulated entries suppressing the partnership of the plaintiff, and the Export Trade Controller on a perusal of the accounts refused to issue the quarter share of the quota to the plaintiff by his order dated 14th December, 1944. There was an appeal to the Chief Export Trade Controller who however refused to interfere. Defendants 1 and 2 were allotted the full quota due to the firm. The plaintiff charged that in law they should be deemed to have received such quota as agents and co-owners with the plaintiff, and they were therefore bound to render a true and correct account of all the incomes they had derived by trading with the goods allotted in respect of the quotas obtained by them and pay the amount due to the plaintiff for his share. The plaintiff claimed this amount as also damages for breach of contract committed by defendants 1 and 2 and also as arising out of various acts of malfeasance and misfeasance committed by the defendants in denying the lawful rights of the plaintiff. The plaintiff prayed for a decree declaring that he was entitled to a quarter share of the quota of all goods which had been actually issued or which was issuable to C. Innasimuthu Mudaliar Sons, Madura, since 15th June, 1944, and ordering an account to be taken to determine the profits earned by the defendants by their trade with the quarter share of the quota allotted under licences obtained by them and for recovery of the amount due to him. The suit was originally filed only against defendants 1 and 2. Subsequently, defendants 3 to 6 were added as parties on their application. Defendants 3 to 5 are the brothers of the first defendant and the sixth defendant is their mother. They claimed an interest in the firm. The plaintiff was allowed to amend his plaint and he alleged that the first defendant had been representing defendants 3 to 6 and their interest, if any, in the firm and the acts of the first defendant were binding upon them.

2. The first defendant was the main contesting defendant. In his written statement the plea put forward by him was in short fraud, undue influence and coercion. He alleged that there was no partnership at any time between the plaintiff and defendants 1 and 2. They were only working as employees of the firm. Taking advantage of the going age and want of experience of the 1st defendant, the proprietor of the firm, the plaintiff brought about the deed of dissolution dated 15th June, 1944, by fraud, undue influence and coercion. There was also a plea that the clause relied on by the plaintiff was without

consideration, illegal and against public policy. The Export Trade Controller's rejection of the plaintiff's claim was quite proper. The plaintiff was not therefore entitled to any relief. The second defendant adopted the written statement of the first defendant. Defendants 3 to 5 and 6 filed written statements setting up the case that all the properties, rights and assets of the firm belong to the family of C. Innasimuthu Mudaliar which was represented after his death by the first defendant, his eldest son. The only partners of the firm are the members of the family. They pleaded that the first defendant had no authority to enter into a partnership or to agree to the terms set out in the deed of dissolution. The so-called deed of partnership was antedated and brought about with the sole view of creating some right in the plaintiff to the quota of the firm. The other defences raised by them are not very material. The plaintiff filed a reply statement denying the allegations made by the defendants in their written statements.

3. The learned Subordinate Judge held that the deed of partnership was intended to be real, that the case set up by the first defendant in the written statement that the deed of dissolution was brought about by fraud, undue influence and coercion was not established and that there could be no doubt that from 7th June, 1942, the first defendant took in the plaintiff and the second defendant as partners. It followed that under the terms of the deed of dissolution the plaintiff could claim a quarter share in the export licence relating to the firm for the export of mill and handloom goods to Ceylon in such licences to be obtained in future. There was nothing illegal or opposed to public policy in such an agreement. He found that the business belonged to the family of Innasimuthu Mudaliar and his heirs, namely, defendants 1 and 3 to 6 and the first defendant would be entitled only to a sixth share in the partnership. There was nothing in law to prevent the first defendant from allotting his share of the quota to the plaintiff. After having found on all these points in favour of the plaintiff, he finally dismissed his claim on the ground that the refusal to issue a licence for the export was entirely a matter within the discretion of the Controller and if he refused to grant the application, the plaintiff could have no cause of action against the defendant. What the plaintiff was entitled to under the deed of dissolution, was the right to make an application for the issue of a separate licence for a quarter share of the quota allowable to the firm but the Controller was not bound to recognise any such right. The second defendant after dissolution had no further interest in the matter and the plaintiff could claim no relief against him. Equally the plaintiff was not entitled to any relief against defendants 3 to 6 who as co-heirs were interested in the firm equally with the first defendant. But the first defendant had no authority to bind them or their interest by the execution of the partnership deed or deed of dissolution. In the end, the suit was dismissed but the parties were directed to bear their own costs, because the first defendant had set up a false case that the plaintiff was not a partner at all, the second defendant had supported his false case and defendants 3 to 6 came on the record of their own motion.

4. Before us Mr. T. M. Krishnaswami Aiyar appearing for the contesting

respondent did not challenge the finding that the deed of dissolution (Exhibit P-2) was not brought about by fraud or undue influence or coercion which was the main case of the first defendant in his written statement. He tried to build up a case that the deed of partnership was never intended to be acted upon and it was only executed to help the plaintiff to secure a share of the quota allotted to the firm by inducing the Export Trade Controller to grant to the plaintiff a share. It was not executed on the date it bears but was executed in or about December 1943- The deed of dissolution was also executed for the same ulterior purpose. This certainly was not the specific case set up by the first defendant in his written statement. We cannot permit him to put forward this plea now; Further, we find it impossible for the first defendant to sustain this plea without examining himself. He never went into the box and the only evidence adduced by him was that of his clerk who does not support this case. We do not agree with respondent's counsel that it was for the plaintiff to explain why the deed of partnership Exhibit P-1 was antedated. Mr. Krishnaswami Iyer was unable to explain away the documentary evidence on which the learned trial Judge based his finding that from 7th June, 1942, the plaintiff was a partner of the firm.

5. Mr. Krishnaswami Iyer then contended that under Clause 3 of the deed of dissolution the plaintiff was entitled to apply for a fourth share but his obtaining that was subject to the discretion of the Export Trade Controller. The first defendant was not responsible if the Controller did not grant the plaintiff's application. The decision of the Controller might be wrong on the facts but it was final. Even a wrong decision of the Controller cannot give rise to a cause of action against the first defendant.

6. Mr. D. Ramaswami Aiyangar for the appellant rested his case on one of two alternative bases : (1) that Clause 3 of the deed of dissolution made the first defendant a trustee or at any rate made him liable under an obligation in the nature of a trust; (2) that Clause 3 was a term of the contract between the plaintiff and the first defendant and the first defendant was liable for damages as on a breach of contract.

7. For the first position he relied upon Sections 88 and 90 of the Indian Trusts Act. Reference was also made to the recent decision of a Division Bench of this Court in Chennuru Seethramamurthi Chetti v. Chennuru Guruswami Chetti (1949) I M.L.J. 400. In our opinion this contention cannot be accepted. The provisions of Sections 88 and 90 of the Trusts Act are founded upon a fiduciary relationship. In the present case the first defendant and the plaintiff were no doubt partners up to 15th June, 1944 and as partners they were in a fiduciary relation. But once the partnership came to an end and all rights and interests relating to the partnership were taken over absolutely by the first defendant, there could no longer be any fiduciary relation. There may be instances where even after formal dissolution the fiduciary relationship may continue till the final account taking. But there is no authority for the position that the fiduciary relationship continues even after the final account taking. The decision therefore

in Chennuru Sitharamamurthi Chetty and Others Vs. Chennuru Guruswami Chetti and Others, . can have no application to the facts of this case because in that case an advantage was gained by some of the partners while the partnership subsisted without the knowledge of the other partners and to their detriment.

8. His second contention however appears to be sound. At one time, he sought to argue that the fourth share to which he would be entitled under Clause 3 of Exhibit P-2 must be treated as a part of the good will of the business and therefore the plaintiff would have a proprietary interest in it. But we think that this is a far-fetched conception. After all, the Controller might not grant a licence at all or the Control order itself might cease to be in force and there might be once more free trade conditions. Realising this he was content to found his claim on contract. We are clearly of opinion that Clause 3 does impose a contractual obligation on the first defendant to allow and assist the plaintiff to obtain his fourth share of the quota allotted to the firm. Otherwise we are driven to the conclusion that this clause which was specially introduced as governing the rights of parties in respect of a valuable right was thoroughly useless and of no legal effect and the first defendant in spite of it was at liberty to sabotage the plaintiff's right. Mr. Krishnaswami Iyer relied upon the last part of the clause which runs thus

in respect of the export licences, quotas, allotments and free licences, each of the three parties may hereafter get separately after the dissolution of this partnership, the other partners shall not have any right or interest whatever.

9. His argument was that if in- spite of the special agreement that the plaintiff should obtain a quarter share and the first defendant a three-fourth share, nevertheless if the first defendant in breach of the agreement obtains a licence for the entire quota, he is not liable in any manner. We do not agree. This provision obviously refers to licences obtained by the parties without committing a breach of the other provisions in the same clause, that is, Clause 3.

10. We are not impressed with the argument of Mr. Krishnaswami Iyer that because the granting of a licence is in the discretion of the Controller, the first defendant is not liable for a breach of the terms of Clause 3: It is undoubtedly a part of the law of contract well established that an engagement for the performance of an act even by a third person is binding even though the performance of such act depends entirely on the will of the latter. Thus, for instance, to procure the consent of a landlord to the assignment of a lease is binding. Chitty in his book on contracts gives an example, where one of several partners in a firm agreed to introduce the plaintiff, a stranger, into. it, it was held that the agreement was valid although the assent of the other partners was of course essential to the admission of the plaintiff as a partner

11. There can be no doubt whatever on the evidence that the first defendant acted in utter violation of the terms of Clause 3 of Exhibit P-2. Apart from his lawyer's notice Exhibit D-i which reveals his hostile attitude, there is the

admission of his clerk D.W. 1 that the first defendant objected before the Export Trade Controller that one-fourth quota should not be given to the plaintiff.- In clear breach, of the agreement contained in that clause, the first defendant applied for the entire quota and eventually received it. Even assuming that the grant of a licence to the plaintiff was only a possibility or a chance dependent upon the action of a third person, that is the Controller, that fact would not prevent the plaintiff from recovering damages for the breach by the first defendant. In *Chaplin v. Hicks* (1911) 2 K. B. 786., the Court of Appeal held that where by contract a man has a right to belong to a limited class of competitors for a prize, a breach of that contract by reason of which he is prevented from continuing a member of the class and is thereby deprived of all chance of obtaining the prize is a breach in respect of which he may be entitled to recover substantial damages. The existence of a contingency which is dependent on the volition of a third person did not necessarily render the damages for a breach of contract incapable of assessment. Fletcher Moulton, L.J., said:

The very object and scope of the contract were to give the plaintiff the chance of being selected as a prize winner, and the refusal of that chance is the breach of contract complained of and in respect of which damages are claimed as compensation for the exclusion of the plaintiff from the limited class of competitors. In my judgment nothing more directly flowing from the contract and the intention of the parties can well be found.

12. In the present case, the chance of being granted a licence for a fourth share is a valuable right and if the first defendant has in breach of the obligation laid on him by Clause 3 of Exhibit P-2 prevented the plaintiff from securing the licence, not only has the plaintiff sustained a real loss but the first defendant is liable for the loss so sustained. The answer to Mr. Krishnaswami Aiyar's argument that the plaintiff's right depended on a contingency is best given in the following observations of Fletcher Moulton, L.J.:

The contract gave the plaintiff a right of considerable value...., therefore to hold that the plaintiff was entitled to no damages for being deprived of such a right because the final result depended on a contingency or chance would have been a misdirection.

13. What then is the relief that the plaintiff is entitled to? He is entitled to damages for breach of contract. The measure of such damages cannot be the profit which the first defendant might have made by trading with the goods he obtained as the quota for the firm. Damages for breach of contract are intended to recompense the plaintiff for the pecuniary loss that he has sustained and do not depend upon the gain that the other party might have made. There is no material furnished by the parties to the Court to assess damages for this standpoint, namely, the loss sustained by the plaintiff. The case must therefore be remanded to the trial Court to assess the damages after giving the parties an opportunity to adduce additional evidence in this matter. In calculating the damages due to the plaintiff the following facts and circumstances must be taken

into account. As the basic period for mill goods was from 1st April, 1941 to 31st March, 1942, during which, period the plaintiff admittedly was not a partner, the plaintiff will not be entitled to any share in the quota of mill goods. But as the basic period for handloom goods is from 1st. October, 1942, to 31st March, 1943, the .plaintiff would have been entitled to the quota. As the right of the family of the first defendant has not been denied, the first defendant's share would be not more than one-sixth and though under Clause 3 the plaintiff would be entitled to a fourth, he could not make the first defendant liable for more than the share which he himself had in the family firm. Taking these facts and the inevitable market fluctuations, the required outlay of capital by the plaintiff and other similar circumstances, the lower Court shall assess the damages to which the plaintiff would be entitled and pass a decree for the amount so ascertained.

14. The decree of the lower Court dismissing the suit as against defendants 2 to 6 will stand. The appeal is therefore allowed in part so far as the first defendant is concerned and remanded to the lower Court for further disposal in the light of our judgment. The costs of the plaintiff and the first defendant in this appeal and in the lower Court will abide the result after remand.