

(1949) 09 MAD CK 0030
In the Madras High Court
Case No : Appeal No. 238 of 1946

M. Maniappa Pillai

APPELLANT

Vs

I. Anthonisami Mudaliar and Others

RESPONDENT

Date of Decision : 14-09-1949

Acts Referred:

Contract Act, 1872 — Section 73
Trusts Act, 1882 — Section 88, 90

Citation : AIR 1950 Mad 289 : (1950) ILR (Mad) 697 : (1949) 62 LW 871

Hon'ble Judges : Rajamannar, C.J;Krishnaswami Nayudu, J

Bench : Division Bench

Advocate : D. Ramaswami Iyengar and P.S. Srinivasa Desikan, for the Appellant; M.K. Anandan and T.K. Subramania Pillai, for the Respondent

Judgement

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, bandloom

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, defendant 1, to 8 annas share, and defendant 2, 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 defendant 1. 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. Defendant 1

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,

defendant 1 refused to give the accounts to the plaintiff. Defendant 1 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 how ever 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 defendant 1 and defendant 6 is

their mother. They claimed an interest in the firm. The plaintiff was allowed to amend his plaint and he alleged that defendant 1 had been

representing defendants 3 to 6 and their interest, if any, in the firm and the acts of defendant 1 were binding upon them.

2. Defendant 1 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 young age and want of experience of defendant 1, 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. Defendant 2 adopted the written statement of defendant 1. 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 defendant 1, his eldest son. The only partners of the firm are the members of the family. They pleaded that defendant

1 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

ante-dated 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 defendant 1 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 defendant 1 took in the plaintiff and defendant 2 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 and

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 defendant 1 would be entitled only to a sixth

share in the partnership. There was nothing in law to prevent defendant 1. 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 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. Defendant 2 after dissolution

bad 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 defendant 1. But defendant 1 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 defendant 1 had set up a false case that the plaintiff was not a partner at all, defendant 2 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 (EX.

P 2) was not brought about by fraud or undue influence or coercion which was the main case of defendant 1 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 defendant I in his written statement. We cannot permit him to put forward this plea now. Further, we find it impossible for

defendant I 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 Ex.

P- I was ante-dated. 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. Defendant 1 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 defendant I.

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

defendant 1, 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 defendant I and defendant I was liable for damages as on a breach of contract.

7. For the first position he relied upon Sections 88 and 90, Trusts Act. Reference was also made to the recent decision of a Division Bench of this

Court in Chennuru Sitharamamurthi Chetty and Others Vs. Chennuru Guruswami Chetti and Others, . In our opinion this contention cannot be

accepted, The provisions of Sections 88 and 90, Trusts Act are founded upon a fiduciary relationship. In the present case defendant 1 and the

plaintiff were no doubt partners upto 15th June 1944 and as partners they were in fiduciary relation. But once the partnership came to an end and

all rights and interests relating to the partnership were taken over absolutely by

defendant I, 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 8 of Ex. 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 defendant 1 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 defendant I 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.

His argument was that if in spite of the special agreement that the plaintiff should obtain a quarter share and defendant 1 a three fourth share,

nevertheless if defendant I 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.

9. 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, defendant 1 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 (Edn 19. p. 36).

10. There can be no doubt whatever on the evidence that defendant 1 acted in utter violation of the terms of Clause 3 of EX. P-2. Apart from his lawyer's notice Ex. D-I which reveals his hostile attitude, there is the admission of his clerk D. W. 1 that defendant 1 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, defendant 1

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 defendant 1. In *Chaplin v. Hicks*, 1911 2 K. B. 786 : 80 L. J. K. B. 1292, 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.

In the present case, the chance of being granted a licence for a fourth share is a valuable right and if defendant 1 has in breach of the obligation laid

or him by Clause 3 of Ex. P-2 prevented the plaintiff from securing the licence, not only has the plaintiff sustained a real loss but defendant 1 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.

What then is the relief that the plaintiff is entitled? He is entitled to damages for breach of contract. The measure of such damages cannot be the

profit which defendant 1 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 far from 1st October 1942 to 31st March 1943 the

plaintiff would have been entitled to the quota. As the right of the family of defendant 1 has not been denied, defendant 1'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 defendant 1 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.

11. 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 defendant 1 is concerned and remanded to the lower Court for further disposal in the light of our judgment. The costs of the plaintiff and defendant 1 in this appeal and in the lower Court will abide the result after remand.