
(1996) 03 MAD CK 0122
In the Madras High Court

Maruvana Beevi

APPELLANT

Vs

M. Abdul Salam

RESPONDENT

Date of Decision : 26-03-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 16
Contract Act, 1872 — Section 45

Citation : (1996) 1 LW 654 : (1996) 2 MLJ 41

Hon'ble Judges : S.S. Subramani, J

Bench : Division Bench

Judgement

S.S. Subramani, J.—Plaintiff in O.S. No. 79 of 1981, on the file of the Subordinate Judge's Court, Nagapattinam, is the appellant before this Court.

2. In the plaint, the plaintiff/ appellant has sought for the following reliefs: (1) To pass a preliminary decree for accounts, directing the defendant to render true and proper accounts of income and expenditure; (2) for rendition of accounts by the defendant regarding the amount due to the plaintiff's 1/6th share to be ascertained and for passing of a final decree in respect of that sum against the defendant; and (3) for costs of the suit.

3. The material averments in the plaint are, that the plaintiff is the daughter of one Mohideen Bava, who died on 27.2.1976. It is said that late Mohideen Bava had two daughters and two sons, and the parties are governed by Mohammedan Law. It is further said that as per law of inheritance, the plaintiff is entitled to 1/6th share. It is further stated that the deceased had certain properties at Penang, and on his death, the legal heirs of the deceased, including the appellant, who are permanent residents of India, were not in a position to manage the properties situated in the foreign country and, therefore, a power of attorney was executed in favour of the respondent, who was a family friend. Ex.A-1 is the copy of the power of attorney dated 27.1.1978. It is said that pursuant to the power of the attorney, huge amounts have been realised by the defendant and except for a paltry amount of Rs. 5,000 sent to her by draft, no

amount has been sent. It is further said that the other sharers have sold their interest in the properties, and the defendant has also joined with them in his capacity as power agent. Since the defendant has not submitted his accounts, a registered notice was sent on 16.6.1981, calling for the accounts, for which a reply was sent by the defendant, disputing his liability. It is said that the defendant has realised a sum of Singapore dollars 53,000, of which the plaintiff is entitled to 1/6th share. It is further stated in paragraph 5 of the plaint that on calculation, the plaintiff will be entitled to a sum of Rs. 24,450.

4. The cause of action is stated to have arisen at Nagapattinam where the defendant is residing and where the power of attorney was granted.

5. In the written statement filed by the defendant, respondent herein, it was contended that the suit is not maintainable without the other executants of the power of attorney as parties to the suit. He further contended that so long as the agency is continuing, the suit for settlement of accounts is not maintainable. He also said that huge amounts have been received by the plaintiff's husband, and if proper accounts are taken, amounts will be only due to him, or in the alternative, only meager amount will be due to the plaintiff.

6. The trial court, after taking into consideration the entire evidence, came to the conclusion that the defendant, as power of attorney, is liable to account, and accordingly passed a preliminary decree. It also found that the suit is not bad for non-joinder of necessary parties. It also came to the conclusion that the claim put forward by the defendant that he is entitled to commission at 10% and that he has paid amounts to the plaintiff's husband are all false, and that since the accounts have not been settled between the parties, the plaintiff is entitled to a preliminary decree as sought for.

7. The defendant preferred A.S. No. 101 of 1984, on the file of the District Court, Nagapattinam. The lower appellate court confirmed the finding of the trial court that the defendant is bound to account to the plaintiff and the contention that huge amounts have been paid to the plaintiff's husband are all false and the plaintiff has also cause of action to file the suit. The claim of commission was also found against the defendant. But the lower appellate court dismissed the suit as not maintainable on the ground that the other co-sharers who have jointly executed the original of Ex.A-1 are necessary parties to the suit, and in spite of opportunities given to the plaintiff to implead them, before the trial court as well as the lower appellate court, the plaintiff did not avail the same. The lower appellate court came to the conclusion that the contention regarding non-joinder of necessary parties was taken in the initial stage itself, and the attitude of the plaintiff in not impleading the necessary parties will affect the maintainability of the suit. The suit was, therefore, dismissed.

8. It is against the said judgment, the plaintiff has preferred this second appeal.

9. At the time of admission of the second appeal, the following substantial questions of law were raised for consideration:

(1) Whether the lower appellate court is right in dismissing the suit on the ground of non-joinder of parties?

and

(2) Whether the power is given by a plurality of individuals expressly stating that the agent is liable to act and the principals can question it jointly and severally?

10. Both these questions could be considered together, for, the only point that has been argued and requires consideration is, whether all persons who have executed the original of Ex.A-1 are necessary parties to the suit.

11. Ex.A-1 is a carbon copy of the power of attorney admittedly executed by the plaintiff, her brother and sister in favour of the defendant. Of course, at the time of argument before the trial court, it was contended that Ex.A-1 cannot be admitted in evidence, since the original is not filed in court. That contention was negatived by both the courts below rightly on the ground that the original is in the possession of the defendant and notice was also given to him to produce the same. Further, in the notice as well as in the reply, he has admitted that a power of attorney was executed in his favour. The contention that Ex.A-1 cannot be looked into in the absence of the original was, therefore, turned down by the courts below.

12. A reading of Ex.A-1 shows that four persons jointly executed a power of attorney in favour of the defendant in regard to the management of the common property which they obtained as legal heirs of their deceased father. A reading of the entire document makes it clear that all the four persons wanted the defendant to manage the same and protect their joint interest. It also makes it clear that none the executants has insisted for getting the accounts severally. The question to be considered is, whether, on the basis of the power of attorney, the plaintiff can institute a suit for settlement of accounts and claim her share alone without the other executants on the party array.

13. Various texts regarding the same will have to be considered first before considering the case-law on the point.

14. In Katiaron "The Law of Agency", 1961 Edition, at page 291, the learned Author says thus:

Agents of Joint or Several Principals: The manner of executing an authority conferred by two or more principals depends upon, the form of the authority. Such an authority may be joint, in which event it must be executed so as to bind all jointly. But the power may be separate, authorising the agent to act for each principal separately, in which case it must be executed separately, and cannot be executed so as to bind the principals jointly. An agent of such principals has no authority to execute contracts to bind principal in the separate business of another.

An agent of two independent and unconnected principals has no power to act for

them jointly, unless there is actual consent of the principals, or a custom to lump orders or sales for different principals, each becoming liable for his share of the contract.

In the same book, dealing with parties to an action by the principal against the agent, at page 944, the learned Author says thus:

Actions for Accounting: Where an agent is appointed by several principals jointly, all the principals in the contract should join in an action for accounts against the agent, for, in a joint contract, an agent cannot be held to render as many accounts of his agency as there are principals.

15. In Venkatesa Iyer's "The Law of Contracts", Volume 1, 4th Edition, at page 518, it is said thus:

When an agent is appointed by two or more persons jointly he is not discharged unless he accounts to them all, except where the principals are partners.

16. In V.G. Ramachandran's "Law of Agency", 1985 Edition, at page 445, the learned Author says thus:

Co-principals must jointly sue the agent for accounts. The agent is not bound to account to each separately. If he does so, he is not thereby absolved from accounting to the other principal. If an agent has submitted collection papers and vouchers to one of the principals, he has no responsibility if that principal does not produce them in court. But he has a duty to produce all other papers and accounts and explain them to the court. If he collects amounts for several co-sharers, he has to give each of them a copy of the joint accounts. Co-sharers who are the principals are joint and several and so there can be joint and several accounts which the agent has to keep and be liable to each of them according to their share. The right of a principal to have an account taken in equity rests upon the trust and confidence reposed in the agent. Hence it is the duty of the agent to render just and true account, u/s 213 read with O.20, Rule 16, C.P.C.

17. In Venkoba Rao's "Law of Agency", Second Edition, at page 186, the learned Author has also approved the said law by stating thus:

Where an agent is appointed by more than one principal, he is liable to them jointly. He is not bound to account separately to any one of them and if he does so, he is not thereby absolved from his liability to others.

18. The reason behind such law is stated in Chitty "On Contracts - General Principles", 25th Edition, at page 1202. In paragraph 1203 of the said volume, the learned Author has stated the reason thus:

Since a joint promise creates only one obligation, the common law rule was that all the promisors who were still alive had to be joined as defendants to the action....

19. In Bowstead on Agency, 15th Edition (1985), at pages 50 and 51, the

learned Author has stated thus:

Where two or more persons give authority to an agent, it is presumed that the authority is to act for their joint account only, unless a contrary intention appears from the nature of the terms of the authority, or from the circumstances of the particular case.

Comment: The prima facie rule is that the obligation arising from a contract made by two or more persons on one side is joint. Thus where two or more persons give authority to an agent, the presumption is that they are authorising him to act only in such matters as concern them jointly, e.g., their joint property, and not in matters concerning one or the other alone. But there may be indications to the contrary; and of course the contractual liability (if there is a contract) of the co-principals may be held to be joint and several rather than joint, in appropriate cases. An agent acting for joint principals is not bound to account to one alone....

[Italics supplied]

20. In the same book, at page 199, the learned Author has stated thus:

Where an agent is appointed by two or more persons jointly, he is not discharged unless he accounts to them all, except where the principals are partners.

21. In "The Law of Contract" by G.H. Treitel, 6th Edition (1983, in the Chapter dealing with Plurality of parties, at page 450 the learned Author says thus:

Where a promise is made to a number of persons jointly, all of them (if living) must be parties to the action. If one joint creditor is unwilling to join, the one wishing to sue must offer him an indemnity as to costs; if he still refuses to join he can then be added as co-defendant.

22. It cannot be doubted that a power of attorney can be executed by more than one person, all appointing one and the same person as their agent, if at all there is any doubt regarding the same, it is also settled in the decision reported in Syed Abdul Khader Vs. Rami Reddy and Others, . In paragraph 10 of the said judgment, it has been held thus:

The first contention of the appellant is that it was impermissible in law for three persons to jointly grant a Power Attorney in favour of defendant 34. Barring the ipso dixit of the learned Counsel nothing was shown to us to make such a joint power impermissible in law. The relation between the donor of the power and the donee of the power is one of the principal and agent and the expression "agency" is used to connote the relation which exists where one person has an authority or capacity to create legal relations between a person occupying the position of principal and third parties. The relation of agency arises whenever one person called the agent has authority to act on behalf of another called the principal and consents so to act. The relationship has its genesis in a contract. If agency is the outcome of a contract between the principal and the agent, in

order to show that three principals jointly constituting an agent by a deed called "Power of Attorney" was impermissible, provisions of Contract Act or the general law of contract should have been shown as having been violated by such a contract. Nothing of the kind was pointed out to us. On the contrary, in Halsbury's Laws of England, Vol.1, 4th Edition, para 726, the following proposition has been stated:

Co-principals may jointly appoint an agent to act for them and in such case become jointly liable to him and may jointly sue him.

We are in agreement with this view and, therefore, three principals could jointly appoint an agent.

So, even though a power of attorney is executed by more than one person, the obligation created under the deed is only one. Therefore, naturally, that obligation cannot be split up and the plaintiff cannot sue for his own share. Even for determining his share, the other principals will be necessary parties. Only when all the principals are on the party array, a proper settlement of accounts could be had, and the plaintiff's share can be determined. Any payment made by the defendant to the plaintiff or to the other sharers will not absolve him from his liability to settle the accounts.

23. The said point has also been considered in various decision of this Court as well as other High Courts.

24. As early as in Mohana Velu v. Annamalai 44 M.L.J. 249 : AIR 1923 Mad. 337 : 72 I.C. 68 : 1923 M.W.N. 89, a Division Bench of this Court has held thus:

If a defendant is sued by one only of two persons with whom he has contracted or by one only of two persons who have a joint cause of action against him, he has a right to have the action dismissed the other is joined. This is not merely technical.

[Italics supplied]

25. In Jagdip Prasad v. Mt. Rajo Kuer AIR 1923 Pat. 464, it was held thus:

The liability of an agent to account is not a liability that arises by virtue of contract between the parties but is a liability that is annexed by law to the office of the agent....

Further down, their Lordships said thus:

So far as the liability of an agent to account to joint principals is concerned the authorities are unanimous that an agent cannot get a discharge by accounting to only one of two co-principals. The position is put in this form in Halsbury's Laws of England. Co-principals may jointly appoint an agent to act for them and in such case become jointly liable to him, and may jointly sue him. The agent is not bound to account separately to one of several co-principals and if he has done so he is not thereby discharged from liability to the other or others unless the co-

principals are also partners. (Vol. 1, P.159, para 347). At P. 187 the proposition is put in this form: "Where the monies are received on behalf of joint principals, the agent is liable to account to them jointly, and is not discharged by payment to one or more of them only, unless by authority of all."

26. In *Raghbar Dayal v. Firm Piare Lal* AIR 1933 Lah. 93, a similar question was considered and it was held thus:

According to law when an agent is appointed by more than one principal, he is liable to them jointly. He is not bound to account to them separately to any one of them and if he does so, he is not thereby absolved from his liability to others....

27. For the proper understanding of the liability to account, we have to look into Ex.A-1. A reading of the same makes it clear that the plaintiff cannot insist for settlement of accounts and recovery of his share alone. If any such decree is granted, the net result will be that each and every sharer will file a separate suit and the defendant will be called upon to account to each and every sharer independently. That cannot be the intention of law when there is only one obligation.

28. In *Siluvaimuthu Mudaliar v. Md. Sahul* AIR 1927 Mad. 84 the case was u/s 45 of the Indian Contract Act. While considering the same, it was held thus:

If a suit is brought to recover a debt due to joint promisees all of them must be impleaded and the suit must be for the entire debt. They are not entitled to split up their claim and each sue separately for his own share.

It was further held in that case that if such a suit is brought to recover a debt due to joint promisees, all of them must be impleaded and the suit must be for the entire debt.

29. Learned Counsel for the appellant relied on the decision reported in *Chary Chandra Maity v. Sital Prasad Ghosh and Ors.* AIR 1946 Cal. 656. That is also a case where all the co-sharers jointly authorised a person as their agent. In a suit for settlement of accounts, the plaintiff impleaded the other co-sharers as pro forma defendants. There was an averment in the plaint in that case that the other co-sharers were made defendants since they refused to join in the suit as plaintiffs. Evidence was let in that case that the accounts had to be given jointly and severally and the evidence also showed that the agent was dealing with each co-sharer independently. In those circumstances, their Lordships said that the liability to account to each and every co-sharer is joint and several, and the suit was, therefore, maintainable, the principle that there can be only one account was accepted, as can be seen from paragraph 7 of the said judgment where the learned Judge said thus:

...Mr.Bose places them before me for the general proposition that where there are joint principals, there can only be joint account. As a general proposition, this cannot be contested, but on the facts of the present case, as found by the courts

below, I am satisfied, after giving all possible weight to the arguments of the learned advocate, that the principals in the present case were joint and several principals and that there can be no objection to joint and several accounting....

[Italics supplied]

30. In this case, from a reading of Ex.A-1, it cannot be said that the parties intended for a joint and several accounting, as was the case in the decision cited by learned Counsel for the appellant.

31. I have already said that opportunity was given to the plaintiff both before the trial court as well as the lower appellate court to implead the co-sharers. The lower appellate court has said that various opportunities given to the appellant were not availed by her, and therefore, it was constrained to dismiss the suit. Even before this Court, the appellant's counsel did not argue that the plaintiff must be given an opportunity to implead the legal heirs. He was only canvassing the correctness of the judgment of the lower appellate court.

32. Once it is held that the suit cannot be maintained without the other co-sharers on the party array, the finding of the lower appellate court can only be confirmed.

33. In the result, the second appeal is dismissed with costs, answering both the questions of law against the appellant.