
(1899) 01 MAD CK 0002
In the Madras High Court

Murugesa Chetti	Vs	APPELLANT
Annamalai Chetti and Another		RESPONDENT

Date of Decision : 26-01-1899

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 17

Citation : (1900) ILR (Mad) 458 : (1900) 10 MLJ 39

Judgement

1. The suit, out of which this appeal arose, was brought on a foreign Judgment, obtained in the Court at Pondi-cherry, on a promissory note, executed by the appellant, in favour of the plaintiff--respondent--in Pondicherry. The date of the for-eign Judgment sued upon in 20th March 1896 and this suit was instituted on the 9th October 1896. Meantime, that is, on 20th July 1896, the appellant was declared an insolvent in Pondicherry and a syndic was appointed to take charge of, and administer his property. The present suit was contested by the appellant, but the District Judge decreed in favor of the plaintiff. The main questions raised in appeal are that the District Judge had no jurisdiction to entertain the suit and that, even if he had, the suit was not maintainable against the appellant at the time it was brought. There is no doubt that the parties are French subjects domiciled in French territory. The ground, on which the plaintiff contended that the District Court of South Arcot at Cuddalore had jurisdiction over the appellant, was that he carried on business within its jurisdiction (Section 17 of the Code of Civil Procedure). The business carried on according to the plaint, was money lending business, but, at the trial no attempt was made to support this. Our attention was drawn to exhibit E, which, no doubt, shows that certain mortgages were obtained by Kandasami, the appellant's cousin, for the joint benefit of himself and the

appellant between the years 1892 and 1896. This is quite insufficient to establish that there was any money lending business carried on by them at

all, but certainly there was none to prove that any such business was carried on at the time of the institution of the suit, the date of the last mortgage

in exhibit E. being January 1896. At the trial, the business, which, it was contended, the defendant was carrying on, was a business in oil conducted

along with the above said Kandasami, The only two witnesses, who had any knowledge of the business done by Kandasami at Cuddalore,

virtually disprove the allegation, that the appellant took any part in the trade. The vague statements of some of the witnesses, that the appellant

some times visited Cuddalore, cannot be relied on as showing that he carried on business there, Cuddalore being in close proximity to

Porndicherry and being a place, where the appellant had Immovable property. The ground upon which the District Judge has found that the

appellant was carrying on business at Cuddalore, and one of the grounds which was urged in appeal on behalf of the plaintiff, was that Karidasami

was the manager of a Hindu family and therefore, it must be presumed that the business was carried on with the consent of the appellant and for his

benefit also; but no such presumption can arise in this case, having regard to the fact that the appellant and Kandasami had already been divided

with regard to their moveable property and were in litigation in regard to the division of their Immovable property. The oil business on which the

plaintiff relies, was commenced in 1894, two years after the partial division had been effected, and it is therefore unlikely that the appellant would

have consented to such a business being carried on as a joint business. Nor is there any soft of evidence that he did. On the contrary, the conduct

of the parties concerned is absolutely inconsistent with the view that the oil business was a business in which the appellant had a? joint interest.

2. No reference appears to have been made to the oil business in the insolvent proceedings as a business in which the appellant was interested, and

also in the action taken subsequently by the syndic in regard to the realisation of the assets the oil business was not included. Again, in the final

partition proceedings between the appellant, and Kandasami, this business was not dealt with as part of the joint family property. Further, the

accounts connected with that trade and produced before the Court stand in the name of Kandasami only. These circumstances negative the view,

that the appellant had any interest in the oil trade, much less that he assisted in carrying it on. Even if it were otherwise and if the appellant would have been entitled to claim an interest in the oil business on the ground that it was carried on by one who was the manager of his family at the time, it would not warrant our holding that the appellant carried on business within the meaning of Section 17 of the Code of Civil Procedure, inasmuch as the person acting as agent within the jurisdiction should, in our view, be an agent in the strict and correct sense of the term, so as to bring the principal within the operation of the said Section 17 of the Code of Civil Procedure, as interpreted by this Court. We do not, however, wish to be understood as saying that a member of a joint family, who actually consents to a trade being carried on on his behalf or by his conduct puts himself in the position of a joint trader, would while he was living outside the jurisdiction, not be carrying on business within the jurisdiction. Such is not the present case; as we have already stated. We are, therefore, unable to agree with the District Judge in holding that he had jurisdiction over the appellant, and the suit must consequently fail. We must hold that the suit fails also on the second ground urged on behalf of the appellant.

3. Upon the facts already stated, it is clear that the Pondicherry Court was a Court competent to adjudicate the appellant, an insolvent, so as to bind all the creditors, the plaintiff being one of them. The effect of such adjudication in French territory is admittedly that the insolvent is deprived of the possession and management of his property and that the same is entrusted to a syndic against whom only all suits in respect thereof must be brought (Section 443, code de commerce: in other words, the liability of the insolvent to be sued is taken away for the time being. It may be true, as argued by the learned Counsel for the plaintiff, that unlike as in some other countries the debt of the insolvent is not extinguished by the declaration of his insolvency, so as to exempt him from future liability in respect of any property, which the insolvent may obtain subsequently. But it is clear that so long as the adjudication of the insolvency remains in force, no suit could be brought against him in French territory. Such being the insolvent's position in French territory, it must be held to be the same outside that territory in a case such as this. The decision of the Privy Council in *Quelin v. Moisson* (1840) 47 I.J.N.S., 791 which was a case on all fours with this is a direct authority in support of the above view. We are

unable to accede to the suggestion made by the learned Counsel for the plaintiff that the authority of that case has in any way been impaired by

subsequent decisions or otherwise: On the contrary, that case has been cited with approval in *Ellis, v. M^r Henry* (1894) 1 Q.B. 633 where Bovill,

C.J. observes at p. 234 "there is no doubt that a debt or liability arising in any country may be discharged by the laws of that country, and that such

a discharge, if it extinguishes the debt or liability, and does not merely interfere with the remedies or course of procedure to enforce it, will be an

effectual answer to the claim, not only in the Courts of that country, but in every other country." The present case is clearly the case of a liability

being taken a way and it is not a matter connected with mere procedure, as was urged for the plaintiff. With the decisive authority of *Quelin v.*

Moisson (1840) 47 I.J.N.S., 791 which is binding upon us, we are not called upon to consider or discuss the other authorities cited on either side.

In the view we have taken of these two main grounds of appeal, it is unnecessary for us to go into the other questions raised on behalf of the

appellant, namely, whether Section 17 of the CPC should be construed, so as to exclude non-resident foreigners from its operation even though

they carry on business in British India through agents, and, if such construction be inadmissible, whether the said section of the Indian Legislature

should be held to be ultra vires, with reference to such foreigners, and also the question, whether the District Judge was right in holding that it was

not competent for him to enter into the merits of the foreign Judgment, on which this suit is based.

4. The result is, the decree of the lower Court must be reversed and the suit dismissed with the appellant's costs throughout.