

(1917) 10 MAD CK 0043
In the Madras High Court

Muthiah Chettiar (Dead) and Others

APPELLANT

Vs

M.P.M.R.M.N. Rimanatham Chettiar and Others

RESPONDENT

Date of Decision : 31-10-1917

Acts Referred:

Citation : 43 Ind. Cas. 972 : (1918) 7 LW 330

Hon'ble Judges : John Wallis, C.J.;Kumaraswami Sastri, J

Bench : Division Bench

Judgement

1. This is an appeal from the judgment-of the Temporary Subordinate Judge of Sivagaga giving the plaintiffs a decree for the amount sued on. The finding is that this money, in the first place entrusted to the firm of defendants Nos. 1 to 7, was to be invested by them with Chetti firms of good standing in Burma. This was under Exhibit A, which provided that the money should be invested by the defendants' firm, the defendants being remunerated by an adathi or commission of 1/64th of a rupee. The money was to be invested on thavanai, the usual terms with the Nattukottai Chetties. The money was so invested but was afterwards recovered by the defendants' firm and retained by themselves on the same thavanai terms. This appears from Exhibit C, dated the 1st May 1896, which says, "Rs. 3,7071 plus 1/16 plus 1/32 should be credited to you in the name of S.Y.R. and debit the said sum of Rs. 8,707? plus 1/16 plus 1/32 in the name of our firm for thaianai. We have so entered in our accounts here." Exhibit D, the account made up in 1898, shows that the loan was credited with this thavanai of customary rate of interest regularly until the account was made up in 1898. The 1st defendant in his evidence says that if money is borrowed by a firm for thaianai interest, interest will be added to the principal at the end of every thavanai if it is not recovered by the lender.

2. Thavanai interest means the customary rate of interest which is fixed by Nattukottai Chetties every 2 months. And the Article of limitation applicable to thavanai transactions has recently been considered by this Court in Vellayappa Ohettiayar v. Unnamalai Achi 42 Ind. Cas. 573: (1917) M.W.N. 858. It is there

pointed out that if these transactions really mean that the money is to be repaid by the Chetties whenever demanded, such a transaction is one of deposit governed by Article 60 of the Limitation Act, but if the real terms are that the money is to be repaid at the expiration of the thavanai period which is current when the demand is made, it is a case governed by the residuary Article 115. There is a decision of this Court in Ramanathan Chetty v. Subramaniyam Chetty 28 Ind. Cas. 688., in which these cases were held to be governed by Article 60, but in that case the fact that the money maybe re-payable Only at the expiration of the current thavanai period, was not considered. It would be a very serious matter indeed if the Court were obliged to uphold the contention of Mr. T.R. Ramachandra Aiyar that, in these deposit transactions with Nattukottai Chetties which amount to very large sums, time should be considered to run from the expiration of the first thavanai period, The evidence of the 1st defendant to which I have already alluded shows that this could not have been the meaning of the parties to the transaction. The idea is that the money should remain until demanded and the interest should be added at the expiration of each thavanai.

3. The only other question is as to whether the present plaintiff has a right to sue. The plaintiff has obtained a succession certificate entitling him to recover that amount on behalf of the deceased lady Meenakshi Achi. The fact that a succession certificate has been granted gives the grantee a title to recover a debt due to the deceased, assuming that the debt was owing to her and that payment to the plaintiff would, therefore, be a good discharge. As regards the 1st defendant's case that the money did not belong to the lady but her husband, the 11th defendant, the 11th defendant disclaims any interest, and we sub no reason to doubt that the money really belonged to the wife.

4. There is another small point. We agree with the Subordinate Judge that there is no evidence that there was a contract as between Meenakshi Achi and her agents on the one hand and the 1st defendant's firm on the other, that they were to have commission after they recovered the money from the firms to whom it had been lent, and be-came principal debtors themselves.

5. There is yet another small point. There is a customary charge, called mahamai in the Subordinate Judge's judgment, for customary payment for charity. Although there is no evidence it is admitted that the customary charge is 2 annas per 100 rupees. The respondents are willing to bear the charge which in the present case amounts to Rs. 22-8.0, and the decree amount will be reduced by that amount. Otherwise the appeal fails and is dismissed with costs.

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