
(1960) 10 MAD CK 0013
In the Madras High Court
Case No : Appeal No. 20 of 1957

Muthupalaniapa Chettiar

APPELLANT

Vs

Alagamai Achi and Others

RESPONDENT

Date of Decision : 14-10-1960

Acts Referred:

Contract Act, 1872 — Section 188
Malayan Ordinance, 1948 — Section 6

Citation : AIR 1961 Mad 438 : (1961) ILR (Mad) 427 : (1961) 74 LW 145

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

Bench : Division Bench

Advocate : R. Gopalaswami Iyengar and V. Srinivasan, for the Appellant; A. Sundaram and P. Balasubramaniam, for the Respondent

Final Decision : Dismissed

Judgement

Rajamannar, C.J.—This is an appeal against the decree and judgment of the learned Subordinate Judge, Pudukottai, in O. S. No. 34 of

1953, which was instituted by Muthupalaniappa Chettiar. The contesting defendants were defendants 1 and 2. The 1st defendant, Alagamai Achi,

is the daughter of the second defendant by one Vallaiammai Achi. The third defendant is the authorised agent of the second defendant in charge of

his affairs in Malacca (Malaya). The plaintiff was carrying on a money lending business in Malacca under the name and style of RM. M. PL,

The suit was for a declaration that the amount of 6267 dollars 83 cents invested with the plaintiff's firm of RM, M. PL. of Malacca in the name of

Vallaiammai Achi, the wife of the second defendant, had been paid and discharged under the receipt, date 28-8-1943, granted by one

Muthupalaniappa Chettiar, the first defendant's authorised agent, and the said discharge is binding on all the defendants, and for a decree, directing

the second defendant to pay the plaintiff a sum of Rs. 47, 436-9-10 with subsequent interest thereon at "6 per cent per annum till the date of

payment, or, in the alternative, should it be held that the 2nd defendant is not liable to refund the amount, directing the first defendant to pay the

said amount with costs and subsequent interest

There was also a prayer for injunction, restraining defendants 2 and 3 from prosecuting Civil Suit No. 26 of 1952 on the file of the Supreme Court

of the Federation of Malaya and from executing the decree in case a decree was obtained during the pendency of the action. This relief of

injunction, however, became ineffectual, as the civil suit not only ended in a decree, but had also been satisfied by payment by the plaintiff of the

decree amount. The plaint itself was amended because of these subsequent events.

2. The following facts are not in dispute. Moneys belonging to Valliammal Achi (mother of the first defendant and wife of the 2nd defendant) and

moneys belonging to the first defendant herself were invested with the second defendant in his P. C. K. firm in Malacca. On 13-3-1937 a Sum of

6267 dollars 83 cents belonging to Valliammai Achi was transferred from the current account of the P. C. K. firm of the 2nd defendant to the RM.

K." PL. firm of the plaintiff for investment with the latter firm. The plaintiff passed a voucher, Ex. A-I, on 13-3-1937 in favour of Valliammai Achi.

It may be mentioned that a sum of 10,000 dollars belonging to the first defendant herself was transferred similarly from the current account of the

2nd defendant to the plaintiff's RM. M. PL. firm by way of investment in the name of the first defendant. We are not concerned, however, with this

amount in this suit. On 3-2-1941, the first defendant executed a power of attorney in favour of one M. N. P. Muthupalaniappa Chettiar,

authorising him to manage all her affairs in the Malayan peninsula.

There was also a firm of the first defendant with the vilasam ""K. AL."" Valliammai Achi died on 5-11-1940, in India, leaving her surviving the 2nd

defendant (her husband), the first defendant (her daughter) and four sons. The Japanese, during the Second World War, overran the Malayan

peninsula. During the Japanese occupation of the territory, the plaintiff paid the amounts due in respect of the monies belonging to the 1st defendant

personally and the amount due in respect of the deposit in the name of

Valliammai Achi, her mother, to Muthupalaniappa Chettiar, the power of attorney agent of the first defendant. The payment of Valliammai Achi's deposit money was apparently on the footing that, on her death, the first defendant (her daughter) became entitled to it.

In March 1951, the third defendant, P. A. Palaniappa Chettiar, as the agent of the second defendant applied to the Supreme Court of the

Federation of Malaya, Settlement of Malacca, for the grant of letters of Administration of the estate and effects of Valliammai Achi to him as

attorney of the second defendant. In or about February 1952, Letters of Administration were granted, as prayed for, to the third defendant as

agent of the second defendant. On 20-10-1952, Palaniappa Chettiar, on behalf of the second defendant as administrator of the estate of

Valliammai, filed a suit in the Supreme Court of Malaya against Muthupalaniappa Chettiar for the recovery of 12752 dollars 8 cents, being the

amount due in respect of Valliammai's deposit with the plaintiff, with interest thereon.

On 18-11-1952, the Solicitors for the plaintiff in that suit furnished particulars of the plaintiff's claim to the court. It was stated therein that the sole

beneficiary entitled to the estate of Valliammai was her husband (the present 2nd defendant). The present plaintiff, who was the defendant in that

suit, pleaded that, on the death of Valliammai her only daughter (the 1st defendant herein) became solely entitled to the amount claimed, according

to Hindu law and custom governing the devolution of the estate of the deceased, On 7-7-1953, the Supreme Court of Malaya passed a decree

against the plaintiff for a sum of 12782 dollars 8 cents together with interest thereon at the rate of 6 per cent per annum until payment and taxed

costs. The plaintiff herein filed an appeal to the Court of Appeal at Kuala Lumpur, but the appeal was dismissed.

It appears from the ground of decision furnished by the trial Judge that, on the date of hearing counsel for the defendant, plaintiff herein applied for

an adjournment but the adjournment was refused. The suit was decreed practically ex parte. During the pendency of that suit, the plaintiff instituted

the present suit and appears to have obtained an interim injunction, restraining the 2nd and 3rd defendants from proceeding with the suit in Malaya

and from executing the decree if and when obtained therein. But it was of no

avail. The amount deposited by the plaintiff into court towards the decree was withdrawn in or about November 1953.

3. The plaintiff alleged, inter alia, that, under the Hindu law of Mitakshara school which governs the rights of succession among the Hindus in South

India, which in this regard is in accord with the custom uniformly and invariably prevailing in the community of the Parties, viz., Nattukottai

Nagarathars, the separate (siruvattu) amount of a woman devolves on her daughters in preference to her sons and husband, and even in Malaya,

the law is the same, that therefore Alagammai (the 1st defendant) was the sole heir of Valliammai. and entitled to the monies belonging to

Valliammai, and that the payment to the first defendant's agent operated in complete discharge of the plaintiff's obligation in respect of the moneys

of Valliammai deposited with his firm.

The plaintiff prayed for the recovery of the amount collected from him in pursuance of the decree in the Malayan court from the second defendant.

In the alternative, he prayed that the amount might be recovered from the first defendant, if it should be held that the second defendant had

preferential light to the amount and the first defendant was not entitled to it.

4. The main written statement was filed by the second defendant. He pleaded that the first defendant was not the heir of her mother Valliammai,

that according to the immemorial custom of Nattukottai Chettiars the sons alone are the heirs of the mother with respect to her stridhanam monies,

that the alleged payment to Nuthupal a map-pa Chettiar, even if true, was not a valid discharge, assuming that the said agent had the necessary

authority from the first defendant to realise the amount, and that the alleged payment by the plaintiff was not bona fide, but made under pressure,

duress, undue influence and coercion.

The second defendant further stated that Valliammai's monies were not her sinivatlu monies, but only her stridhanam or dowry monies, and that the

sons of Valliammai were entitled to the said monies after her death. After the presentment of the plaint, the second defendant filed an additional

written statement, in which he raised the contention that the decision of the Malayan court was binding on the parties and operated as res judicata

and that it was not open to the plaintiff to question the same.

5. The first defendant adopted the written Statement of the 2nd defendant and further pleaded that the alternative claim made by the plaintiff against

her was clearly barred by limitation, By another additional written statement, she raised another plea, viz., even assuming that the plaintiff had a

cause of action against her, he could only recover such amount as he was entitled to under the provisions of Ordinance 42 of 1948 of the

Federation of Malaya, and that, according to the said evaluation, the sum due to the plaintiff would be less than 100 dollars.

6. Several issues were raised; but it is sufficient to mention the following questions which fall for decision in this appeal:

1. Whether the first defendant was the sole heir of her mother with respect to the amounts deposited in the plaintiff's firm.

2. Whether, under the power of attorney in his favour, Muthupal Siappa Chettiar had authority to demand of get back the said amount.

3. Whether the alleged payment on 27-8-1943 to Muthupalaniappa Chettiar was vitiated on any ground.

4. Whether the plaintiff has a cause of action against any and which of the defendants.

5. Whether the suit claim against the first defendant is barred by lime.

6. Whether the Malayan Ordinance No. 42 of 1948 governs the suit claim, and, it so, what, if any, is the correct amount due?

The learned Subordinate Judge held that the monies in deposit with the plaintiff's firm in the name of Valliammai represented her stridhanam monies

and the monies devolved upon the four sons of Valliaramai and not on the 1st defendant (her daughter) that the payment made by the plaintiff to

the first defendant's agent in Malacca would not discharge the plaintiff of the liability to the estate of Valliammai, that he had no authority to grant

discharge and that the payment was not vitiated by duress, coercion or undue influence, but that the payment was neither bona fide nor made under

a mistake, that the judgment of the Supreme Court of Malaya operated as res judicata between the parties-and that, therefore, the plaintiff would

not be entitled to recover the amount either from the second defendant or from the first defendant on the ground that the payment was made under

a mistake.

He, however, held that the suit claim was not barred by limitation against the

first defendant. Even assuming that the plaintiff was entitled to recover the amount paid to the first defendant's agent on the ground that it was made under mistake, on an application of the Malayan Ordinance 42 of 1948, the learned Judge held that no amount was due to the plaintiff by the first defendant-On these findings, the learned Judge dismissed the suit with costs. Hence, this appeal by the plaintiff.

7. The first question which we have to decide is whether the first defendant became entitled to the monies belonging to Valliammai is her sole heir.

It appears to be common ground that there is custom among the members of the Nattukottai Chelti community well established that sons would

succeed to the stridhanam of their mother in preference to the daughter. The only-dispute appears to be with regard to the meaning to be attached

to the term ""stridhanam"". The plaintiff's attempt was to confine the meaning to property given to a woman on the occasion of her marriage, and not

to monies and other property given to her on Other occasions, which are described as siruvattu.

The monies of Valliammai to deposit with the plaintiff, it was alleged by him, were her siruvattu panam. No evidence was let in to support this

distinction between stridhanam and siruvattu. Indeed, it is a matter for comment that no oral evidence was given either by the plaintiff or by the

second defendant. The parties contented themselves with filing copies of the depositions given by the second defendant and Muthupalaniappa

Chettiar in another suit, viz-, O. S. No. 70 of 1952, on the Gle of the Sub Court, Pudukoltai.

That suit did not relate to the subject-matter of the present suit. It related to the amount in deposit with the plaintiff, which admittedly belonged to

the first defendant herself. The only question in that suit was whether the payment by the plaintiff to the first defendant's agent (Muthupalaniappa)

legally constituted a discharge of the plaintiffs liability to the first defendant. So far as the custom is concerned, there is an unreported ruling of a

Division Bench of this court, of which one of us was a member, in Lakshmana Chettiar v. Arunachalam Chettiar, A.S. Nos. 156 and 157 of 1944

(Mad), which, in our opinion, directly governs the present case.

It was held therein that, whatever be the precise import of the term ""sirualtu"", there is no warrant for any distinction being drawn in regard to the

preferential heirship of the son between funds acquired by the mother in different ways, but belonged to her absolutely, i.e., which could be

described as stridhanam under Hindu law. It was observed;

We are only refusing to limit the scope of an established custom governing the devolution of stridhanam among Nattukottai Chettiars by attributing

to the term ""stridhanam"" a narrow and restrictive meaning which is said to be special and peculiar to the community.

Our attention was drawn to a later decision of Ramaswami Gounder J. sitting alone in Murugappa Chetti v. Muthammal Achi, A.S. No. III of

1952 (Mad) in which the learned Judge, on the admission of a party and in the complete absence of other evidence, held that monies set apart for

the mother would devolve not on the sons, but on the daughters. The decision of the Bench was cited by him; but, all that he had to say was this:

The learned Judges repelled the attempt made to distinguish various classes of stridhanams, such as seermurais, siruvadu and the other monies

belonging to the mother and held that the custom covered all kinds of monies left by the deceased mother, so that, in that decision, the custom now

set up by the defendant was judicially recognised. My attention was not drawn to any other instance of judicial recognition.

This decision of Ramaswami Gounder J. does not assist the plaintiff. We may add that there is some evidence that the suit deposit money

represented the dowry of Valliammai given to her by her father evidently, on the occasion of her marriage. We have no hesitation in agreeing with

the learned Judge's finding that the money in deposit with the plaintiff-firm in the name of Valliammai devolved upon her sons, and not upon her

daughter (the first defendant).

8. The suit filed by the second defendant's agent in the Supreme Court of Malaya against the plaintiff herein, for the recovery of the amount due in

respect of Valliammai's deposit it must not be overlooked was filed on behalf of the grantee of Letters of Administration to the estate of

Valliammai. Such grantee would effectually and completely represent Valliammai's estate, whoever be the beneficiaries. Once we have held that

the first defendant did not succeed to these monies, it follows that the suit by the second defendant through his agent was rightly decreed.

It is true that the claim was made in the suit that the monies belonged to the

second defendant as the husband; but such assertion would not bind the real heirs; viz., the sons. The result is that the payment by the plaintiff to the first defendant's agent (Muthupalaniappa), even if true and valid, would not be binding on the second defendant or the legal heirs of Valliammai. The plaintiff cannot recover the amount paid by him to the second defendant in accordance with the decree of the Malayan court. The plaintiff's suit, in so far as it is against the second defendant, must fail.

9. The next question is whether the plaintiff is entitled to recover the amount paid by him to the second defendant or any other amount from the first defendant. The money, admittedly, was not paid into the hands of the first defendant. It was paid to her agent (Muthupalaniappa Chettiar). It was contended on behalf of the first defendant that the power of attorney executed by her in favour of Muthupalaniappa would not give him authority to demand or recover any amount which did not legally belong to her. Her learned counsel relied on the following language of the power of attorney:

In my name and on my behalf, to ask, demand, sue for, recover and receive from every person and every body police or corporate to whom it

shall or may concern all sum or sums of money rents, debts, dues, goodwares, merchandise, chattels, effects and things of what nature or

description, whatsoever which now are of which at anytime or times during the subsistence of these presents shall or may be or become due,

owing, payable or belonging to me in or by any right, title, ways or means howsoever.

The argument was that the sum in question was not the sum of money which was owing, payable as belonging to the first defendant. One thing is

clear, that Muthupalaniappa did not collect the amount in his individual capacity. It was received by him as agent of the first defendant (vide. Ex A.

2), presumably on the footing that the first defendant became entitled to her mother's monies on her death. In the absence of any authority to the

contrary, we are inclined to hold that the collection of money from a third party by an agent, purporting to be on behalf of the principal, would in

law be a collection of that amount by the principal. To hold otherwise would lead to much uncertainty and inconvenience.

To take this case itself, if we had decided that the first defendant was the sole heir of her mother (Valliammai), then, the receipt by the agent would

be within the scope of his authority. But, if we hold otherwise, as we have done, then, it would be without authority. If a higher court were to take a different view and hold that the first defendant was the true heir, then, again, the receipt by Muthupalaniappa would be in law a receipt by the first defendant. It may be that, in a particular Case, the principal may establish by evidence that the money collected by the agent was collected by him in his individual capacity.

We shall even go further and say that it may be open to the principal to prove by evidence that the money so collected by the agent never reached her hands. In the present case, there is singular absence of such evidence. Stray statements in the depositions in the former suit were sought to be made use of as having a bearing on the point. But, as we have already mentioned, the prior suit related to an entirely different subject matter, and there could be no question in that suit as to the competence of the agent to collect the money which admittedly belonged to his principal (the first defendant)-

10. No attempt was made before us to rehabilitate the plea raised on behalf of the first defendant that the payment to Muthupalaniappa was vitiated by duress, coercion or undue influence. There is, however, a finding by the learned Judge which was attacked, viz., that the payment made to Muthupalaniappa was neither bona fide nor under a mistake. We think that this finding of the learned Judge is not supported by any evidence, and is based on pure speculation. "According to the learned Judge, the plaintiff, as a Nattukottai Chetti, must be presumed to be acquainted with the custom of the community, whereby the stridhanarn of a woman devolves oil her sons. We have no evidence as to this.

On the other hand, he raised the plea in the Malayan court that it was the daughter (the first defendant) who was the only heir. It may well be that the plaintiff wanted to get rid of all his liabilities by payment in the occupation currency. "But that is quite a different matter. His anxiety rather suggests that he also thought that Alagammai (the first defendant) was the heir. The plaintiff, no doubt, knew that the deposit voucher was in India.

But it was also equally well known that communications between Malaya and India at that time were impossible. We are of the view that the payment by the plaintiff to the first defendant's agent was under the mistaken

assumption that the first defendant was the heir.

11. The learned Judge found that the claim of the first defendant was not barred by time. We agree with him. The earliest date on which it may be

said that he became aware of his mistake is the date of the judgment in the suit in Malaya, and the present suit was filed well within three years

thereafter.

12. The last question which remains relates to the application of the Malayan Ordinance No. 42 of 1948. It was passed on 16-12-1948. The

preamble to this Ordinance says that it Was passed to regulate the relationship between debtors and creditors in respect of debts incurred prior to

and during the period of enemy occupation of the territories comprising the Federation of Malaya.

Occupation debt"" is defined as a debt payable by virtue of an obligation incurred during the occupation period and accruing due at any time.

Occupation period"" means the period commencing on the 15th day of February 1942, and ending on the 5th day of September 1945, both dates

inclusive, and includes any part of such period. ""Time essence contract"" is defined as a contract, the parties to which intended that it should be of

the essence of the contract that payments under it should be made on a date or dates certain. The material provision is Section 6, which runs as

follows:

Subject to the provisions of Section 1 of this Ordinance, any occupation debt or part thereof which still remains unpaid at the commencement of

this Ordinance shall, unless such debt was expressly made payable otherwise than in occupation currency, be revalued in accordance with the

scale set out in the schedule to this Ordinance, as at the date or dates when the same was expressed to be payable under any time essence

contract governing the transaction, or in the absence of such express date or dates, as at the date when payment was first demanded by the

creditor or his agent or as at the 12th day of August 1945, whichever of such dates is earlier in time, and shall be payable to the extent determined

by such scale, and no interest shall be payable on a debt as so revalued.

Proviso (a) is also important. It runs thus:

Nothing shall be payable in respect of any Such debt or balance of any such debt, which, when revalued as aforesaid, does not amount to one

hundred dollars in Malayan currency, or which was incurred after the 12th day of August 1945.

If the liability of the first defendant to refund the amount paid to her is an occupation debt, then, u/s 6 of the Ordinance, the revaluation should be

as on 12-8-1945, because, the liability was not the result of a time essence contract, and there is no evidence of any demand earlier than 12-8-

1955. It is also not disputed that, if revalued as on 12-8-1945, the amount would be less than 100 dollars. Mr. R. Gopalaswami Aiyangar,

however, contended that the liability of the first defendant to refund would not be an occupation debt.

After giving the matter our careful consideration, we have come to the conclusion that it would fall within the definition. The money was paid to the

first defendant, who was not entitled to it, under the mistaken impression that the money was due to her. There was, therefore, an obligation on her

part to refund the money. Such liability must be deemed to have arisen on the date of the payment itself (Vide Baker v. Courage and Co., 1910 1

KB 50 . This obligation to refund was certainly incurred during the occupation period because the payment was between the two dates, 15-3-

1942 and 5-9-1945.

The term ""debt"" no doubt, is commonly used to, describe liabilities which have an origin in contract; but we see no reason why we should, restrict

the connotation of that term to such liabilities only. Anything due and payable is a debt. On this point, therefore, we agree with the learned trial

judge that no amount can be recovered by the plaintiff from the first defendant, even assuming that the first, defendant was liable to repay the

amount paid to her agent. The appeal is therefore dismissed, but, in the circumstances without costs.