

(1920) 01 MAD CK 0022
In the Madras High Court

Narayanan Chetty and Others

APPELLANT

Vs

K.N.P.R. Suppiah Chetty and Others

RESPONDENT

Date of Decision : 05-01-1920

Acts Referred:

Citation : (1920) ILR (Mad) 629 : 58 Ind. Cas. 639 : (1920) 11 LW 418 : (1920) 38 MLJ 437

Hon'ble Judges : Wallis, C.J;Krishnan, J

Bench : Full Bench

Judgement

Wallis, C.J.—This is an appeal from the judgment of the Temporary Subordinate Judge of Sivaganga in a suit brought by the next

reversioner of the deceased Raman Chetty to recover from the defendants, who are members of a Nattukottai Chetty trading family, a certain sum

which they alleged to have been deposited after Raman Chetty's death by Raman Chetty's uncles as forming part of the estate. The Subordinate

Judge has decreed the suit in part.

2. The first point taken by Mr. Krishnaswami Aiyar for the defendants is that although the plaintiff as reversioner may be entitled to recover the

principal, he is not entitled to recover the interest which accrued due during the lifetime of the widow as that formed part of her estate and was

descendible to her heirs in the absence of any intention having been manifested on her part to incorporate it with the estate of her deceased

husband. The evidence is that after her husband's death his uncles deposited the money with another firm of Nattukottai Chetties who closed their

business and that the deposit with them was transferred to the defendant's firm, and the evidence is that they were instructed to pay Rs. 50 a year

to the widow for her maintenance, which sum she admittedly received. Now there is no evidence that she ever claimed to be entitled to any more.

Whether it was so or not, the evidence shows that the intention of the uncles was that the whole sum should go to her son if she adopted one,

which she never did. In these circumstances, the inference appears clear that the widow rightly or wrongly acquiesced in the interest on this sum

being treated as part of her husband's estate and as incorporated with her husband's estate and descendible to his heirs. She never even claimed

to receive it. The case therefore is clearly distinguishable from the cases to which we have been referred. *Subramanian Chetty v. Arunachellam*

Chetty ILR (1904) Mad. 1 Isri Dutt Koer v. Hansbutti Koerani I.L.R (1888) Cal. 324.(P.C.) Saodamini Dasi v. The Administrator-General of

Bengal ILR (1892) Cal. 433. (P.C.) Magunta Veeraraghava Reddi and Another Vs. Magunta Kota Reddi, and Sri Vikrama Deo Garu Vs. Sri Sri

Sri Vikrama Deo Maharajulugaru, which were cases in which the income from the husband's estate had come into the possession of the widow

and she had disposed of it in one way or other. In *Isri Dutt v. Hansbutti Koerani ILR (1888) Cal. 323* she manifested her intention that it should

be incorporated with the husband's estate and it was held that she could not go back on this. In the other cases it was held that she had manifested

her intention to treat it as her own separate property descendible to her own heirs. In the view we take of this case it is unnecessary to consider

what would be the rule applicable if the evidence merely were that the widow had failed to collect the interest on money forming part of her

husband's estate. On the other hand, there is a dictum of the Privy Council in *Isri Dutt v. Hansbutti Koerani ILR (1888) Cal. 324* which might be

relied on. On the other hand, there is the elaborate discussion of Sir Subrahmania Aiyar, J., in *Subramanian Chetty v. Arunachellam Chetty I.L.R.*

(1904) Mad. 1 which treats the statement of the Privy Council as a mere obiter dictum but is also itself obiter, For the purpose of the present case,

it is enough to say that the widow clearly acquiesced in the interest being treated as part of her husband's estate.

3. The next question is one of limitation. This Court in recent years on several occasions, had to consider what was the nature of the deposits with-

Nattukottai Chetties on what are called *thavanis*, and in a case in *Muthiah Chettiar v. Ramanathan Chettiar (1817) 7 L.W. 330* this Court held that

such cases were governed by Article 60 both as to principal and to interest. In the present case Mr. Krishnaswami Aiyar has taken the point that

so far as interest is concerned, these transactions are governed by Article 63--"" For money payable for interest upon money due from the

defendant to the plaintiff."" It is said in Muthiah Chetty v. Ramanadhan Chettiar with reference to thavanai transactions that "" the idea is that the

money should remain until demanded and the interest should be added at the expiration of each thavanai."" As I understand it, that means that the

understanding between the parties is that, at the end of each thavanai period, the interest for that period instead of being payable in cash to the

creditor should be added to the deposit so that both should be treated as a fresh deposit; and if that be so, then the article applicable continues to

be only Article 60 and not Article 63 which is ""for money payable for interest,"" and the starting point under that article is when the interest becomes

due. As I understand it, that means, when the interest becomes actually payable. If the agreement between the parties is that the interest is not to

be payable until demanded but is to be added to the deposit as an increment to the deposit, then I think that Article 63 would apply and Article 60

does. That is the view which has hitherto been taken in this Court and this is the first time that any one has suggested that Article 63 would be

applicable. I think that very serious consequences would result if that article were held applicable because very large amounts of money have been

deposited with Nattukottai Chetties on these terms and nobody has ever thought that it was necessary to make constant demands upon them.

4. Mr. Krishnaswami Aiyar also argued that it was not within the competence of the managers of the joint Hindu Nattukottai Chetty trading families

to accept money on deposit on thavanai terms, that it is not competent for them to do one of the most ordinary things in the transaction of their

business. That position is quite untenable.

5. For the reasons I think that the appeal fails and must be dismissed with costs.

Krishnan, J.

6. I agree.