

(1924) 08 MAD CK 0036
In the Madras High Court

P. Kanakasabapathy Mudaliar

APPELLANT

Vs

Hajee Oosman Sahib and Others

RESPONDENT

Date of Decision : 27-08-1924

Acts Referred:

Trusts Act, 1882 — Section 5

Citation : AIR 1925 Mad 192 : (1925) 21 LW 134 : (1924) 47 MLJ 791

Hon'ble Judges : Charles Gordon Spencer, C.J.;Srinivasa Aiyangar, J

Bench : Full Bench

Judgement

Charles Gordon Spencer, C.J.—This suit was dismissed upon a demurrer, as the learned Judge was of opinion that the plaint disclosed no

cause of action. No evidence was taken on either side. From the allegations in the plaint it appears that the plaintiff, a godown-keeper in the

employment of a Mahomedan firm, styled Messrs. Oosman Hassan & Co., was credited with a bonus of Rs. 3,500 out of the profits of the firm in

consideration of the good services rendered by him and of the fine profits made by the firm. The plaintiff alleged that this bonus was carried to his

credit in the firm's books in 1919 and that in 1920 he was allowed to draw out of it Rs. 420, but that the defendants refused, in spite of his

demand, to pay the balance.

2. The question of law is whether on the facts alleged the entry in the firm's books constituted a completed gift, and whether the defendants were

trustees or depositors as regards the undisbursed amount of the bonus. Section 5 of the Indian Trusts Act says : "No trust in relation to moveable

property is valid unless declared by a non-testamentary instrument in writing signed by the author of the trust and registered, or by the will of the

author of the trust.....or unless the ownership of the property is transferred to the trustee.""Section 123 of the Transfer of Property Act declares

that"" for the purpose of making a gift of Immovable property, the transfer may be effected either by a registered instrument signed or by delivery.

The defendants' liability therefore turns on the question whether there was any delivery or transfer of ownership to the plaintiff.

3. A number of cases have been cited before us. The nearest to the facts of the present case appears to be *Bat Mahakore v. Bai Mangla* ILR

(1911) B 403. In that case there was a credit entry made by Damodardas in his account books in the name of Harkore, his wife. Chandavarkar J.,

held that this constituted a valid trust in favour of Harkore. Heaton, J. held that Damodardas became a deposittee and that the addition of interest to

the deposit account and the debiting of money spent on pilgrimage was a further indication of the relations of the parties being those of depositor

and deposittee. In *Sabjan Sahib v. Abdul Azeez Sahib* 42 IndCas 684 *Abdur Rahim J.*, held that a mere entry in books of account did not create a

completed gift on the facts of that case, and he attached much importance to the fact that Sabjan in whose name the credit stood did not draw

upon the amount standing at his credit. The present case may be distinguished by the fact that there was a drawing upon the fund. In *Sir Jamsetji*

Jijibhai and Ors. v. Sonabai (1865) 2 Bom. HCR 139 *Couch J.*, considered all the circumstances of the case as to whether there was an intention

on the part of *Sir Jamsetji Jijibhai* to create a trust in favour of *Sorabji Pestanji* and, as indicating that intention, he had regard to the manner in

which the money was dealt with, which was placed on the credit side of the account. He held in that case that a trust was created because there

was no instance in which a sum of money had been placed on the credit side of the account in which the donor afterwards attempted to deal with

the money as his own. In *Natha Gulab and Co. Vs. G.I.P. Railway Company*, a cheque was issued and attached before it was cashed and before

the remittance was made by the Bank to the payee. Similarly in *Janki Das v. The East Indian Railway Company* ILR (1884) A 634 before actual

delivery took place the bonus recommended to an employee of the Railway was attached in execution of a decree obtained against him. In the

present case, there is not only the allegation that the amount of Rs. 3,500 was credited to the plaintiff in the firm's account, but there is further the

allegation that he was allowed to operate upon this account. If the firm had paid out the bonus into the hands of the plaintiff and if the next moment he had deposited it for safe keeping with his employers, the position would have been in no way different from that disclosed by the entries as they were made. On the alleged facts, which are of course open to be rebutted at the trial, it appears to us that there is a case of a completed gift and a transfer of ownership in favour of the plaintiff; and, if ownership in the bonus was completely transferred, and there was more than a mere promise without consideration to give the plaintiff a bonus, it is immaterial that the amount was originally of the nature of a bonus.

4. The case must go back for hearing evidence and disposing of it upon its merits. The defendants have since the disposal of the suit become insolvent and are now represented by the Official Assignee. The respondents must bear the costs of this appeal which will come out of the estate.

The costs of the suit will abide and follow the result. The appellant will be entitled to a refund of the Court-fee on the appeal.

Srinivasa Aiyangar, J.

5. I agree with my Lord the learned Chief Justice in the order proposed and only wish to add this. I do not at all see why the plaintiff's claim should not be deemed to be based on a contract, apart from any question whatever of a contemplated gift, or a completed gift, or apart from any relationship between the parties of depositor and depositor or creditor and debtor. No doubt, if the services of the plaintiff had been rendered only for the salary stipulated, a promise of a grant of bonus to him would not be a promise for past consideration. But all those who know anything of these Muhammadan firms know that, apart altogether from the salary paid to the servants of the firm, the expectation is held out to them, according to the mamool or practice, that, if they should render exceptionally good service during the period of the settlement, they would be rewarded at the time of the settlement by the grant of a substantial bonus. If, in these circumstances, the servants put forth extra work which the masters find satisfactory and, in consideration thereof, a bonus is promised to them, it seems to me that it is really in law a promise for past consideration which is good under the Indian Law. It is for the purpose of establishing the implied agreement in such firms that, I take it, the plaintiff has referred in his

plaint to the previous settlements, to the grant of bonus to the plaintiff at those settlements, to such bonuses having been credited at every settlement to his account, and to his having operated upon the account so credited. I therefore consider that, even apart altogether from any question of gift completed or not, the plaintiff has a case on the footing of a contract which is clearly sustainable. The averments in the plaint are sufficient for the purpose. I, therefore, agree to the order proposed.