
(1913) 04 MAD CK 0014
In the Madras High Court

P.H. Parameswara Pattar and Another	APPELLANT
Vs	
Viyathen Sreedevi and Others	RESPONDENT

Date of Decision : 04-04-1913

Acts Referred:

Evidence Act, 1872 — Section 19

Citation : 20 Ind. Cas. 637 : (1913) 25 MLJ 51

Hon'ble Judges : Sundara Aiyar, J;Sadasiva Aiyar, J

Bench : Full Bench

Judgement

Sundara Aiyar, J.—The learned vakil for the defendants contends that there is no clear finding in the judgment of the District Court that the amount stated in Exhibit F-the settlement of accounts between the plaintiff and the 1st defendant-was, as a matter of fact, due by him to the plaintiff. The District Judge lays down the law correctly when he observes that "" Liability must of course be proved against the surety in the same way as against the principal debtor"". He does not appear to have proceeded on the footing that it was enough to prove that the 1st defendant admitted his liability to the plaintiff under Exhibit F. The lower appellate Court proceeds to say, "" It is difficult to see how under the circumstances of the case plaintiff could have proved the liability of defendants 2 and 3 who in fact guaranteed to identify plaintiff for any sums appropriated by 1st defendant while employed as Kariasthan in any other way. "" It is argued that this amounts to a finding that in the circumstances of the case Exhibit F is sufficient evidence to prove the liability of defendants 2 and 3 also for the claim made. It is possible that this view was taken by the District Judge. But I think it is unsafe to accept the sentence referred to above as an explicit statement that the plaintiff has proved against

defendants 2 and 3 that the amount of his claim was due by the 1st defendant.

2. I would therefore call for a definite finding on the question whether any and what amount was misappropriated by the 1st defendant. The finding

will be submitted within six weeks from the date" of receipt of this order and seven days will be allowed for objections.

Sadasiva Aiyar, J.

3. I am not quite sure that I could not take the finding of the District judge to have been based on the 1st defendant's admissions found in Exhibit F

having been used as evidence against defendants 2 and 4. But as the language of the District Judge is not very clear, I have no objection to calling for a clearer finding.

4. In compliance with the order contained in the above judgment the District Judge submitted a finding to the effect that Rs. 989-1-5 must be held

to be the amount misappropriated by the 1st defendant.

5. After the return of the above finding of the lower appellate Court.

6. The Court delivered the following

7. The District Judge's finding is to the effect that Exhibit F correctly represents the amount due by the 1st defendant to the Kovilagam when he

ceased to be an agent. I have no doubt that Exhibit F is admissible in evidence as against defendants Nos. 2 to 4. The language of Section 19 of

the Evidence Act is to my mind clearly in the plaintiff's favour. It enacts that "" statements made by persons whose position or liability it is necessary

to prove, as against any party to the suit, are admissions, if such statements would be relevant as against such persons in relation to such position or

liability in a suit brought by or against them, and if they are made whilst the person making them occupies such position or is subject to such

liability. "" It is necessary in this suit to determine the liability of the 1st defendant to the Kovilagam in order to determine the rights of the plaintiffs

against defendants Nos. 2 to 4. The admission contained in Exhibit F was made by the 1st defendant while he was still subject to the liability to

make good all amounts received by him on account of the Kovilagam and not properly spent by him on its behalf. I do not think it is necessary that

a statement or admission by the 1st defendant to be admissible against defendants Nos. 2 to 4, should have been made by him whilst his agency

continued. I think the reason of the rule laid down in Section 19 as well as the words of the section will not justify such an interpretation. In *Lysaght*

v. Walker (1831) 5 Bligh. 5 and *Guardians, Abbeyley Union v. Sutcliffe* 26 L.R.332 cited by Mr. Anantakrishna Aiyar for the respondents, the

admissions no doubt were made at a time when the agency continued. But I do not think that that is necessary. The reason for making the

admission of the agent admissible against his surety would be equally applicable to a statement made by him while his liability for acts done by him

as agent continues. The District Judge was therefore at liberty to attach such weight as seemed to him proper to Exhibit F. The weight to be

attached to an admission made by the principal debtor as against his surety must depend upon the circumstances of each case, In the judgment of

the District Judge who first heard the appeal, reference was made to documents which show that defendants Nos. 2 to 4 took steps to get the

accounts settled as between the plaintiff and the 1st defendant. They actively interested themselves in ascertaining the 1st defendant's liability, as it

was important for them to do. There was also evidence that one or more of these defendants was actually present at the settlement. The District

Judge does not refer to these facts. It is not clear why he refers to letters written by the 2nd and 3rd defendants a year or two years after the

accounts were actually settled. I must say that the revised finding of the District Court is to my mind very unsatisfactory. The evidence adduced in

the case is not referred to as a whole. At the same time the learned vakil for the appellants has not contended that Exhibit F was prepared under

circumstances which would impeach the value of the 1st defendant's admission as one voluntarily made. It was undoubtedly his interest to diminish

his own liability as far as possible. There are apparently therefore no reasons to suppose that Exhibit F was not arrived at after an honest

examination of the accounts by the Kovilagam and by the 1st defendant. Apart from Exhibit F the evidence for the Kovilagam is extremely

unsatisfactory. It did not produce the day book and the ledger which was sent up by the first defendant in the ordinary course of business, and the

agents admit that the evidence produced before the Court would not lend strength to the admission of the agent in Exhibit F. I have hesitated much

whether the appellants are not entitled to have a second remand in order that the District Judge may deal more fully with the evidence. I therefore

invited the learned vakil for the appellant to show that any particular entries in Exhibit F. might be regarded as open to impeachment and to refer to any circumstances which would furnish satisfactory evidence that Exhibit F cannot be regarded as a correct account. I must say that I have not been satisfied that he has succeeded in doing so. I feel that, while both the evidence and the finding in the case are unsatisfactory, it would serve no useful purpose to ask the District Judge to record a fresh finding, especially as it is not possible to say that Exhibit F was drawn up under suspicious circumstances. It was for the Judge to decide what weight should be attached to Exhibit F and from his judgment I conclude that, unless Exhibit F be shown to be incorrect by defendants Nos. 2 to 4, he would be prepared to act on it. I find no reasonable ground for supposing that the defendants would be able to perform that task. I feel that no other course is open to me in the circumstances than to accept the finding; and that the result of doing so must be to dismiss the second appeal with costs.

Sadasiva Aiyar, J.

8. I entirely agree with the Judgment just now pronounced by my learned brother. Only I have not felt as much hesitation as he has felt before arriving at the conclusion that we must accept the lower Court's finding. In the order of remand itself I expressed my concurrence in passing that order principally with a view to ascertain whether the lower Court really intended to act upon Exhibit F as evidence against the defendants. I have no doubt that it is evidence as against defendants 2 and 3. Having been taken through the evidence, I have also come to the clear conclusion that the defendants 1 to 3 did not mean to deny the correctness of the entries in this statement of account, Exhibit F. 1st defendant seems to have some claim against the 4th Rajah, Netuthrampalam, and his anxiety evidently was that that amount should be credited in his (1st defendant's) favour and that he (1st defendant) should be made liable only for the balance after deducting from the sum due under Exhibit F the amount which he claims as owing to him from the 4th Rajah. The plaintiff's 1st witness was cross-examined by him (1st defendant) about Exhibit IV, and the witness admitted that Exhibit IV was in his handwriting. Neither the 1st defendant nor defendants Nos. 2 and 3 seems to have cross-examined him as to whether the amount due by that 4th Raja under Exhibit IV should be set off against the

present claim. In re-examination the plaintiff's first witness says "" the account IV is the account between Netutharapad Thamburan and 1st defendant."" That answer clearly indicated that the amount due by the 4th Rajah to the 1st defendant had nothing to do with the kovilagam. The plaintiff's 2nd witness said in his examination-in-chief itself pointedly that ""the amount due as per Ex. IV need not be credited to 1st defendant by the kovilagam."" I do not find any cross-examination directed by the defendants to this statement of the witness. Of course, the 1st defendant said (as the 3rd defence witness) that, though he had not included any of these accounts in the Masantam suit by him to the higher authorities, that account ought to be credited in his favour at the settlement of accounts. This statement seems to me absolutely of no value, there being strong evidence which can be used not only against the 1st defendant, but also against the other defendant, showing that the 1st defendant really owed the money mentioned in Ex. VII and Ex. F. On these grounds I would also dismiss the second appeal with costs.