(1917) 01 MAD CK 0007

In the Madras High Court

P.M.A. Muthiah Chetty and Others — APPELLANT

Vs

P.R. Alagappa Chetty and Another — RESPONDENT

Date of Decision : 29-01-1917

Acts Referred:
Limitation Act, 1963 — Article 89

Citation : (1918) ILR (Mad) 1

Hon'ble Judges : Seshagiri Ayyar, J;John Wallis, J

Bench : Division Bench

Judgement

John Wallis, Kt., C.J.—In the first of these cases--Appeal No. 192 of Wallis, C.J. 1915, the Subordinate Judge has dismissed a suit

brought by principals against an agent and his son to recover a specified sum of money, particulars of which are set out at length in the plaint, and

those particulars show that what they are really seeking to do is to make the first defendant account for the moneys which they entrusted to the first

defendant.

2. The main ground of complaint taken by the plaintiffs in their plaint is that the first defendant lent moneys of the principals to persons to whom he

was not authorized to lend them, and Mr. Krishnaswami for the appellants has taken the point that this case is governed by Article 90 of the

Limitation Act which provides for:

other suits by principals against agents for neglect or misconduct

and not by Article 89 which deals with suits:

by a principal against his agent for moveable property received by the latter and not accounted for.

3. Now the use of the word ''other'' in Article 90 shows that that article does not

include suits which properly come within Article 89, and we think

that this is really a suit for a mere money account which comes within Article 89, Mr. Krishnaswami has relied upon Great Western Insurance Co.

v. Cunliffe (1874) 9 Ch. A p 525.

4. In that case it was sought, in taking an account by a principal against his agent, to hold the agent responsible for the loss which had occurred to

the principal by the agent''s failure to insure certain goods, that is to say, for failing to carry out the instructions of the principal by spending moneys

of the principal in a particular manner and Lord Justice James held that that did not come within an ordinary money account. In an ordinary money

account the accounting party is asked to account for the moneys which have come to his hands and to pay over the balance, and where the

account is on the fooling of wilful default he may be held liable, not only for the moneys which have come to his bands but also for moneys which

ought to have come to his hands; and if he is shown, in taking such an account to have applied moneys in a way in which he was not authorized to

apply them, the result is that he is not allowed credit for that sum in taking the account. That is the ordinary practice in taking accounts and it seems

to us that there is no reason for holding that the matters pleaded in this case should not come into an ordinary money account. As I have said Great

Western Insurance Co. v. Cunliffe (1874) 9 Ch. A p. 525 itself and also the illustration put there of an attempt to make a solicitor liable for his

negligence in the conduct of an action when taking an account in respect of his client''s moneys--those are cases of a different nature from the

present.

5. Therefore, in our opinion, in this case, Article 89 was rightly applied.

6. Then the question arises as to whether this case was properly disposed of with regard to that article. Now the Judge has simply held the suit to

be barred on the authority of a decision of my learned brother and myself in Venkatachalam v. Narayanan ILR (1916) Mad, 376. All that we

decided in that case was that termination of agency is a question of fact for purposes of Article 89 of the Limitation Act and the agency must be

considered as having .terminated when the authority to the agent is revoked or the agent renounces the agency, or the business of the agency is

completed which is practically another case of revocation or determination of authority. Now that must be a question of fact in each case to be

decided upon the evidence.

7. We do not think the case is sufficiently clear upon the pleadings to enable us to dispose of the case without taking evidence, and we have

therefore decided to call for a finding upon fresh evidence as to whether the suit is barred under Article 89. We think it necessary, however, to say

that we consider this question depends upon the question when the authority of the agent to represent the principal ceased and that it does not

depend upon the question as to the agent''s obligation to take back a salary chit and pass his accounts with the principal. Fresh evidence may be

taken. The finding will be submitted in two months from this date and seven days will be allowed for filing objections.

8. [His Lordship then dealt with the connected appeal, and as it involved only questions of fact, it has been omitted from the report.]

Seshagiri Ayyar, J.

9. I agree.

