
(1901) 11 MAD CK 0011
In the Madras High Court

Rajaram Devai

APPELLANT

Vs

Lakshmi Sankara

RESPONDENT

Date of Decision : 06-11-1901

Acts Referred:

Citation : (1903) 13 MLJ 206

Judgement

1. The appellant contends that the Subordinate Judge ought not to have charged him with the value of the remissions made by him in 1891, 1892,

1893. and 1898. As regards the 50 kalams remitted in 1898 we are not prepared to say that the Subordinate Judge's view is incorrect. The

appellant was then a wrongdoer in that he was improperly retaining possession of the plaintiff's property after he had attained majority, and no

sufficient reason is adduced to justify the grant of so large a remission, if it was in fact granted. As regards the three earlier remissions they were

much smaller in amount and they were granted long before relations between the parties were strained. They are proved by the appellant's sworn

evidence to have been, in fact, made, and to have been made on good grounds, and he is supported by his contemporaneously written accounts,

which we see no reason to discredit. The appellant must be allowed the value of these remissions, viz-. Rs. 91-9-02.

2. The appellant further contends that the Subordinate Judge was wrong in charging him with Rs. 29-9-6 and Rs. 14-7-0 on account of interest on

sums which the appellant ought to have invested for plaintiff's benefit but did not.

3. The amount of these sums and the circumstances under which and the periods for which they were not invested are stated by the Subordinate

Judge in paragraphs 26 and 27 of his Judgment. There is no proof that the appellant made any profit out of these sums or used them for his own purposes. Had he done so he would be clearly liable to the plaintiff.

4. It is, no doubt, also true that where the trust property consists of money and cannot be applied immediately or at an early date to the purposes

of the trust, the trustee is bound to invest the money for the benefit of the cestui que trust. If the trustee in the present case had invested the sums in

his hands in the savings bank, he would, no doubt, have acted with propriety ; but considering that the trustee was in loco parentis towards the

plaintiff under the will of the testator and was defraying all the plaintiff's expenses, and considering that the trustee also foresaw that the sums in his

hands would, within a few months, be required for the expenses of the plaintiff, as they, in fact, were, we do not think that he can be held to have

committed a breach of trust in having failed to invest these comparatively small sums. We must therefore disallow them two items of interest to the

plaintiff.

5. As regards the other items objected to by the appellant, we concur with the Subordinate Judge.

6. It was strongly contended before us that the Subordinate Judge should not have allowed the plaintiff proportionate costs. It was contended that

the appellant acted within his rights in withholding from plaintiff after he attained majority the balance of cash admittedly in appellant's hands on his

account, and also the landed and house property which belonged to plaintiff, because the plaintiff refused to give him a full discharge as regards his

trusteeship ; and it was also contended that even if appellant was not within his strict legal right in so doing, he bona fide believed himself to be so,

and therefore ought not to have been mulcted in costs even to the extent decreed by the Subordinate Judge.

7. We are not referred to any authority to show, nor are we prepared to accede to the contention, that a trustee is justified in insisting on the cestui

que trust giving him a release as a condition precedent to his delivering the trust property to him, and a bona fide belief on the appellant's part that

such was his right is, in our opinion, immaterial as affecting the question of costs in a suit which was necessitated by his unlawful refusal. The

obtaining a release is solely for the personal benefit of the trustee, and is not, in

any sense, an act done in the execution of the trust. The cases cited before us by the appellant's pleader are, therefore, inapplicable to the present suit.

8. The proper course for the appellant was to have delivered over to the plaintiff the property to which the plaintiff was admittedly entitled ; and, if

nothing more was due to plaintiff, then to have required him to give an acknowledgment in writing to that effect, enforcing the right, if necessary, by legal proceedings.

9. The last contention of the appellant to which we need refer is as regards house rent. We have already stated that the appellant improperly

retained possession of the plaintiff's house after he had attained majority, No doubt during the course of the suit the appellant presented a petition

stating that, he was ready to deliver the house to plaintiff, and the latter presented a petition stating that he was ready to take delivery, but beyond

that the appellant took no steps whatever to deliver the house to the plaintiff.

10. We must therefore, hold that the Subordinate Judge was right in decreeing rent to plaintiff up to the date of delivery of the house to him.

11. The decree of the Subordinate Judge will be modified to the extent indicated above and confirmed in other respects.

12. Each party will have proportionate costs in this appeal.