

(1915) 02 MAD CK 0022
In the Madras High Court

Ramanatham Chetty and Others

APPELLANT

Vs

Subramaniyan Chetty and Another

RESPONDENT

Date of Decision : 11-02-1915

Acts Referred:

Citation : (1915) 28 MLJ 372

Judgement

1. Defendants 2, 5 and 6, the representatives of one S.A. Subramanyam Chetty, appeal against the decree directing them to pay the plaintiff who claims to be the adopted son of one Meyyappa Chetty, a sum of Rs. 10,329-3-5 with interest. The plaintiff's case is that Meyyappa Chetty entrusted his nephew S.A. Subramanyam Chetty, who is described as "a well propertied man"" and a money lender with a sum of Rs. 3,812-1-6 for investment. Subramanyam Chetty first deposited the amount in Keemandan M.P. Firm at Rangoon, and afterwards when he himself commenced business at Rangoon withdrew the amount from the Keemandan M.P. Firm and deposited it in his own Rangoon branch. These deposits, both in the Keemandan Firm and afterwards in the S.A. Firm, were made in the names of V.M. Rm. and M. Rm. M. which were the Vilasams of Meyyappa Chetty. Meyyappa Chetty died and his widow adopted the plaintiff at the instance of Subramanyam Chetty who told the plaintiff that he had got this amount deposited with him by Meyyappa Chetty. Subramanyam Chetty also is dead and his representatives are now sued. The defence is that Meyyappa Chetty never entrusted Subramanyam Chetty with any amount and that the Vilasams V.M. Rm. M do not represent Meyyappa Chetty. The fact and validity of the adoption of the plaintiff by the widow also are denied. The Subordinate Judge has

recorded findings in favour of the plaintiff on all these questions. The defendants appeal.

2. We are of opinion that the plaintiff is the adopted son of Meyyappa Chetty.

3. Their Lordships discuss the evidence as to adoption.

4. The next question is whether Meyyappa Chetty deposited the amount, as alleged, with Subramanyam Chetty. S.A. Subramanyam Chetty was,

apparently, a wealthy man. Exhibit A series clearly show that he deposited a sum of Rupees 3,500 as alleged by the plaintiff with the Keemandan

M.P. Firm at Rangoon on 16-9-1895. Exhibit A-6 shows that the amount belonged to V.M. Rm. It was deposited by Subramanyam Chetty in

that name, so that Subramanyam Chetty alone might operate on that account though the money really belonged to V.M. Rm, It is also proved that

S.A. Subramanyam Chetty withdrew the amount from Keemandan M.P. Firm and deposited it in his own firm when he opened a branch at

Rangoon (See Exhibit A) and his own accounts also show that the deposit was made in the name of V.M. Rm, as the money belonged to the

person who was represented by that Vilasam.

5. The question that arises for decision then is whether V.M. Rm. represented Meyyappa Chetty, the plaintiff's adoptive father. It is not argued in

appeal that V.M. Rm. is not a Vilasam of Meyyappa Chetty. P.W. 1 who was a clerk under Subramanyam Chetty, and after his death under the

6th defendant, states that V.M. Rm. represented Meyyappa Chetty and that the latter's money was deposited with Subramanyam Chetty's

Rangoon Firm. He was not put any question in cross examination in respect of the deposit. P.W. 2 who was a clerk under the 6th defendant also

says that V.M. Rm. refers to Meyyappa Chetty. He states that he wrote the letter Exhibit U. to the dictation of defendants 5 and 6. These persons

who now dispute the plaintiffs claim were executors under the will of Subramanyam Chetty and they stated in that letter according to the

appellant's construction of it that the deposit to the credit of V.M. Rm. related to Subramanyam Chetty's maternal relative but according to the

plaintiff, the letter shows that the money belonged to Subramanyam Chetty's maternal uncle i.e., Meyyappa Chetty. We attach no weight to the

contention of the appellant that this letter is not sufficient to prove an admission that the money belonged to Meyyappa Chetty, as it only States that

it belongs to a relative in the maternal line. Assuming that the term is vague enough to suggest only a maternal relative and not the maternal uncle,

the defendants do not say who that relative is. The 6th defendant does not deny the genuineness of Exhibit D, nor does he explain to whom it

refers. We are therefore, of opinion that Exhibit D was intended to refer to Meyyappa Chetty. P.W. 3, who like Meyyappa Chetty belonged to

Varivayal family, also says that V.M. Rm. refers to Meyyappa Chetty. We are, therefore, of opinion that the plaintiff's contention that V.M. Rm.

refers to Meyyappa Chetty is proved and that he is entitled to the amount deposited under that Vilasam. The next question is whether the suit is

barred by limitation. It is said that the accounts show that the deposit was made not payable on demand but for periods of two months. In support

of this contention, reliance is placed on the entries which calculate interest at thavanai rate, and it is argued that thavanai means that the amount is

deposited for a period of two months and it would be unreasonable to hold that the person is entitled to draw interest which prevailed for a period

of two months unless the Chetty had the security of the use of the money for the same period, and that Article 60 of the Limitation Act which only

applies to deposits payable on demand does not, therefore, apply. On behalf of the plaintiff it is contended that thavanai does not indicate that the

amount is deposited for two months, but that it only shows that interest is calculated at a certain rate which prevailed for a period of two months.

This contention was not raised in the court below. But we think that it is unnecessary to determine the meaning of the term, as there is sufficient

evidence in the case to show that the deposit was payable on demand and that it was not made for a period of two months. We have already

stated that what Meyyappa Chetty probably did was to deposit the money with Subramanyam Chetty to deal with it in any way he liked and there

is no evidence as to what instructions were given by Meyyappa Chetty. The probabilities are that he left it to Subramanyam Chetty to utilise it in

the way most profitable to Meyyappa Chetty. Subramanyam Chetty deposited it with Keemandan M.P. Firm at Rangoon on his own

responsibility. That deposit was probably for fixed periods of two months, and a suit against Keemandan M.P. Firm might probably not be

governed by Article 60 of the Limitation Apt. Afterwards Subramanyam Chetty withdrew it and deposited it with his own Rangoon branch. The

accounts were rendered in the first instance to S.C. They show that the deposit was made ""for morai V.M. Rm.""; or in other words, it was

Subramanyam Chetty himself and not Meyyappa Chetty who deposited it in the Rangoon branch; Chockalingam Chetty who was the agent at

Rangoon states that instructions to pay. thavanai interest were given to him by the principal, i.e., by Subramanyam Chetty. The evidence, therefore,

does not show that Meyyappa Chetty deposited the amount with Subramanyam Chetty on what are called thavanai conditions. It only shows that

Subramanyam Chetty directed his firm at Rangoon to pay interest to V.M. Rm. at the thavanai rate. We have already pointed out that the

probabilities are that Meyyappa Chetty would not have imposed any conditions or given any directions to Subramanyam Chetty as to how the

money was to be utilised, but that he would have left the matter entirely to his discretion. The presumption, in these circumstances, is that the

money was payable by Subramanyam Chetty to Meyyappa Chetty on demand, if Article 60 applies it is conceded that the suit is not barred by

limitation.

6. It was also argued before us that the plaintiff is not entitled to recover the amount without producing a succession certificate, and the decision

reported in *Perraya v. Ahmed Abdul Rahiman Sait* (1911) M.W.N. 671 is relied upon. That decision was based upon a judgment in

VenKatramanna v. Venkayya ILR (1890) M. 377 which has been subsequently overruled. (See *Subramaniam Chetty v. Bakku Servai* 7 M.L.J.

100 and *Pallamaraju v. Bapanna* ILR (1889) M. 380. The attention of the learned Judge in the *Madras Weekly Notes* case was not, apparently,

drawn to these decisions. It was also contended that the plaintiff who was adopted only after the death of Meyyappa Chetty did not take the

property as a co-parcener by survivorship. It is quite clear that ancestral property is not taken by an adopted son as his father's heir and he is not

bound, therefore, to produce a succession certificate to recover what is found to be ancestral property.

7. For these reasons we confirm the decree of the Lower Court and dismiss the appeal with costs. The memorandum of objections also is

dismissed with costs.