

(1937) 10 MAD CK 0014
In the Madras High Court

Ramaswamy Chettiar alias Sethu Chettiar and Others	APPELLANT
Vs	
K.S.M. Manikkam Chettiar and Others	RESPONDENT

Date of Decision : 06-10-1937

Acts Referred:

Transfer of Property Act, 1882 — Section 130

Citation : (1938) 47 LW 118 : (1938) 1 MLJ 56

Hon'ble Judges : Pandrang Row, J

Bench : Division Bench

Judgement

Pandrang Row, J.—This is an appeal from the decree of the Subordinate Judge of Devakottah dated 22nd February, 1932, in O.S. No.

198 of 1930 on his file. The suit was one instituted by the two plaintiffs to recover nearly Rs. 13,000 from defendants 1 to 4. The suit claim was

based on a document dated 2nd February, 1926, Ex. A. That document was brought about as the result of an arrangement arrived at between the

plaintiffs on the one hand and the fifth defendant on the other immediately after the death of the sister of the fifth defendant who had been married

to the first plaintiff who was then a minor. In fact the case of the plaintiffs was that disputes arose about the properties that had been given to this

lady Valliammai Achi at the time of her marriage between the first plaintiff and the fifth defendant, each claiming the money as his. This dispute

arose before the corpse was removed from the house of the first plaintiff and a number of caste men and relations acted as panchayatdars and

pronounced their opinion in accordance with which the document Ex. A was executed by the fifth defendant and the second plaintiff on behalf of

the then minor first plaintiff and attested by the panchayatdars, one of whom was the first defendant with whose firm the moneys had been

deposited. The first defendant did not contest the suit. The second defendant pleaded that he was not a necessary party to the suit. Defendants 3 and 4 put forward the claim of the fifth defendant to the moneys in question and the fifth defendant was the principal contesting defendant. His case was that, excepting a small portion, the moneys had been given by his family at the time of the marriage and that on the death of the girl without leaving any issue the same should revert to his family according to the custom among the Nattukottai Chetties. As regards Ex. A the fifth defendant completely denied that there was any arrangement as alleged or that he had signed Ex. A. The most important of the issues framed by the Court below were issues 1 to 3 and 7. The first three issues raised the question whether the arrangement relied upon in the plaint and Ex. A were true and whether the fifth defendant had consented to it and acquiesced in it. The 7th issue related to the question of limitation. All the important issues were decided in favour of the plaintiffs and the learned Subordinate Judge made a decree accordingly in favour of the plaintiffs and against defendants 1 to 4.

2. In the present appeal by defendants 1, 3 and 5, the following points have been argued by their learned Advocate, (I) that Ex. A is not a binding contract or agreement as it is not supported by any consideration and (2) that the suit is barred by limitation. It is hardly possible to question the correctness of the finding of the Court below that Ex. A was actually executed by the fifth defendant after the panchayatdars had settled the terms thereof on the date which Ex. A bears. The fifth defendant who is the only witness examined on his side no doubt denied that he had agreed to any such arrangement or that he signed in Ex. A but there can be no doubt that his evidence on these points is completely false and so far as this part of his case is concerned there cannot be the least doubt that it is devoid of truth. The execution of Ex. A by the fifth defendant as well as by the second plaintiff is proved by three panchayatdars P.Ws. 1, 2 and 4 one of whom, namely, P.W. 1 is a man of substance occupying a high rank in society being a Rao Bahadur, M.B.E. and an ex-Member of the Legislative Council. Their evidence has been accepted by the Court below and there can be no doubt that their evidence as regards the execution of Ex. A by the fifth defendant is true. In a subsequent document (the execution

of which is admitted by the fifth defendant) Ex. C executed a few months afterwards there is a reference to an amount of Rs. 1,100 credited in the name of the fifth defendant's son in the first defendant's firm which cannot be anything other than a similar amount agreed to be credited to the same person in the same firm according to Ex. A. The fifth defendant is unable to give any account as to where this amount of Rs. 1,100 came from or how it came to be credited in the name of his son. Ex. C therefore furnishes independent evidence in support of the plaintiffs' case that the fifth defendant executed Ex. A. On this part of the case we have not the slightest hesitation in agreeing with the finding of the Court below, namely, that there was a dispute, that there was an opinion expressed by the panchayatdars and that a family arrangement was come to which is embodied in Ex. A which was signed by the fifth defendant and by the 2nd plaintiff and attested by the panchayatdars. The evidence in the case permits of no other conclusion, namely, that there was a dispute about the money that had been deposited with the first defendant's firm at the time of the marriage in the name of the then minor first plaintiff and that this dispute was settled in the manner indicated in Ex. A. As regards the contention that Ex. A is not enforceable against the fifth defendant by reason of the absence of consideration therefor it is sufficient to say that according to Ex. A itself the consideration was the settlement of the dispute that had arisen and the restoration of peace and harmony in the family. In this connection it must be mentioned that the fifth defendant himself is married to the sister of the first plaintiff and that lady was alive at the time. It was therefore necessary in the interests of family harmony that the dispute should be amicably settled. The mere fact that the claim of one of the parties to the dispute might have had more legal foundation than that of the other does not necessarily show that the dispute was not bona fide or that the arrangement was not a proper family arrangement. There is nothing in the evidence which throws doubt on the bona fide character of the dispute or the propriety of the arrangement. As mentioned already, the contest in the Court below was about the truth of the arrangement and the genuineness of Ex. A. Under Ex. A the fifth defendant himself got some benefit in the sense that a portion of the money, namely, Rs. 1,100 was agreed to be set apart or credited in favour of his son and it was only the balance that was to be drawn by the second plaintiff for the benefit of the first plaintiff

from the firm with which the money was lying. We are therefore of opinion that Ex. A cannot be considered to be invalid or unenforceable for any alleged want of consideration. The bona fide settlement of a family dispute does not require any specific consideration to support it. Ex. A indeed can be viewed in another light, namely, in the light of an assignment of an actionable claim within the meaning of Section 130 of the Transfer of Property Act. The writing that is contained in the exhibit is sufficient to show that the intention of the parties was that one portion of the money lying with the first defendant's firm should belong thenceforward to the fifth defendant's son and the other portion should belong to the first plaintiff. It must also be remembered that the first defendant himself was a party to the arrangement in the sense that he acquiesced in it and attested Ex. A.S. 130 of the Transfer of Property Act does not require that the assignment, of an actionable claim should be in any particular form or that there should be consideration for it. As was observed in *Rama Iyen Vs. Venkatachellam Patter and Others*, no particular words are necessary to effect the transfer of a debt or any beneficial interest in movable property and no particular words are necessary to effect such a transfer if the intention to transfer is clear from the language used. It is in the light of these general principles that the documents that were the subject-matter of discussion in *Nandubai v. Gau* ILR (1902) Bom. 150 and *Konijetti Veeraswamy v. Varada Veeraswamy* (1912) 16 I.C. 708 were considered to amount to assignments. We might refer also to *Harding v. Harding* (1886) L.R. 17 Q.B.D. 442. The intention that can be gathered from Ex. A is in our opinion fairly clear and that intention was that the money that was lying in the first defendant's firm should be split up into two parts, one of which was to belong to the fifth defendant's son and the other to the then minor first plaintiff for whose benefit it became payable to the order of the second plaintiff. This operates as an assignment of the entire debt in two separate portions to two separate individuals. It is unnecessary to dilate on this aspect of the question because it does not appear to have been considered in the Court below, and it will therefore be enough to rest our decision on the basis that Ex. A is something other than an assignment, namely, a family arrangement in settlement of bona fide disputes.

3. The other point which raises the question of limitation can be more briefly dealt with. The date of Ex. A is no doubt 2nd February, 1926,

whereas the plaint was filed on 11th April, 1929, that is, a little more than three years after the date of Ex. A. The question is which is the article

which applies to a claim of the present nature. If it is Article 60 as found by the Court below, there is no doubt that there is no bar of limitation

because no demand was made till 1928. It is however contended that this is not a claim to which Article 60 can apply but that Article 115 applies.

This article relates only to claim for compensation for breach of a contract. The present claim is not for compensation but merely to obtain money

which is lying with a banker's firm to the credit of the first plaintiff. The original deposit of the money at the time of Valliammal Achi's marriage was

undoubtedly a deposit with a banker and this position has not been disputed before us. It is however contended that after the execution of Ex. A

the position was radically changed and the money was no longer a deposit with a banker. We fail to see how this transformation can be said to

have been effected by Ex. A. On the other hand, Ex. A clearly says that the portion of the money that was to go to the first plaintiff was payable to

the order of the second plaintiff by the firm with whom the money was lying. The original deposit itself was in the name of the first plaintiff and the

arrangement came to nothing more than that a portion of what was deposited should be paid for the benefit of the first plaintiff and to the order of

the second plaintiff. In other words that money still remained as a deposit payable on demand to the order of the second plaintiff. These last words

were inserted because the first plaintiff was a minor and could not draw the money himself. We are of opinion that the lower Court was right in its

view that Article 60 applied to the present suit and that the right to sue did not accrue till there was a demand and a refusal; and if this is the correct

view it is clear that the suit is not barred by limitation. We therefore concur in the findings of the Court below on this point also.

4. The result is the appeal fails and it is dismissed with the costs of the plaintiffs-respondents.