

(2001) 12 MAD CK 0089
In the Madras High Court
Case No : S.A. No. 724 of 1991

Sivakumar

APPELLANT

Vs

Ramanathan and Another

RESPONDENT

Date of Decision : 07-12-2001

Acts Referred:

Contract Act, 1872 — Section 182
Limitation Act, 1963 — Article 113

Citation : (2001) 12 MAD CK 0089

Hon'ble Judges : A.K. Rajan, J

Bench : Single Bench

Advocate : S. Nataraj Shankar, for the Appellant; A. Muthukumar, for the Respondent

Final Decision : Allowed

Judgement

1. The suit has been filled by the plaintiff for rendition of accounts against the defendants.

2. The brief facts of the case is as follows:

Plaintiffs father and defendants' father were brothers. The properties were being managed by the defendants' father. Subsequently, even after the plaintiffs father died, the defendants' father was managing the properties. The father of the defendants died in December, 1986. Thereafter, the suit has been filed in the year 1988 for rendition of accounts from 1983 to 1988. The lower Appellate Court decreed the suit, as prayed for.

Thereafter, the Appellate Court modified the decree and judgment and restricted the period only to three years from the date of filing of the suit. But, still, the lower Appellate Court said since the father of the defendants died in December, 1986, the accounts shall be rendered in 1987. Against this, the second appeal has been filed.

3. The substantial questions of law are as follows: " (1) Whether the legal heirs

succeeding to the estate of an agent are liable to produce account relating to the agency to the principal and pay the amount that may be found to be paid ?

(2) Whether the acts of an agent concerning the estate of the principal is the personal act and it ends on the death of either of them and whether a liability may arise to one of them to the other for any amount that may become payable on accounts being taken ?

(3) Whether the principle of *actio personalis moritur cum persona* is applicable to law of agency and saves the estate of the deceased agent from any liability for the acts committed by him as an agent ?

4. Heard the arguments of both sides. This Court advised for settlement among the parties and the respondents' counsel accepted that and actually paid Rs. 5,000 by way of demand draft as early as 11.9.2001. But the counsel for the appellant could not get proper instruction from his client and he is not in a position to make an endorsement to that effect that compromise has been arrived at. Therefore, the cheque has also been returned today to the respondents' counsel by the appellant's counsel.

5. From the facts of this case, it is clear that the father of the respondents was responsible and duty bound to render accounts with respect to the properties managed by them. According to law, accounts cannot be asked for more than three years. Under the facts and circumstances of the case, accounts cannot be asked for a period earlier to 1985. Therefore, the first Appellate Court was not wrong in decreeing for rendering of accounts from the year 1985. But the first Appellate Court has taken into account the fact that the father of the defendants died and therefore, legal representatives of the father of the defendants, namely defendants were not responsible to render accounts for any period prior to the death of their father. This appears to be not correct. They are bound to compensate if any dues payable to the plaintiffs. Therefore, the defendants are liable to render accounts from 1985.

6. Counsel for the respondents argued that since the second defendant was working in State Bank of India and he is not responsible for rendering accounts. Therefore, the second defendant is not responsible for rendering of accounts after the death of the father, but at the same time, he is also responsible to render accounts with respect to the profit earned from the property upto 1987.

7. In the result, the second appeal is allowed in part as stated above with costs throughout. The substantial questions of law are answered in favour of the appellants.