

(1958) 07 MAD CK 0036

In the Madras High Court

Case No : Civil Revision Petition No. 1508 of 1956

S.K. Mohamed Ibrahim and Others

APPELLANT

Vs

M. Vedachala Mudaliar (died) and Others

RESPONDENT

Date of Decision : 23-07-1958

Acts Referred:

Citation : AIR 1959 Mad 387 : (1959) ILR (Mad) 90 : (1959) 72 LW 177 : (1958) 2 MLJ 442

Hon'ble Judges : Ramachandra Iyer, J

Bench : Single Bench

Advocate : R. Gopalaswami Aiyangar, for the Appellant; T.R. Venkataraman, for R. Ramamurthi Aiyar, for the Respondent

Final Decision : Allowed

Judgement

Ramachandra Iyer, J.—This civil revision petition arises from an order of the learned Subordinate Judge of Cuddalore in O. S. No. 57 of 1952 on the file of his court directing a revised valuation of the reliefs prayed for in the plaint and also fixing the basis of value of the reliefs sought. The plaintiffs are the petitioners herein. They are 3 of the heirs of one Khader Hussain Rowther who was carrying on business in partnership under the name and style of Mask and Co., with respondents 1 and 2. Kliader Hussain died early in 1943.

The petitioners stated that they were entitled to have a dissolution of the firm, viz., Mask, and Co., or for a declaration that it has been dissolved and also prayed for taking of accounts on that basis. In the plaint the plaintiffs referred to three receipts executed by them in favour of defendants 1 and 2 on a settlement of accounts upto 1943. Written statements were filed and when the matter was taken up for trial, the lower court by its order dated 2-8-1956 held that the receipts had the effect of releasing defendants 1 and 2 from all their obligations and that therefore there should be a prayer for setting aside the receipts.

In accordance with the directions of the court the plaintiffs filed I. A. No. 525 of

1956 for amending the plaint. They stated that if for any reason the court were to hold that the receipts constituted release of the plaintiffs' claim to the extent to which they were liable to be construed as releases they should be held as not binding on the plaintiffs and also prayed for setting them aside. They further averred that the receipts were never intended to be releases.

The amendment of the plaint was ordered in due course and after the amendment the learned Subordinate Judge took up for hearing the additional issue No. 3, viz., as to whether the suit was properly valued. It is a matter for regret that a suit of the year 1952 should still be at the stage of preliminary skirmishes. On the additional issue the learned Subordinate Judge came to the conclusion that the valuation required revision in two respects : (1) There being three receipts executed by each of the plaintiffs they would form distinct causes of action and therefore should be valued as distinct subjects, and (2) that u/s 7, Clause IV-A of the Court-fees Act, 1870, the proper value of the receipts was the sum mentioned in the receipts together with further interest from 31-3-1949 plus the first defendant's share of the profits. The plaintiffs have filed the above revision petition against the order of the learned Sub-Judge.

2. It is rather difficult to agree with the learned Judge in either of his two conclusions. As stated already the plaintiffs are claiming as heirs of the late Khader Hussain Rowther for accounts in the partnership business which their father had with defendants 1 and 2. The receipts which they gave of which that executed by the first plaintiff--Ex. B. 1 is typical, stated that defendants 1 and 2 and first plaintiff's father were carrying on a business at Panruti under the name and style of Mask and Co., that Khader Hussain died on 23-1-1943 and that after his death for the purpose of "completing the partnership" defendants 1 and 2 and the first plaintiff and others came to an agreement dated 31-3-1943.

It further mentions that in pursuance of this agreement the shares which the heirs of Khader Hussain were entitled to in the amounts due to Khadir Hussain from Mask and Co. were determined upto 31-3-1943 and entries were made in the ledger and that a sum of Rs. 20884-12-4 with interest was found due to the first plaintiff. Ex. B. 1 thereafter mentions certain deductions to the aforesaid amount. After making necessary adjustments a sum of Rs. 12394-5-1 was found payable to the first plaintiff which he received before the Sub-Registrar after executing Ex. B. 1. Ex. B. 1 then acknowledged that the first plaintiff had looked into all accounts and accepted the same as correct and stated

"according to the copy of the accounts given by you a sum of Rs. 11548-1-9 upto 31-3-1950 with the usual rate of interest is due to me. From the said company hereafter no amount is due to me." Exs. B. 2 and B. 3 the receipts given by the plaintiffs 2 and 3 were for lesser amounts but the contents were substantially the same.

3. The receipts no doubt effect a release of the rights of the plaintiffs for amounts due from defendants, 1 and 2. The lower court was, therefore, right in

holding that the plaintiffs should set aside the receipts, Exs. B. 1 and B. 3.

4. The question then to be considered is whether in setting aside Exs B. 1 to B. 3, they should be treated as three distinct subjects or as a single one. It is well settled that the heirs of a deceased partner have a single cause of action against the surviving partners for account. In *Abinsa Bibi v. Abdul Khader Saheb*, ILR 25 Mad. 26, *Bashyam Ayyangar J.* observed at page 32:

"The cause of action for an account and share of the profits of the partnership which Chanda Mean had against his co-partners was only a single and indivisible one and certainly if he had retired from the partnership or if the partnership was otherwise dissolved during his lifetime he could have brought only one suit. On his death his right devolved upon all his heirs in several shares which are regulated by the Muhnmadan law of inheritance. Though as between themselves their lights are several yet so far as the ancestor's debtor is concerned, his obligation is single and cannot be split up without his consent. The numerous heirs of the deceased creditor are only jointly entitled to enforce the right which the deceased creditor, if alive, could singly enforce." from this it is clear that the cause of action of the three plaintiffs as heirs of their father was one and indivisible against defendants 1 and 2. The question then is whether by virtue of each of them executing separate receipts namely Exs. B. 1 and B. 3 the cause of action could be deemed to have been split up. It is clear from the pleadings that there was one account taking and three receipts were part of a single transaction.

It is true that with the privity of the debtors the heirs of the deceased creditor can enter into separate transactions and thereby afford several causes of action, but on a reading of the plaint as a whole it is found that the complaint of the plaintiffs is single and indivisible and they want to set aside the receipts as a single transaction as it deprived them of their full rights to the share of their father. I would therefore hold that the learned Sub-Judge was not correct in holding that there were three separate, causes of action for which the aggregate value of the three causes of action should be adopted.

5. The next question is as to what is the proper value for setting aside Ex. B. 1 to Ex. B. 3. Section 7, Sub-clause IV-A runs as follows:

"In a suit for cancellation of a decree for money or other property having a money value, or other document securing money or other property having such value, according to the value of the subject matter of the suit and such value shall be deemed to be, if the whole decree or other document is sought to be cancelled, the amount or the value of the property for which the decree was passed or the other document executed; if a part of the decree or other document is sought to be cancelled such part of the amount or value of the property." A receipt is *prima facie* not a release but in certain circumstances it can imply a release; in the present case the receipts Ex. B.1 to B.3 expressly say that "from the said company hereafter no amount is due to them", and they have therefore the undoubted effect of the executants giving up their rights. The point

for determination is as to what exactly is the value of the properties secured by the document. In *Scdamma v. Krishnamurthi*, AIR 1938 Mad 824, Venkataramana Rao J. observed as follows:

"What has to be determined for the purpose of deciding the case is as to the correct interpretation to be given to the word "securing" occurring in the section. Briefly the dictionary meaning of the word "secure" is to make safe or to confirm or make certain possession and enjoyment of rights or privileges. An acknowledgment of a right or a liability may in a sense be said to make certain or safe the right or liability acknowledged. But it seems to me to construe the word in that wide sense would work hardship on a litigant and having regard to the scope and object of the enactment it has to be construed strictly A document where a person admits a right of another or acknowledges his liability will not come under this category because it may be open to a party to show that the admission or acknowledgment was under a mistake, that, is, documents which are of evidentiary value and might even estop a party from stating facts contrary to those alleged by him in the document or documents which do not require to be cancelled or set aside. Therefore document or documents which require to be set aside are documents whereby rights are transferred or released such as sales, gifts, leases, mortgages, or releases. Even releasing might sometimes require to be set aside when use rights are in a way transferred thereunder and so long as a deed of release stands it may preclude a party from setting up the alleged release till it is set aside

It seems to me that the document which is sought to be set aside must of itself have secured the property. That is there must have been a conveyance of the said property or a release of the rights thereunder which would operate as an extinguishment of the right of the person conveying or releasing."

6. Therefore in the case of a release the value of the property secured should be the value of the property released and not what is received under the release. This aspect of the matter is made clear in the decision reported in *Doraiswami Reddiar and Others Vs. Thangavelu Mudaliar and Others*, . In that case a mother as the guardian of her minor sons executed a release deed on behalf of the minors for a consideration of Rs. 3461-8-0. A question arose as to the proper value of the suit. Venkatasubba Rao J. observed at page 670 thus :

"What then is the value of the property for which the release deed was executed? It recites that the consideration paid to the plaintiffs' mother is Rs. 3461-8-0, The plaintiff's do not suggest in their plaint that this amount was not in fact paid. Their complaint is that the deed is vitiated by fraud and undue influence and is even otherwise not binding upon them. I am disposed to read the plaint as meaning that their rights which their mother gave up are worth to them much more than Rs. 3461-8-0. At present I am concerned with the plaint as it stands and I cannot help thinking that according to the plaintiffs the property which their mother gave up, that is, their interest in the partnership is worth to them more than the amount mentioned in the deed."

From this it is clear that the value of the property secured is the value of the partnership interest which was given up by the release and not the amount that was actually received as consideration for the release. The same question was considered in *Padma Bivi Ammal Vs. J.M. Mohammad Mohideen Rowther and Others*, . Balakrishna Ayyar J. held that the recital in the release deed that a sum of money had been paid does not secure any money to the plaintiff.

I am, therefore, of the opinion that the plaintiffs cannot be compelled to adopt the consideration recited in the receipts as value of the property released. What is released is not the amount mentioned in the receipt but their further interest in the assets of the partnership or a right to obtain relief by way of accounting. If the receipts are set aside they would be bound to pay back or at least give credit to the sums acknowledged by them to have been received under the receipts and that cannot properly be said to be any properly secured by the documents.

In the case of a release the value of the property released would be the value for purposes of Section 7(IV-A) of the Court-fees Act. The learned Judge was further not correct in saying that not merely the amount mentioned in the receipts but also subsequent interest on the amounts and the share of the profits of the defendants should be included in the valuation. If the receipts were to be set aside the plaintiffs would get only a relief by way of accounting and that right alone they gave up by means of the release under Exs. B.1 to B.3. It is that accounting that has got to be valued and that has been valued already in the original plaint itself.

Though the substantial relief would be the setting aside of Exs. B1 to B.3, the value of the relief would be the same as the consequential relief of accounting for which court-fee has been paid. In the circumstances of the case, I find that the court- fee paid is sufficient. I direct that the suit should be taken up immediately and disposed of without any further delay. This civil revision petition is allowed. Respondent 2 and the legal representative of respondent 1 will pay the costs of the petitioner.