

(1923) 08 MAD CK 0054
In the Madras High Court

Subramaniam Chetty and Others

APPELLANT

Vs

Lakshmanan Chetty and Others

RESPONDENT

Date of Decision : 09-08-1923

Acts Referred:

Citation : 76 Ind. Cas. 670

Hon'ble Judges : Venkatasubba Rao, J;Phillips, J

Bench : Division Bench

Judgement

1. This appeal, which is connected with Appeal Suit No. 340 of 1918 from the same decree, relates to claim put forward by plaintiffs against the A.M. Firm, consisting of the family of appellants. Plaintiffs' father, the first defendant's father and others were members of N.R.M.P. Firm, which deposited a sum of money with A.M. Firm, in which first defendant's father was a partner. The accounts of N.R.M.P. Firm have not been settled. This is a suit to recover plaintiff's father's share of a debt due to his firm by another firm, in which one partner of creditor firm is also a partner. Even if plaintiffs were partners of the N.R.M.P. Firm, this would be an action for a partial account--such a suit will no doubt lie in certain cases, but, as pointed out by the Privy Council in Gopala Chetty Vs. Vijayaraghavachariar, when a suit for an account is barred, a suit for a partial account cannot be allowed merely on the ground that defendant could claim that a general account should be taken, because it would not be fair to drive him to taking an account, which, the law thinks, cannot be properly taken owing to the lapse of time. The principle, which determines the maintainability of a suit for partial account, is laid down in Karri Venkatareddi v. Kollu Narasayya 1 Ind. Cas. 384 : 32 M. 76 : 19 M.L.J. 10 : 4 M.L.T. 456 where it is observed:

2. "The rule leaves it to the Court to determine under what circumstances it would be equitable to order a partial account, having regard to the rights of the parties." We see then that such a suit will only be allowed in cases where it is equitable to do so. Ordinarily, when one partner seeks to make another liable for one single item due to the firm, it would not be equitable to decree such a claim,

when the defendant partner is not allowed to claim other items which may be due by plaintiff to the firm. This applies with additional force in the present case, for, the firm sought to be made liable is a joint family, and it would be inequitable to decree a solitary claim against them, without allowing them to put forward the right of first defendant's father, as a member of the family, to a share of the other partnership assets. If plaintiffs could not bring the suit as partners, a fortiori they cannot bring it as legal representatives of a deceased partner.

3. The Subordinate Judge has found that a suit for dissolution and taking of accounts is barred by limitation; and although this finding is impeached, we think, that the evidence of 6th defendant, coupled with the latter's directing the closing of the business, and the fact that 6th defendant's agency, which consisted only in collections out standings, terminated in November 1910, show that the partnership was dissolved not later than that date.

4. We think, therefore, that this is not a case in which a suit for partial account can be allowed, for it would be most inequitable to do so.

5. The appeal is accordingly allowed and plaintiff's suit dismissed as regards this item with costs throughout.