
(1923) 08 MAD CK 0062
In the Madras High Court

Subramanian Chetty and Others

APPELLANT

Vs

Lakshmanan Chetty and Others

RESPONDENT

Date of Decision : 09-08-1923

Acts Referred:

Citation : AIR 1924 Mad 161 : (1923) 18 LW 613

Judgement

1. This appeal, which is connected with A.S. No. 340 of 1918 from the same decree, relates to a claim put forward by the 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 1st 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 the 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 v. Vijayaraghavachariar* 1922 P.C. 115, 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 Venkata Reddi v. Kollu Narasayya* [1909] 32 Mad. 76, where it is observed:

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.

2. 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 the 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 1st defendant's father, a member of the family, to the share of the other partnership assets. If plaintiffs could not bring this suit as partners a fortiori they cannot bring it as the 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 the 6th defendant, coupled with the latter's directing the closing of the business and the fact that the 6th defendant's agency, which consisted only in collecting outstandings, 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 accounts can be allowed, for it would be most inequitable to do so.

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