

(1942) 01 MAD CK 0018
In the Madras High Court

V. Ramasami Aiyangar and Others

APPELLANT

Vs

S.M.A.M. AR. Arunachalam Chettiar and Others

RESPONDENT

Date of Decision : 15-01-1942

Acts Referred:

Citation : AIR 1942 Mad 478 : (1942) 55 LW 207 : (1942) 1 MLJ 430

Hon'ble Judges : Alfred Henry Lionel Leach, C.J

Bench : Division Bench

Judgement

Alfred Henry Lionel Leach, C.J.—These four appeals arise out of separate suits filed in the Court of the Subordinate Judge of Devakottai.

They all raise the same questions; they were heard together and were decided by the Subordinate Judge in one judgment. It will be convenient to

adopt the same course here; but we propose to deal with Appeal No. 67 of 1939, in the first instance as our conclusions in that case will govern

the decrees to be passed in the other three appeals.

2. Appeal No. 67 of 1939, arises out of O.S. No. 193 of 1936, which was instituted on the 2nd December, 1936. The suit was brought by one

Arunachalam Chettiar, who died before the hearing. In consequence the executors of his will were substituted as the plaintiffs, but at a later stage

the present appellants, the receivers of Arunachalam's estate, were also made plaintiffs, since when they have carried on the litigation. The "suit

was filed to recover Rs. 46,538-6-9, alleged to be due in respect of a sum deposited on the 8th July, 1930, with the Chettiar firm of N. M. S. Rm.

carrying on business at Laijhieu in French Cochin-China. This firm had been formed at Pallathur in this Presidency by the first, second, third and

fourth defendants (first, second, third and fourth respondents), and one

Alagappa Chettiar, who died in 1931. It was formed for the purpose of carrying on business at Laithieu. On the 19th March, 1934, the deposit was renewed. The period was one of ninety days and the money became payable to the depositor on the 17th June, 1934.

3. In order to carry on business in French Cochinchina, registration of the firm was necessary, and for this purpose the third defendant was

declared to be the proprietor. On the 12th March, 1936, the third defendant was adjudicated a bankrupt in Saigon. In their written statement the

first and second defendants denied that they were partners in the firm and averred that the third defendant was the sole proprietor of the business.

The third defendant admitted that the deposit had been made, but pleaded his adjudication in bar. The fourth defendant did not appear and the

case proceeded against him ex parte. The case against the legal representatives of Alagappa was abandoned in the trial Court.

4. On the 24th August, 1938, the first defendant filed an additional written statement pleading that he had paid \$1,10,525 to * the Official

Assignee of Saigon. This sum represented the total liabilities of the firm under French law, calculated in dollars. Admittedly the amount included

what was due in respect of the deposit in suit, with interest calculated up to the date of the adjudication of the third defendant. The Official

Assignee of Saigon had moved the Court for the adjudication of the first and fourth defendants. This application was filed after the adjudication of

the third defendant. The Bankruptcy Court dismissed the application, but on appeal, the Court of Appeal at Saigon held that the first and fourth

defendants were jointly and severally liable "for the debts left by Raman Chettiar as managing partner". At the same time the Court of Appeal was

of the opinion that there was no ground for the adjudication of the first and fourth defendants, nor of the firm. As a result" of this judgment, which

was delivered on the 31st December, 1937, the first defendant was called upon by the Official Assignee of Saigon to pay the \$ 1,10,525 and he

took out process to enforce the demand. Consequently the first defendant was compelled to make the payment. It is his case that the payment

operated to discharge him from all liability in respect of the deposit.

5. The Subordinate Judge considered (i) that the business carried on at Laithieu in the firm name of N. M. S. Rm. did not belong to the third

defendant alone, but was carried on by the first, second, third and fourth defendants and Alagappa in partnership until Alagappa's death; (if) that after Alagappa's death, the business was certainly continued, but he left undecided the question whether the second defendant could be regarded as one of the continuing partners; (in) that the firm's liability in respect of the deposit had been discharged by the payment by the first defendant of the \$1,10,525 to the Official Assignee at Saigon; and (iv) that the adjudication of the third defendant in itself operated as a bar to the suit against him.

6. It is conceded on behalf of the appellants that the contract in respect of the deposit is governed by French law, the deposit having been made in

Saigon in dollars and the money being repayable there in dollars. It is also a common ground that the adjudication of the third defendant in Saigon

took away the right of the depositor's representatives to institute a suit against him. There are, in fact, decisions of this Court directly bearing on the

question *Murugesu Chetti Vs. Annamalai Chetti and Another*, and *A.R.P. Narayanan Chetti and Others Vs. Kana Pana Veeanna Rana Virappa*

Chetti and Others, . The appellants say, however, that they are entitled to maintain the suit against the other partners of the firm as the first

defendant did not pay, the \$1,10,525 to a person who under Indian law could be regarded as the authorised agent of the depositor and therefore

there had in law been no repayment of the deposit. In these circumstances they contend that they are entitled to a decree against the solvent

partners for the full amount with interest to date of suit, calculated in rupees at the rate of exchange ruling on the date when the deposit fell due.

They advance the further contention that even if the money paid by the first defendant to the Official Assignee of Saigon can be regarded as

covering the deposit and interest thereon up to the date of the adjudication of the third defendant, they are entitled to a decree for interest on the

principal sum from the date of the adjudication up to the date of the decree for which they pray.

7. The rights and liabilities of the parties must in all respects be decided according to French law and if the payment made by the first defendant to

the Official Assignee of Saigon operates as a discharge of the liability in respect of the deposit, the suit must fail. In *Swiss Bank Corporation v.*

Boehmische Industrial Bank (1923) 1 K.B. 673, Bankes, L.J., said:

If the debt is situate," or in other words if it is properly recoverable, in this country, then it would be discharged by payment under an order of our

Courts and the garnishee need have no fear of being required to pay it a second time; but if the debt is situate, that is properly recoverable, in a

foreign country, then it is not discharged by payment in this country under an order of the Courts of this country, and the debtor may be called

upon to pay It over again in the foreign country.

In the same case, Atkin, L.J., said:

The plaintiffs having got judgment by an order of the Court now seek to get execution by attaching a debt which to my mind clearly "arises" and ""is

situate"", within the territorial limits of the jurisdiction of the English Courts, if there is any difference between the two expressions. Those Courts

have statutory power to order execution to issue against such property, and by our law, and by the principles of private international law, such

process when executed has the effect of discharging the person who owes the debt thus attached from further liability to pay it.

In delivering the judgment of the Privy Council in *Mount Albert Borough Council v. Australasian Temperance and General Mutual Life Assurance*

Society Limited (1928) A.C. 224, Lord Wright observed:

The proper law of the contract means that law which the English or other Court is to apply in determining the obligations under the contract.

English law in deciding these matters has refused to treat as conclusive, rigid or arbitrary, criteria such as *lex loci contractus* or *lex loci solutionis*,

and has treated the matter as depending on the intention of the parties to be ascertained in each case on a consideration of the terms of the

contract, the situation of the parties, and generally on all the surrounding facts. It may be that the parties have in terms in their agreement expressed

what law they intend to govern, and in that case *prima facie* their intention will be effectuated by the Court. But in most cases they do not do so.

The parties may not have thought of the matter at all. Then the Court has to impute an intention, or to determine for the parties what is the proper

law which, as just and reasonable persons they ought or would have intended if they had thought about the question when they made the contract.

In the present case it is admitted that the contract between the depositor's

representatives and the N. M. S. Em. firm is governed by French law.

On the facts, any other conclusion would not be reasonable. The debt being recoverable in Laithieu and a French Court of competent jurisdiction

having compelled the first defendant to make payment, the appellants cannot ask this Court to make him pay twice over. It is not a question

whether the Official Assignee can be regarded as the authorised agent of the depositor to receive payment. This question does not arise. We

concur in the finding of the Subordinate Judge that the payment must be regarded as a payment in discharge.

8. The plea that the first defendant is liable for interest on the principal sum from the date of the adjudication of the third defendant is on no firmer

basis. The Court of Appeal in Saigon held that the first defendant is only liable for interest up to that date, and the rights and liabilities of the parties

being governed by French law, this decision must be accepted. It has been stated at the Bar that an appeal was filed from the decision of the Court

of Appeal in Saigon to the cour de cassation in Paris, but it is not known whether steps are being taken to prosecute it. In any event until it has

been reversed, the decision of the Court of Appeal in Saigon must be accepted as stating the French law correctly. It may be mentioned that no

attempt has been made to show that the decision of that Court is in any way erroneous. It follows that we concur also in the decision of the

Subordinate Judge that the payment made by the first defendant to the Official Assignee at Saigon must be deemed to operate as a payment in full

discharge. The appeal fails and is dismissed with costs in favour of the contesting respondents.

9. Memoranda of cross-objections regarding the order for costs passed by the Subordinate Judge have been filed by the first and second

respondents. The Subordinate Judge ordered the first and fourth defendants to pay the plaintiffs the court-fee on the plaint and half the pleader's

fee and also directed the defendants to bear their own costs. It is admitted that if the deposit had not been repaid, a suit for its recovery would lie

in the Subordinate Court, although the decision would be governed by French law. When the suit was instituted, the first defendant had not paid

the \$1,10,525 to the"" Official Assignee of Saigon and therefore there was reason for the institution of the suit. In these circumstances we consider

that the order with regard to costs passed by the Subordinate Judge was a proper one. The memoranda of cross-objections will be dismissed with costs, one set.

10. As no different considerations arise in the other three appeals, they must also be dismissed with costs and the memoranda of cross-objections which have been filed there will likewise be dismissed with costs (one set in each appeal).

11. In Appeal No. 106 of 1939, the sons of Alagappa Chetti have been wrongly impleaded as parties because the claim against their father was given up in the lower Court. They will be given separate costs which we fix at Us. 100.