

(1910) 03 MAD CK 0079
In the Madras High Court

Velayuthan Chetti and Others

APPELLANT

Vs

Pillaiyar Chetti and Others

RESPONDENT

Date of Decision : 18-03-1910

Acts Referred:

Transfer of Property Act, 1882 — Section 130

Citation : 9 Ind. Cas. 287

Hon'ble Judges : Arnold White, C.J.;Abdur Rahim, J

Bench : Division Bench

Judgement

1. We think the City Judge is right in holding that the evidence in support of the plaintiff's case is unworthy of credence. If Subraya Chetty had been carrying on a lucrative business in partnership with his father-in-law the 1st defendant, there would have been some sort of accounts forthcoming and the 1st plaintiff who lived in the same house would have been able to give some particulars of the alleged business; further it is difficult to believe that Subraya Chetty should have waited till the day he died to settle accounts with his partner or that he should have been in a position in the very last hours of his life to calculate exactly how much he had saved in the course of several years preceding his death without the help of any account book or notes. Nor can we say that the Judge is wrong in not accepting the story regarding Exhibit A, the draft pro-note. We think the reason he gives for not acting upon the evidence of Nagalinga Chetty and Kesvalu are such as naturally occur to one in regarding the probabilities of the story. Much emphasis was laid by the learned Vakil for the appellants on the fact that the 1st defendant states that when he asked his son-in-law what provision he was going to make for his poor relatives Subraya Chetty asked him to give them the jewels which belonged to his wife who had predeceased him. The 1st defendant says that he did hand over the jewels according to the instructions of Subraya Chetty but the appellants' Vakil argues that this is not true and that the story regarding the jewels had been invented in order to effectually hide the true fact. But we do not see what necessity the defendants were under to put forward a positive case of their own if it was not bona fide. Nagalinga Chetty himself

appears to have instructed the 1st defendant's pleader in a previous litigation to the effect that the jewels were made over to Subraya's relations, though now appearing as witness for the plaintiff, he denies all knowledge of the transaction. Admittedly there were jewels of the value of about Rs. 2,000 which belonged to Subraya and if they are still with the defendants it is difficult to believe that the plaintiffs who are very poor should have omitted to make a demand for them. Then it appears that about a month before the death of Subraya Chetty his father-in-law endorsed in his favour two promissory-notes for about Rs. 4,000. This transaction can only be explained on the footing either that on that date there was a settlement of accounts between the two or that the 1st defendant who was very fond of his son-in-law and maintain him for years made a gift of that money to him. Then it is unlikely that if the 1st defendant owed to Subraya a further sum of Rs. 2,160 no, similar; arrangement should have been made with regard to it or that a well-to-do man like the 1st defendant who was so generous to his son-in-law and even anxious about some provision being made for his poor relatives should think of depriving the plaintiffs of a sum of, Rs. 2,000 and odd which means a great deal to them and is not perhaps of much consequence to the 1st defendant if, in fact, the plaintiffs were entitled to the money. The appeal should, therefore, be dismissed with costs We have dealt with the case on the basis that the so-called agreement has been proved But it struck us in the course of argument that the arrangement relied on by the plaintiffs if made out would have the effect of transfer of an actionable claim within the meaning of Section 130 of the Transfer of Property Act and such a transfer can only be made by an instrument in writing. But the plea was not apparently taken before the lower Court and the learned Vakil for the appellant said he was not prepared to deal with the question.