
(1929) 09 MAD CK 0012
In the Madras High Court

Velliyappa Chetti by Mother and Guardian, Lakshmi Achi
Vs

APPELLANT

Vellayappa Chetti and Another

RESPONDENT

Date of Decision : 18-09-1929

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 16

Citation : (1930) ILR (Mad) 475 : (1930) 59 MLJ 316

Hon'ble Judges : Kumaraswami Sastri, J

Bench : Division Bench

Judgement

Kumaraswami Sastri, J.—These appeals arise out of a suit filed by the plaintiffs, the 1st plaintiff claiming to be the legatee under the will of his grandfather, for an account of the estate and for possession. He also wanted damages for misfeasance and malfeasance of the executors. The executors are defendants 1 and 5 The Lower Court passed a decree in plaintiffs' favour. The 1st defendant's case was that the 5th defendant was managing the estate till his disappearance in 1915 and that his management was merely formal, i.e., "he merely signed in the deposit account and the receipts, Exhibits IV and IV (a).. The 5th defendant was admittedly not heard of for five or six years before the suit, and he is not heard of even now. His son has been impleaded as being a member of the undivided family. The 5th defendant is ex parte. The 6th defendant's mother and guardian, in her written statement, denied that the 5th defendant (her husband) ever took part in the management of the estate. Upon, this, issues were raised and the case went to trial. It was found that the 5th defendant did take part in the management of the estate, that he put in monies and collected monies and that he also sold an item of property in which the testator had a third share. Out of the monies which belonged to the estate

and which were invested, there was a claim in the plaint for Rs. 40,000 against the 7th defendant. This represented monies belonging to the estate

which had been invested. The Subordinate Judge passed a decree for Rs. 40,000 with interest at 6 per cent per annum. In Appeal No. 120 of

1925 we held that the amount in deposit with 7th defendant was not Rs. 40,000 but Rs. 37,100 on the date of the plaint, and we modified the

decree by allowing Rs. 37,100 with interest, as stated above. That money has been paid into Court and there is no question of any loss to the

estate so far as that money is concerned except as regards interest which is the subject-matter of the Appeal No. 257. The Subordinate Judge

found that there was one more item for which the defendants were accountable and this was a sum of Rs. 3,000 proved to have been collected by

the 5th defendant. He allowed that sum with interest at 9 per cent. per annum. As regards that sum, it is not disputed before us that that sum was

collected by the 5th defendant, as that is proved beyond all doubt by the account books filed. What is argued is that the Court should not have

allowed Rs. 3,000 and interest, but that an account should have been directed to be taken and the 5th defendant given an opportunity of proving

certain expenses, which he had incurred for the estate and which he was entitled to credit for. When the case was closed, the 6th defendant put in

a petition saying that certain accounts which showed dealings by 5th defendant with the estate were found behind some vessels in the house and

wanted admission of these books. The Subordinate Judge, in our opinion, rightly rejected the petition. The question raised in Appeal No. 407 by

Mr. Padmanabha Aiyangar is that the Judge ought to have passed a preliminary decree and then sent the case for taking accounts; and he refers to

the Privy Council decision in (1886) L.R. 13 I.A. 123 (Privy Council) and to Mohexh Chunder Bose v. Radha Kishen. Bhattacharjee (1907) 6

C.L.J. 580 Degambar Mozumdar v. Kallynath Roy I.L.R.(1881) C. 654 Rajhunath v. Ganpatji I.L.R.(1904) A. 374 Aydsha-bai v. Ebrahim

I.L.R.(1908) B. 364 Thirukumaresan Chetti v. Subbaraya Chetti I.L.R.(1897) M. 313 and Ram Dass v. Bhagwat Dass (1904) 1 A.L.J. 347 in

support of his view. He also refers in this connection to Order 20, Rule 16, Schedule I of the CPC and Rules 120 to 136 of the Civil Rules of

Practice (Mufussal). There can be little doubt on these "authorities that, ordinarily in a case for an account, even though the defendant may deny his

accountability, the proper course is to pass a preliminary decree and send the case for taking accounts. But, we do not think that it follows that in

every case, irrespective of other considerations, the Court is bound to send the case for taking accounts. Their Lordships of the Privy Council, in

dealing with this point, make a reservation. At page 158 they state:

Their Lordships are not expressing an opinion that in a suit for account it may not appear at the hearing that the issue is so simple and so clearly

raised and met by evidence, as to be ready for decision at that time. But the general rule is the other way.

2. Order 20, Rule 16, also does not make it imperative to pass a preliminary decree apart from any other consideration. All that Rule 16 says is

that a preliminary decree may be passed, where it is necessary, in order to ascertain the amount of money due to or from any party, that an

account should be taken. In the present case we have the fact that so far as the liability of the defendants is concerned it is Rs. 40,000 which was

claimed and ultimately decreed, not having been disputed by the 7th defendant except as to Rs. 3,000 and odd which he says was not deposited.

His solvency was not disputed and he has paid the sum due into Court. The only question between the executors and the plaintiff was whether the

Rs. 3,000 was collected. As regards a sum of about Rs. 780 which was got by the sale of the village, that there was a sale deed and that the

amount was received is not disputed. The plaintiff will be entitled to a half of that amount. As regards the Rs. 3,000 as we have said before, it is

proved beyond all doubt, and it is not denied before us, that that sum was collected by the 5th defendant. Therefore, when the case came up for

disposal, there was the Rs. 3,000 proved to have been collected and no denial in the written statement that the amount was ever collected. No

statement was made that any expenses were incurred, nor did the 6th defendant ask the Judge at that stage to allow the expenses he had incurred

in connection with that item. The petition to file account books said to have been discovered behind some brass vessels was rightly rejected. It

therefore comes, in our opinion, in the category of cases which the Privy Council describes as cases, where the facts are so simple that the taking

of accounts will be unnecessarily lengthening the proceedings without any benefit to the parties. It may be more complicated, if, in (the connected)

Appeal No. 257, the appellants insist on the usual procedure being adopted by reason of other items being charged. But their counsel does not want the case to be sent back for a preliminary decree being passed. In these circumstances, we do not think it is necessary to send the case back for a preliminary decree being passed, which will only mean unnecessary lengthening of the proceedings without any material benefit to anybody...The result is that Appeal No. 407 will be dismissed with costs.