

(1938) 01 MAD CK 0047
In the Madras High Court

Vr.L.Vr.S. Pethaperumal Chettiar (deceased) and Others

APPELLANT

Vs

V.Al.V. Ramaswami Chettiar and Others

RESPONDENT

Date of Decision : 26-01-1938

Acts Referred:

Citation : (1938) 2 MLJ 505

Hon'ble Judges : Venkatasubba Rao, J

Bench : Division Bench

Judgement

Venkatasubba Rao, J.—We have heard Mr. Venkatarama Aiyar fully and do not propose to call upon the respondents. The plaintiff-appellant complains that he is not bound by the arrangement evidenced by Exs. A to F, the outcome of a settlement entered into between himself and the first defendant (defendants 2 and 3 are the brothers of the latter and need not be specially mentioned), on the ground that it is vitiated by undue influence and coercion. The facts are fully set out in the lower Court's judgment, which we do not propose to recapitulate. The material facts which need be stated are these. The fourth defendant is the mother of the plaintiff and aunt (mother's sister) of the first defendant. At the time of the death of the plaintiff's father in 1918 there was a partnership which was being carried on. The first defendant and his brothers were partners in that firm entitled to a certain share. The plaintiff's father was a sub-partner possessing a fractional interest in the last mentioned share. The business of the firm was continued subsequent to the death of the plaintiff's father. There was some other concern belonging to the deceased father, which after his death passed into the hands of the defendants' family. The plaintiff was living with his mother, who dealt with his estate and had various sorts of dealings with the first defendant. There was a promissory note outstanding, which had been executed by her on the 11th August, 1927, in his favour. The plaintiff came of age on the 31st July, 1930, and the settlement in question took place on the 9th August of the same year. The first defendant required the plaintiff to renew the promissory note which was about to get barred and said that if his request was not complied with, he had no alternative but to file a suit upon it. It was at this juncture that

the settlement in question took place. There were then several accounts, to be settled between the parties. The plaintiff owed the first defendant, besides the amount due on the promissory note mentioned above, other sums also. That the amount due by him in the aggregate was about Rs. 40,000 is not denied. There were amounts payable to the plaintiff's estate by the first defendant not only in respect of the partnership to which reference has been made, but also under other headings. The settlement proceeded upon the ground that the amount payable to the plaintiff and the amount payable by him should be set off, one against the other, that in addition the first defendant should pay the plaintiff a sum of Rs. 1,000 and that the account should be treated as finally closed. Mr. Venkatarama Aiyar contends that such a settlement cannot be held binding on the plaintiff. The positive case set up of undue influence and coercion does not require serious notice. The question then for decision is, whether in view of the situation of the parties and by reason of the accounts not having been investigated, the plaintiff becomes entitled in law to impeach the transaction. There are two things to be said in favour of the plaintiff. First he had just attained the bare age of majority and transactions with persons of that sort are jealously watched by the Courts, and secondly the parties stood in fiduciary relationship, as there was undoubtedly a duty cast on the first defendant (who occupied the position of a surviving partner) to make a full disclosure of the state of the account. Where fiduciary relation is established, it is settled law that the person in fiduciary position should affirmatively prove that the weaker party was a free agent and had independent and disinterested advice. That the plaintiff had just come of age is, as stated above, another factor, which also makes it necessary to go into the question whether he had such protection as to secure to him a free and unfettered judgment, independent of any sort of control (see the judgment in the case decided by one of us in *Narayana Doss Balakrishna Doss Vs. Buchraj Chordia Sowcar and Others*, .

2. That the plaintiff had competent and independent advice cannot be denied. He was assisted by three experienced men of his community (one of them being his brother-in-law and the other two his dayadis), who intervened on his behalf and in his interest. They are euphemistically termed " mediators ", but that they were intent upon safeguarding his interests alone there can be no doubt. There was a fourth person interested in the plaintiff, who also joined in the discussions which led to the settlement. The plaintiff's mother was near the spot where the negotiations took place and was consulted. It has also been abundantly proved that there was neither importunity nor persuasion on the part of the first defendant; on the contrary, he was prepared to produce the accounts and wanted some little time but the plaintiff and his advisers would brook no delay. The plaintiff though young, was, as the lower Court points out, very shrewd and what is more, there was a secret understanding between him and the so-called mediators, that once his indebtedness was wiped out as the result of the documents that were to come into existence, he should repudiate the arrangement and file a suit claiming an account. That the plaintiff has not come

to the Court with clean hands, is a part of his own case as the secret understanding is set up by him in his plaint. Of the three mediators one died before the trial and the remaining two were examined for him and admit that they gave this dishonest advice to the plaintiff.

3. On these facts it is perfectly clear that the settled account cannot be re-opened. As stated by the Judicial Committee:

If... persons meet and agree not to ascertain the exact balance, but agree to take a gross sum as the balance; a sum which one is willing to pay and the other is content to receive... it is obvious that the production of vouchers is entirely out of the question.. for the very object of the parties is to avoid the necessity for producing these vouchers". *Henry McKellar v. John Wallace* (1853) 5 M.I.A. 372 .

4. This is precisely what happened here. The plaintiff dispensed with the production of the accounts, and agreed after taking competent advice to receive a gross sum in lieu of the amounts that might be found payable to him. That the right to disclosure can be waived is quite clear. The plaintiff in effect stated:

I do not wish that there should be a prolonged scrutiny of the longstanding accounts. I want the sum payable to be fixed at once in the presence of the mediators and I am prepared to take it in lieu of what is due to me.

5. Having done this, he can no longer repudiate the arrangement and claim that the settled account should be re-opened *Law v. Law* (1905) 1 Ch. 140. That the plaintiff had excellent reasons for having chosen this course, is perfectly clear. There were questions of very doubtful nature (as the evidence shows) which could have been raised, and his advisers rightly thought it more prudent to enter into a settlement than litigate in a Court of law.

6. The learned Judge in the Court below in his lucid judgment has discussed the matter fully and has applied to the facts found, the right principles of law. The appeal fails and is dismissed with costs.

7. There is one matter which requires special mention. For the Rs. 1,000 payable to the plaintiff under the settlement, a hundi was passed to him, which he thought fit not to cash, owing to the attitude adopted by him. Before we pronounced judgment Mr. Patanjali Sastri has intimated that his clients defendants 1 to 3 are prepared to pay the amount due under the hundi, and we record that undertaking. The amount payable under the hundi will go in reduction of the costs payable to the respondents. The amount of costs and the amount due under the hundi will be set off one against the other and only for the balance due either party will be liable.