

PRIVY COUNCIL

R.M.K.R.M. Somasundaram Chetty

Vs.

M.R.M.V.L. Subramanian Chetty
(Viscount Haldane Lords Atkinson and Darling JJ.)

05.07.1926

JUDGMENT

LORD ATKINSON J.

1. This is an appeal from a judgment of the Court of appeal of the Supreme Court of the Straits Settlements, dated the 22nd September 1924, dismissing the appeal of the defendants in two consolidated suits against the judgment of the Supreme Court of the Straits Settlements, dated the 26th May 1924.

2. The principal questions in this appeal are whether the respondents (the plain tiffs in the consolidated suits,) are precluded from recovering judgment in the second suit (viz., Suit 1923, No. 570) by reason of the judgment recovered by them in the first suit (viz. Suit 1923, No. 120) and whether, there was jurisdiction in the consolidated suits to set aside the judgment in the first suit (viz., Suit 1923, No. 120).

3. The appellants and the respondents are money-lenders carrying on business in Penang ; the respondents (plaintiffs) under the vellasam or mark of M. R. M. V. L. and the appellants (defendants) under that of R. M. K. R. M. The defendant firm is owned by one Rameswamy Chetty, of Palavangudy, Ramnad District, Southern India. It is the practice for such firms to carry on their business through an attorney and agent and to describe and style the firm by its vellasam or mark coupled with the name of its Penang agent for the time being. Subramanian Chetty was at all material times the attorney and agent of the plaintiff firm and A. N. S. Somasundaram Chetty the attorney and agent of the defendant firm.

4. The relation in which these attorneys or agents, when engaged in a money-lending business, stood to their principals, whether the latter were individuals or firms, their functions and powers, are well and authoritatively described by Mr. Justice Berrett-Lennard in his judgment delivered in this case in the Court of appeal on the 22nd

September 1924. He said :

First, when a local representative of a Chetty firm carries on the business under the vellasam (i. e., the letters) of the firm coupled with his own distinct name, the announcement to the external world in general is that, whether a copartner with, or a mere agent of, other persons, he is to be looked upon as a principal. It is to be noted that the vellasam of a firm is not its full style. Next, a local representative of the type described does not label himself as simply an agent. He regularly sues as a principal on mortgage deeds, bills of sale and promissory notes. The title of his co-partners or principals to immovables granted in form to him is never abstracted or otherwise shown on the occasion of any sale or qualified disposition. The rights of his principals or co-partners are in truth behind the curtain, much to the disadvantage of the Government.

5. Mr. Jowitt contended, in the clear and forcible argument he addressed to the Board on behalf of the appellants, that in reality in the money-lending business in Penang, the vellasam of a firm coupled with the name of a local representative, whether in fact partner, attorney or agent, merely meant to inform the public that this named person was then conducting the business of the local branch of the firm.

6. On the 27th February 1923, a writ of sommons was issued in a cause (Suit 1923, No. 120) at the suit of M. R. V. L. Subramanian Chetty against R. M. K. R. M. Somasundaram Chetty, claiming a sum of \$ 7,40,000 described as "balance principal of current account," and, interest from the 28th August 1922, to the 27th February 1923, at \$ 125 per \$ 100 per mensem as per Chetty's current account.

7. The writ was served personally on Somasundaram Chetty, who, on the 14th March 1923, entered an appearance in person not by solicitor running thus :

Enter appearance for R. M. K. R. M. Somasundaram
Chetty..... Signed R. M. K. R. M. Somasundaram
Chetty, defendant.

8. On the 19th March 1923, a summons was taken out by G. E. Wright Motion, solicitor for the plaintiff, addressed to R. M. K. R. M. Somasundaram Chetty, requiring the latter to appear before the Registrar in Chambers on Friday, the 23rd March 1923, at 11 o' clock in the forenoon on the hearing of an application on the part of the plaintiff for an order under Section 208 of the Civil Procedure Code for leave to sign final judgment against the defendant for the sum of \$ 7,798, being the amount of balance, principal and interest, due on current account as endorsed on the writ of

summons. Notwith standing the appearance entered by the defendant in person and costs to be taxed.

9. That application was supported by the affidavit) of M. R. M. V. L. Subra manyam Chetty, who swore that the defendant was justly indebted to him (presumably under that description) in the sum of \$ 7,298,60, described as being the amount of the balance for principal and interest due on current, account. Then R. M. K. R. M. Soma sundaram Chetty, by his solicitor Mr. Lim Cheng Ean, took out a summons for further particulars of the plaintiff's claim. This summons was supported by the affidavit of the defendant, in which he denied being indebted to the plaintiff in the sum claimed and further denied ever having agreed to pay interest at the rate of \$ 125 per \$ 100, or that such a rate of interest was payable on Chetty's current accounts. On the 28th March 1923, an order was made by Mr. H. G. Sarwar, the Registrar, to the effect that the plaintiff was at liberty to sign judgment against the defendant for the sum of \$ 7,400, with costs, and that the defendant was at liberty to defend is to the balance. The defendant never did defend as to the balance, possibly be cause he was superseded in his office, but the result apparently was that in Suit No. 120 judgment was signed for the original capital sum of \$ 7,400. The person who was the principal of the business of which Somasundaram was the attorney, was named Ramaswamy Chetty, R. M. K. R. M. being his firm.

10. On the 10th April 1923, M. R. M. V. L. Subramaniam Chetty commenced proceedings in bankruptcy, founded on his judgment of the 28th March 1923, for \$ 7,400 and costs by issuing a notice directed against Ramaswamy Chetty and his firm R. M. K. R. M., but entitled as against R. M. K. R. M. Somasundaram Chetty, and by a bankruptcy petition dated the 15th May 1923, sought to get a receiving order and an order of adjudication against Ramaswamy Chetty. There could be no more effectual way of treating the judgment in Suit No. 120 as a valid judgment than thus making it the basis of bankruptcy proceedings. On the 18th June 1923, Mr. Justice Sproule, by his order, set aside this bankruptcy notice on the ground that the service of it was defective. The plaintiff entered an appeal against this order, buff did not prosecute the objection. The plaintiff in the Original Suit No. 120 then issued a fresh bankruptcy notice against R. M. K. R. M. Somasun daram Chetty, but had it directed against Ramaswamy and his firm, and obtained an order for substitution of service of the notice on Ramaswamy's attorney in Penang.

11. The application was one to set aside this bankruptcy notice on the ground (inter alia) that the judgment of the 28th March 1923 (i. e., Suit No. 120). upon which the

bankruptcy notice was based, was a judgment against Soma sundaram Chetty, and not against the firm R. M. K. R. M. or its sole proprietor Ramaswamy Chetty. On the 13th July 1923, by an order of that date, Mr. Justice Sproule dismissed this application. On appeal the Court of appeal allowed the appeal, reversed the order of Mr. Justice Sproule of the 13th July 1923, set aside the order allowing substituted service of the bankruptcy notice and declared that Ramaswamy Chetty had not committed any act of bankruptcy. The importance of these proceedings lies in this, that the foundation on which they were based is the judgment signed in Suit No. 120 for the capital sum of \$ 7,400, and the persistent effort of the plaintiff in that suit has been to enforce that judgment as a valid and binding legal adjudication.

12. There could be no more emphatic way of asserting its validity.

13. On the 5th September 1923 an action was commenced by a specially endorsed writ of summons in Suit No. 550, by the firm M. R. M. V. L. against the firm R. M. K. R. M., claiming to recover not only the principal sum of \$ 7,400, for which a judgment had been already recovered in Suit No. 120, but interest calculated at \$ 125 per \$ 100 per mensem, amounting in the whole to \$ 8,376,40. Ramaswamy, who carries on business at Penang under the mark R. M. K. R. M., entered an appearance and required a statement of claim to be delivered to him. A summons was, on the 17th September 1923, taken out by the plaintiff firm under Section 208 of the Civil Procedure Code, requiring the parties concerned to appear before the Registrar in Chambers at 10 o'clock on the morning of the 24th September 1923, on the hearing of an application on the part of the plaintiff, calling on the defendant firm to show cause why final judgment should not be entered against them for the sum of \$ 8,376,40, being the amount endorsed on the writ for balance of principal and interest and costs. This summons was supported by an affidavit made by Subramanian Chetty describing himself as attorney of the plaintiff firm who proved the debt claimed. This summons was opposed on an affidavit of one S. S. Subramanian Chetty, who described himself as the attorney of R. M. K. R. M. Ramaswamy Chetty. The deponent denied that the defendant firm was indebted to the plaintiff in the sum of \$ 8,376,40, or any part thereof and then added the following statement :-

14. I am informed and verily believe that in Suit 1923, No. 120 the said M. R. M. V. L. Subramanian Chetty, the attorney of the plaintiffs above named, sued the said R. M. K. R. M. Somasundaram Chetty in person claiming a sum of \$ 7,400 (besides interest thereon) as the balance of principal due from him on current account and on the 28th day of March 1923, recovered a judgment for the said sum of \$ 7,400 and

costs personally against R. M. K. R. M. Somasuadaram Chetty and that proceedings to enforce the said judgment were issued against the said R. M. K. R. M. Somasundaram Chetty. In this action the plaintiffs claim the same amount of \$ 7,400 (besides interest thereon) as balance of principal due to them on the same our rent account and seek to recover another judgment on the same claim against the defendant firm.

15. I am advised and verily believe that the defendants have a good defence to this action. By summons dated the 17th September 1923, the plaintiffs applied for judgment in' the Suit 1923, No. 550. Upon the hearing of the summons the Registrar gave leave to defend. The plaintiffs appealed to the Judge against the order giving leave to defend, and on the 1st October 1923 issued a summons in Suit No. 120 for an order that the judgment in that suit be set aside on the ground, as stated in the summons.

16. That it has been held by the Court of appeal (in the bankruptcy proceedings) to be judgment against Somasundaram Chetty personally which the plaintiff never asked for and on which there was no adjudication.

17. On the 5th October 1923 a summons was taken out by the plaintiff's solicitor (who was also the solicitor of A. N. S. Somasundaram Chetty, who had been the attorney of the defendant firm in Penang until May 1923, when his power of attorney was cancelled) requiring the parties interested to appear before the Court in Chambers on the 8th October, 1923 on the hearing of an application on the part of the plaintiff for an order that Suit 1923, No. 120, between M. R. M. V. L. Subramanian Chetty and R. M. K. R. M. Somasundaram Chetty might be consolidated with Suit 1923, No. 550, and that the action might thenceforth be carried on as if they were one action, and that all necessary and proper directions might be given as to the conduct and carriage thereof, and that the costs of the parties in the actions, including the costs of that application, might be costs in the consolidated actions. The application was adjourned into Court for argument and came on for hearing on the 8th October 1923, before Mr. Justice Sproule who granted the application asked for, that Suits No. 120 and No. 550 should be consolidated and be thenceforth carried on as one suit. But strange as it may appear, while these proceedings for the consolidation of the two suits were taking place, the earlier proceedings were also taking place : first, an application by the plaintiff in Suit No. 120 to set aside the judgment signed in that suit, and, second, an appeal by the plaintiff in Suit No. 550 from an order of the Registrar made on the 24th September 1923, granting the defendant liberty to defend. The questions involved

were fully argued on three occasions, and it was ultimately ordered that the summons and appeal should stand for judgment, and same standing for judgment it was, on the 12th October 1923, ordered that the appeal should be dismissed and be dealt with on the trial of the consolidated actions, and that the costs be reserved to the trial. So that not only is the impeached judgment made the basis of active bankruptcy proceedings, but its existence is prolonged until the termination of the consolidated actions, and its validity is to be in that suit determined.

18. Legal judgments cannot be treated as mere counters in the game of litigation. They are serious pronouncements, for the most part by the judicial officer of the State, touching the rights of disputes of subjects, bringing home to those subjects what the rules of justice required and are enforceable, if need be, by the forces of the State. Moreover, when once pronounced, they cannot be lightly set aside.

19. It may perhaps (be there is no proof of it) that the parties to Suit No. 120 were under the impression that the result of suing and being sued in the names of their respective attorneys of their respective firms (their principals) would be the same as if the firms themselves were the parties litigant, but that is not the kind of error, if it be an error, which vitiates a judgment regularly pronounced. Certainly it does not suggest that this error existed when one sees the judgment.

20. The statement of claim in the consolidated actions was delivered on the 16th November 1923, and the defence of Ramaswamy Chetty was delivered on the 6th December 1923. The first is a very lengthy document ; but the following facts are not really in controversy : first, the causes of action in Suits No. 120 and No. 550 are the same - a debt of 17, 400 owed to the same firm, a balance on current account (the fact that interest was claimed in the latter suit cannot alter matters.) Second, that the judgment in Suit No. 120 only bound Soma sundaram, the attorney of the firm R. M. K. R. M., personally. Paras. Nos. 26 to 31, inclusive of the statement of claim, contain apparently the only comments which, it is alleged, tend to show that the plaintiff, in instituting the suit, was mistaken, or misled, or fell into error.

21. It is stated that the people in Penang knew well the meaning of R. M. K. R. M. Somasundaram Chetty and knew that all transactions effected in his name were transactions with, and were binding on, the firm, and were not personal transactions of the attorney. This is precisely what the Chief Justice has held is not the position. It is then averred that Ramaswamy Chetty held out A. N. S. Somasundaram Chetty as his authorised agent and attorney to do business on behalf of his firm, and that

Ramaswamy authorised his attorney to open the accounts which resulted in the debt sued for. In the statement of claim it is averred that R. M. K. R. M. Ramaswamy Chetty and A. N. S. Soma sundaram Chetty were not joint contractors, nor was the latter a partner in the firm R. M. K. R. M. and the judgment signed sub nomine R. M. K. R. M. was not a bar to judgment being given against R. M. K. R. M. Ramaswamy Chetty ; that the judgment dated 28th March 1923, i.e., the judgment in Suit No. 120, was bad and void in law and should be set aside ; that this judgment was not and was never intended to be signed against A. N. S. Somasundaram Chetty personally, or against anyone except the firm R. M. K. R. M.; that A. N. S. Somasundaram Chetty is a per son, but R. M. K. R. M. is merely a trading name and has no personal existence at all ; that A. N. S. Somasundaram Chetty is a person and was not sued as a defendant in that suit, and he is not bound by it. Most of these averments are flatly contradicted by the documents in the case. Somasundaram Chetty, was sued in the case as R. M. K. R. M. Somasundaram Chetty, which on the admitted facts means that this latter per son was attorney or agent or partner of the firm indicated by the letters R. M. K. R. M. That is abundantly proved.

22. These two judgments which were signed in Suits No. 120 and No. 550 were both based on the same cause of action and directed against the agent of a firm and the other against the firm itself and cannot in law co-exist in valid and effective force. In *Kendall v. Hamilton* the Lord Chancellor stated with fullness and characteristic accuracy the law upon this point. At page 514 he says :

Now I take it to be clear that where an agent contracts in his own name for an undisclosed principal the person with whom he contracts may sue the agent or he may sue the principal ; but if he sues the agent and recovers judgment he cannot afterwards sue the principal, even al though the judgment does not result in satis faction of the debt.

23. If any authority for this proposition is needed, the case of *Priestly v. Fernie 3 H. and C.* may be mentioned. The reasons why this must be the case are, their Lord ships think, obvious.

24. It would be clearly contrary to every principle if a creditor who has seen and known and dealt with and given credit to the agent should be driven to sue the principal if he does not wish to sue him, and, on the other hand, it would be equally contrary to justice that the creditor, on discovering the principal who really has had the benefit of the loan, should be prevented from suing him if he wished to do so. But it would be no less contrary to justice that the creditor should be able to sue first the

agent and then the principal when there was no contract and no intention of any of the parties that he should do so. Again, if an action were brought and judgment recovered against the agent, then the agent would have a right of action for indemnity against his principal, while if the principal was liable also to be sued he would be vexed with a double action. Further, if actions could be brought and judgments recovered against the agent and afterwards against the principal there will be two judgments in existence for the same debt or cause of actions. They might not necessarily be for the same amounts, and there might be recoveries had or liens and charges created by means of both, and there would be no record on the face of the judgments, or any means short of a fresh proceeding, of showing that the two judgments were really for the same debt or cause of action, and that satisfaction of one was or would be satisfaction of both.

25. The case of *King v. Hoare* 13 M. and W. 494 J. Ex. 29, was approved of by the Lord Chancellor and Lords Hatherley, Penzance, O' Hagan Selborne, Blackburn and Gordon, and applied by each to the facts of the case, with the exception of Lord Penzance who held that the rule laid down in *King v. Hoare* was only a rule of law and that since the Judicature Act of 1873 the rule of equity as to such matters had superseded the law. The other noble Lords delivered judgment in practical agreement with that of the Lord Chancellor, and it was decided that an action and judgment against two persons who had borrowed money from the plaintiffs (though the judgment be unsatisfied) constitute a bar to another action brought by the same plaintiffs against a third person who was afterwards discovered to have been interested as a partner with the two debtors in the business for the purposes of which the money was borrowed. In Vol. 1, p. 209, of Halsbury's Laws of England, in paragraph 445 one finds a paragraph supported by the authorities referred to which expresses accordingly the law on the point. It runs thus :

Where, however, the other contracting party, whether in ignorance of the principal's existence or not, obtains a judgment against the agent *Kendall v. Hamilton (Supra)* or though he knows at the time when the contract is made or discovers afterwards who the real, principal is, elects to look to the agent to the exclusion of the principal the principal is discharged from liability and his liability cannot be revived, such election is conclusively proved by obtaining judgment against the agent even for part of the claim. *Dunn v. Newton I. C. and E. 278* ; *Addison v. Gandasqui 4 Taunt 374* : *13 R.R. 689*; *Priestly v. Fernie (Supra)* ; *Peterson v. Gandasqui 15 East 70*; *Morel v. Earl of Westmoreland,*

26. It may possibly be, but it is not proved in evidence, that the plaintiff in Suit No.

120, the attorney, agent or partner of or in the firm of M. R. M. V. L., was under the impression that he could obtain a judgment for \$ 7,400 against the defendant the attorney, agent or partner of or in the firm of R. M. K. R. M. which would not merely be a personal judgment against the attorney or agent but a judgment against the defendant attorneys' firm. If the plaintiff attorney was under that impression it was wholly due to his ignorance of the law, and it is because he instituted and prosecuted to judgment Suit No. 120 in that state of ignorance that he or his principal now claims to have this judgment set aside. No fraud was practiced upon the plaintiff in that suit, or his principal ; no false representation was made to them ; no inducement held out to the agent to sue in the way he did ; and no misleading steps were taken or acts done with the consent of the defendant attorney or his principal. It appears to their lordships that the claim to have this judgment set aside resembles very much the case of a litigant who, with erroneous and exaggerated notions of his rights, brings an action to enforce those rights as he understands them and is beaten because the Judge comes to a wholly different conclusion as to the extent of those rights and directs judgment to be entered against him, and then the defeated litigant applies to have this judgment set aside because he had mistakenly formed an extravagant opinion of his own rights which misled him into litigation.

27. It is, of course, open to the plaintiffs, both attorney and principal, to bring an action to have the judgment entered up in Suit No. 120 set aside. They do not take that course ; they apparently want to have it set aside by motion. It is not necessary to cite on this point any authorities in addition to *Ainsworth v. Wil ding* Romer, J., in giving judgment in that case, said at page 676 :

The Court has no jurisdiction after the judgment at the trial has been passed and entered to rehear the case. Formerly the Court of Chan cery had power to rehear cases which had been tried before it even after decree had been enter ed, but that is not so since the Judicature Acts. So far as I am aware the only cases in which the Court can interfere after the passing and entering of the judgment are these (1) where there has been an accident or slip in the judgment as drawn up, in which case the Court has power to rectify it under Order 28, Rule 11 and (2) where the Court itself finds the judgment as drawn up does not correctly state what the Court actually decided and intended.

28. He points out that he is not dealing with cases where the Court acts with the consent of the parties. Cotton, L. J., *In re Swire* 30 Ch. D said :

It is only in special circumstances that the Court will interfere with an order

which has been passed and entered except in cases of a mere slip or verbal inaccuracy, yet, in my opinion, the Court has jurisdiction over its own records, and if it finds that the order as passed and entered contains an adjudication upon that which the Court in fact never has adjudicated upon, then in my opinion it has jurisdiction which it will, in a proper case, exercise to correct its record that it may be in accordance with the order really pronounced. Lindley, L. J., said :
If it be once made out that the order whether passed and entered or not does not express the order actually made, the Court has ample jurisdiction to set that right, whether it arises from a clerical slip or not.

29. and Bowen, L. J., said :

An order, it seems to me, even when passed and entered may be amended by the Court so as to carry out the intention and express the meaning of the Court at the time when the order was made, provided the amendment be made without injustice or in terms which preclude injustice.

30. These authorities may not directly apply to the present case, since it is not contended that the form of the judgment in Suit No. 120 is different from what it was intended to be. The weakness of the respondent's case appears to their Lordships to consist mainly in this, that there is no evidence whatever that Subramanian Chetty was under any mistake or misconception whatever in instituting Suit No. 120, as to the form in which it was instituted, neither was there, any evidence that the two attorneys believed that their two principals were by their description made parties litigant to the suit.

31. Their Lordships are therefore of opinion that the order appealed from was erroneous and should be set aside, and that judgment should be entered for the appellants with costs here and below, and they will humbly advise His Majesty accordingly.

Appeal allowed.

Cases Referred.

4 A. C. 504 : 48 L. J. C. P. 705 : 41 L. T. 418 : 28 W. R. 97

977 : 34 L. J. Ex. 173 : 13 W. R. 1089

: 2 D. and L. 382 : 14 L.

[1904] A. C. 11 : 73 L. J. K. B. 93 : 89 L.T. 702 : 52 W. R. 353 : 20 T. L. R. 38.

[1896] 1 Ch. 673 : 65 L. J. Ch. 432 : 74 L. T. 193 : 44 W. R. 540

. 239 : 53 L. T. 205 : 33 W. R. 785