PRIVY COUNCIL

Sathappa Chetty

Vs.

S.N. Subrahmanyan Chetty

Privy Council Appeal No. 46 of 1924
(Lords Phillimore Darling, Mr.Ameer Ali and Sir Lancelot Sanderson JJ.)

14.02.1927

JUDGMENT

LORD PHILLIMORE J.

1. The contention of the appellants has been ably put before their Lordships; but in their view it fails.

2. In this case five Chetti families formed, in April 1902, an oral partnership at Will for the purpose of conducting a banking and money-lending business in Burma, they being themselves resident on the continent of India. The plaintiff and his children formed one of the families and it will be convenient to treat the representative held as the single party in the judgment which their Lordships are giving. He held six and a half out of ten shares. Only 30,000 rupees were paid in as capital; but it was one of the terms of the arrangement that the plaintiff should be called upon and be prepared to lend further sums at a specified rate of interest. Business was carried on by agencies and the first agent was one of the partners, the third defendant. He did not manage well and by 1907 there had been very great losses. After that time very little money-lending business was done; it gradually diminished and finally ceased, other agents being appointed, whose principal occupation was to get in the debts. The plaintiff advanced very considerable sums of money and it is obvious and had been obvious for a considerable time that, if and when the partnership came to an end, or whenever it should come to an end, the only question would be how much the defendants would have to pay to the plaintiff. It is quite clear that there will be a considerable loss. It is quite clear that the plaintiff will not get back a great portion of his advances. He will himself have to contribute six and a half shares out of the ten shares of the loss, but he will be entitled to something more or less, unless he is barred by the Limitation Act,

from the other defendants.

3. On 3rd January 1910, the present plaintiff and the first defendant sued the third defendant, making the other partners also parties, to recover the loss which his mismanagement was supposed to have produced. He set up that it was a partnership matter and that nothing could be determined against him until the accounts of the partnership were taken, and the Subordinate Judge agreed with him on 5th December 1911, and dismissed the suit. The High Court affirmed this and dismissed the appeal on 21st January, 1915.

4. On 6th March 1917, the plaintiff instituted the present suit against his four other partners and their sons, claiming a dissolution of partnership and accounts and consequential relief, including a Receiver to get in such assets, if any, as are still outstanding.

5. The defense raised two points one which can be disposed of at once that there was a partner called Neelamegam, who was a necessary party to the suit. The Subordinate Judge thought he was; the High Court thought he was not; that he was not in partnership as a member of the firm, but possibly in a superior partnership of which he was one side and the whole firm as a unit was the other side. In their Lordships' view that is right and that settles the question; he is no necessary party to an internal suit between the five members of the unit which formed the partnership with him.

6. That leaves the question of the Limitation Act. In the view of the Subordinate Judge this partnership had been dissolved considerably more than three years before the date of the institution of the present suit. In their Lordships' view this was not so; in their view there never had been any dissolution until the plaintiff, by the present suit, by his writ and plaint claiming dissolution, intimated his will to dissolve which of itself is enough to put an end to a partnership at will. Their Lordships think that the Judges of the High Court were right. It is clear that up to some stage in the previous suit the parties ware urging, and successfully urging, that the partnership was still subsisting. On one view that may be said to be the case up to the date of the appeal judgment in 1915, which if so is within the period of limitation; but, even if that view be not taken, there is no definite date upon which the defendants can put their fingers successfully as a date at which the partnership was dissolved, and, when their Lordships come to consider the business which lies at the root of the whole matter, it stands in this way: The plaintiff ought at some time or other to recover some moneys from the other parties. If the partnership was put an end to some years ago his rights arose then and

either the parties ought at once to have contributed such a sum as would make up to him his share of the loss, or they ought to have in some way disposed of the remaining assets and than met the remainder of the loss by their contributions. But no one at the time suggested this. On the other hand they were entitled to say to the plaintiff :

> "Until all the assets are realized we cannot tell how much we owe to you, and we claim not to pay you anything until all the assets, are realised.

7. If so, for that purpose the partnership went on; it went on, not because it would do any more business, until those assets were realizad, the final dissolution of the partnership could not take place. For this and for the other reasons given by the learned Judges in the High Court their Lordships are of opinion that their decision was right, and they will humbly advise His Majesty that this appeal be dismissed with costs. The judgment of the High Court, remitting the case with directions to the Subordinate Judge in the circumstances appears to their Lordships to be the right one.

Appeal dismissed.