

## **PRIVY COUNCIL**

Al. Vr. St. Virappa Chettiar

Vs.

Periakaruppan Chettiar

P.C.A.No.15 of 1943

(Lord Porter, Lord Goddard and Sir Madhavan Nair JJ.)

17.10.1944

### **JUDGMENT**

#### **SIR MADHAVAN NAIR J.**

1. This is a consolidated appeal from a decree of the High Court of Judicature at Madras dated 21st October 1940, which modified a decree of the Subordinate Judge of Coimbatore dated 26th March 1937. The appeal arises out of a suit brought by the appellant representing the joint Hindu family firm AL. VR. ST., which carried on business as money lenders, against its agent the respondent, for accounts. The dispute between the parties now relates to the liability of the respondent with reference to certain items of account decided against the appellant by the High Court. It may be mentioned that the respondent though an agent of the appellant's firm was authorised to carry on business for his personal benefit and to draw from the firm for that purpose, and the accounts disclose that he was carrying on business on behalf of some of his relations and "possibly of some relations of the plaintiffs also."

2. The business of the family carried on at Bhavani in the Coimbatore District of the Province of Madras, with which this litigation is concerned, was started in 1911 by the father of the appellant Virappa and his two brothers, Lakshman and Bamanathan. The father died in 1913. The first agent of the firm was one Sunderaraj. The period for which each agent was appointed lasted for about three years, more or less. Sunderaraj's agency referred to as the first period ended in September 1914, when the agency of the respondent commenced. He was appointed agent successively for 1914. 1917, 1917 to August 1919, August 1919 to August 1922, referred to as the 2nd, the 3rd, and the 4th period of agency. His 5th period of agency commenced in August 1922.

3. In November 1924, the appellant who was appointed Receiver on 3rd December 1923 in a partition suit brought by their maternal grandfather on behalf of himself and his minor brother against their elder brother Lakshmanan on account of mismanagement, and had been in that capacity superintending the business at Bhavani, terminated the respondent's agency, and brought on 20th December 1924, the suit which has given rise to this appeal, charging him with misappropriation, and falsifying accounts, and praying for a decree to direct him to render due and proper accounts, to deliver what are known as rokka chittai accounts, and to pay a sum of Rs. 68,955-15-8 with interest and for other relief. The rokka chittai accounts which were called for, were produced by the respondent in Court in January 1925. Before proceeding further, it will be advantageous to state the nature of these accounts as a large amount claimed in the suit is based on entries contained therein. These accounts do not give particulars of anything but contain only memoranda wherein credits and debits are entered without any detail. The following passage taken from the judgment of the High Court explains their nature and the other account books in this case :

"It may be observed here that these rokka chittai accounts were intended to relate mainly to dealings or transactions of a provisional character, and covered not merely the dealings of the plaintiff's firm, but also dealings which the defendant was authorized to carry on for his own personal benefit as well as dealings which he was carrying on behalf of certain persons who can be conveniently referred to as the relations, for among them were certainly defendant's wife, sister and daughter and possibly-though this does not clearly appear-some relations of the plaintiffs. Regular accounts consisting of bound day-books and ledger-books were maintained in respect of the dealings of the plaintiff's firm and the defendant's own individual dealings and somewhat less formal accounts were also separately kept in the form of small stitched note-books in respect of the dealings of these relations, which were far fewer in number and smaller in extent. The rokka chittais which related in part to dealings under each of the above categories were small loose sheets of papers strung together and were thus of an informal character. It is common ground that these rokka chittais were mostly written by one or other of the three clerks who were employed in the plaintiffs firm and were working under the defendant."

4. By the judgment of the High Court in appeal, dated 17th November 1931, which modified the preliminary decree passed by the Subordinate Judge on 3rd December 1928, it was held that the respondent should render accounts during the 4th period of

his agency commencing from February 1922, the date of the institution of the partition suit, and for the 5th period till its termination. As the respondent had not delivered rokka chittais till after the suit was filed the High Court also held, as mentioned in the judgment now under appeal, that the appellant and his brothers "were entitled to call upon the respondent to render an account of the transactions disclosed by the rokka chittais and not covered by the other accounts which the respondent had already delivered though such transactions might relate to the period prior to February 1922."

5. The Subordinate Judge appointed an "auditor" to audit the accounts, and he submitted a report with reference to the various memoranda filed by the appellant. Both parties filed objections to this report. The Subordinate Judge then referred these objections to another person, a "Commissioner," who after examining various witnesses submitted his report considering the liability of the respondent in the light of the evidence. The liability of the respondent now in dispute before the Board relates to what are called petti varavu (box-credit) and petti pathu (box-debit) in Memo. No. 2. Memos Nos. 9, 10, 11, 12 and 15, and the memorandum relating to "certain transfer entries." These are various items in the taking of accounts between the principal and his agent with respect to the transactions carried on by the latter during his agency. It has been held by the Board that in case of taking accounts where no question of principle is involved the decision of the High Court on the various items should be treated as conclusive unless the appellant can prove that the decision is beyond all question erroneous. (See the practice note in the case of of the appellant with reference to the various memoranda in the light of the principle laid down in this judgment.

6. Memorandum No. 2 petti varavu (box-credit) and petti pathu (box-debit) are various entries of credit and debit which the auditor has collected from the rokka chittai accounts. On the whole, these entries balance each other and nothing is found due to the appellant's firm. The appellant's case as regards these items is that the "box" referred to, is the firm's cash chest, petti varavu representing moneys received on behalf of the firm, and later on, misappropriated by the respondent, the repayment entries with reference to them, noted as petti pathu being absolutely fictitious. The respondent's case is that the "box" represents a "small chest" in which the moneys of his relatives were kept, that these moneys were being borrowed when there were not funds enough in the firm for doing business and entered as petti varavu in the rokka chittai; and when they were repaid entries were made under the name petti pathu. The total amount claimed by the appellant under petti varavu is Rs. 10,390-11-6. Both the Commissioner and the Subordinate Judge have found that the case of the appellant is

true, but that finding has been set aside by the High Court. It is true that the entries are admitted by the respondent, but having regard to the case set up by him, the amounts received as petti varavu are not moneys which belong to the appellant's firm. In view of the contentions of the parties, the real question for consideration is whether the petti varavu entries represent the moneys paid into the firm as represented by the respondent, or are they moneys received by him on behalf of the firm? In this connexion it should be noticed that the charge against the respondent as originally put forward before the auditor was that "these transactions relate to private dealings of the respondent's wife and sister" and he noted that "after hearing evidence the Court has to decide whether the transactions are temporary misappropriations. The defendant denies the plaintiff's allegations but has not offered any proper explanation."

7. It is obvious that the original claim related only to interest on sums unauthorisedly used by the respondent but subsequently returned by him. However, the present case was later on developed by the appellant through the evidence of P. W. 9. The respondent met it by relying on Ex. IX Series which he sought leave to produce in addition to the evidence which he had already tendered. These exhibits show as pointed out by the High Court that the respondent had a "sinna petti" (small box) in which the moneys belonging to his relations were kept and that now and again sums from this box were sent to the appellant's firm and credited in the chittai. This probabalises the case of the respondent. Even the evidence of P. W. 9, lends some support to the case of two boxes set up by the respondent. On this point, the question is one of evidence and the respondent's case has been accepted as true by the High Court. P. W. 9 says that one of the three sources which constitutes petti varavu is this, viz., that debtors of the firm, when they pay into the firm towards loans, a portion alone is credited in the accounts with reference to the said inam and the balance alone is shown as petti varavu."

8. If this is true, then there is considerable force in the remark of the High Court

"How the original entries made in the regular accounts at the time of the advance of the loans, the correctness of which is not questioned could be squared with the alleged false entries showing smaller sums as received has not been explained and no single instance of such discrepancies in the regular accounts has been brought to our notice."

9. This throws considerable suspicion on the appellant's case with respect to petti varavu. Their Lordships have been taken through the entire evidence of the parties relating to this item in Memo. No. 2, and they have not been able to find that the

learned Judges have disregarded any principle of law in arriving at their conclusion which appears to them to be borne out by the evidence. In this connexion, their Lordships must refer to the argument which Sir Herbert Cunliffe, the learned counsel, urged with great emphasis, namely, that the High Court in accepting the testimony of the defendant as the basis for its finding on this point has not given due and sufficient regard to the well-known rule that on a question of credibility of a witness great weight ought to be given to the judgment of the Judge who saw and heard the witness. As regards this argument, their Lordships, besides saying that the High Court has arrived at its conclusion on a consideration of the merits of the evidence, need only observe that the argument as applied to this case is fallacious, as neither of the Courts which had to decide the case had the benefit of seeing and bearing the witness; and the "Commissioner" who had that advantage does not in his report base his conclusion on the demeanour of the witness in the witness box or the impression produced by him on his mind. They may also add, that in a case like the present, where the findings as regards facts have been drawn from "argumentative inferences" from the testimony oral and documentary produced by a witness, and depend upon "the weight of evidence" and "the inherent probabilities of the story," and not on the credibility induced by his "whole demeanour in the witness box," or "the manner in which he answers questions," their Lordships think - as they have often expressed in their previous decisions - that the trial Court is in no better position than the Court of appeal in discovering the truth. Turning now to the liability of the respondent raised in the other memos., the learned counsel for the appellant has frankly, and in their Lordships' opinion rightly, admitted that it is difficult to say that any question of principle is involved in the consideration of those items, though he tried strenuously to show that the findings called into question are all erroneous. It may be observed that the Courts in India have recorded concurrent findings against the appellant on the matters raised in these memoranda. However, their Lordships will deal with these items very briefly, as they were discussed before them in the endeavour to find out whether any case in which the board will interfere can be made out in this appeal.

10. Memos. Nos. 9, 10 and 11 are very much of the same character. They relate to collections made by the respondent from his own debtors, neglecting to collect the amounts which they owed to the firm also. It is said with respect to them, that the respondent has shown a neglect of duty and attended to his own business sacrificing the due interests of his principal; but the learned counsel has not been able to show that the Courts have in any way misdirected themselves in law in dealing with the questions, nor was he able to show that the findings are erroneous. The same may be

said about Memo. 12, which refers to the respondent's transactions with the clients of the Plaintiff's firm in spite of the prohibition with respect to such dealings: Memo. 15 relates to misappropriations alleged to have been made by the respondent of amounts paid by various persons, false debits being entered against them. Both Courts have rejected this charge for valid reasons. The next charge relates to what have been called "transfer entries." Balances appearing in certain accounts are said to have been wrongly transferred to certain other accounts. The respondent's explanation which appears to be satisfactory has been accepted by both Courts. Their Lordships' attention was next drawn to the order of the High Court with respect to samans (bonus), and the order which the learned Judge, passed as regards costs ; on these matters also, their Lordships' are not able to say that any principle of law has been disregarded by the High Court. On the whole, in their Lordships' judgment, the controversy raised with respect to the various items in this appeal, all relate to ordinary items of accounting in the taking of accounts between a principal and his agent, and do not in the language used by the board in the similar case, "form proper subject-matter for an appeal to His Majesty in Council." (*N. R. Kapur v. Murli Dhar Kapur*) Their Lordships will, therefore, humbly advise His Majesty that this consolidated appeal should be dismissed with costs to the respondent.

Appeal dismissed.

Cases Referred.

AIR 1942 PC 61 : ILR (1942) Kar PC 157: 202 IC 754 (PC), *Lala Hakim Rai v. Lala Ganga Ram*. Their Lordships will now examine the case

AIR 1944 PC 87 71 IA 149 (PC),