

**SUPREME COURT OF INDIA**

P. C. K. Muthia Chettiar

Vs.

V. E. S. Shanmugham Chettiar

C.A.No.705 of 1965

(R. S. Bachawat and K. S. Hegde, JJ.)

26.07.1968

**JUDGEMENT**

**BACHAWAT, J.:-**

1. Subramanian Chettiar was the owner of 5 original shares subsequently represented by 1250 shares in the Chop-Leong Watt Hin Rubber Estate in Malacca. On December 9, 1912 Subramanian died leaving behind him his widow and his son plaintiff Shanmugham. In August 1913 the attorney of Subramanian's widow took out letters of administration to his estate. Subramanian, the defendant and certain others were partners in the P. M. S. Firm at Malacca. On July 16, 1915 while both Shanmugham and the defendant were at Malacca they entered into a compromise agreement which is evidenced by Exhibits A-177 and A-178. Under this compromise they agreed that out of the aforesaid original 5 shares in the Chop Leong Watt Hin Rubber Estate 2 1/2 shares would belong to the P. M. S. Firm then represented by the defendant as the managing partner and the remaining 2 1/2 shares would belong to Shanmugham. Under this compromise the defendant agreed and undertook to recover the 5 shares and to account to Shanmugham for the 2 1/2 shares belonging to him and the income and the dividends arising therefrom. On January 7, 1924 while Shanmugham and the defendant were at Malacca they entered into an agreement which is recorded in Exhibit B-2. Under this agreement Shanmugham transferred his remaining 2 1/2 shares in the Rubber Estate to

the defendant on receipt of 18000 dollars as consideration. On September 14, 1927 Shanmugham instituted a suit against the defendant in the court of the Subordinate Judge, Devakottai, asking for a declaration that he was entitled to the original 5 shares in the Rubber Estate, that Exhibits A-177, A-178 and B-2 were void and for accounts and consequential relief. Shanmugham alleged that the transactions of July 16, 1915 and January 7, 1924 were vitiated by fraud, and fraudulent concealment. During the pendency of the suit Shanmugham was adjudicated an insolvent and thereupon the Official Receiver of Ramanathapuram was Added as the 2nd plaintiff. After protracted proceedings which is not necessary to mention now, the Subordinate Judge granted the declarations claimed by Shanmugham and passed a preliminary decree for accounts. The Subordinate Judge accepted the plaintiff's contentions and held that both the transactions of July 16, 1915 and January 7, 1924 were vitiated by fraud and were liable to be set aside. The defendant filed an appeal in the High Court of Madras. During the pendency of the appeal the defendant died and his legal representatives were brought on record. The High Court held that the arrangement dated July 16, 1915 was valid and was not vitiated by fraud. With regard to the arrangement dated January 7, 1924 the High Court agreed with the Trial Court and held that the transaction was vitiated by fraud and that the defendant was liable to account for 2 1/2 shares in the Rubber Estate and dividends amounting to 35535 dollars and 50 cents with interest thereon. The High Court also held that the suit was not barred by limitation. The High Court assessed the value of 2 1/2 shares at 31250 dollars and in modification of the decree passed by the Trial Court passed a final decree against the defendant for Rs. 2,35,555 and further interest. The present appeal has been preferred by the defendants after obtaining a certificate from the High Court.

2. Mr. M. S. K Sastri attacked the finding that the arrangement dated January 7, 1924 was vitiated by fraud. He argued that the High Court failed to take into account the exceptions to Section 19 of the Indian Contract Act and that assuming that Shanmugham's consent was procured by fraud, nevertheless the agreement was not voidable as he had the means of discovering the truth with ordinary diligence. There is no substance in this contention. The two courts have concurrently found that the agreement was vitiated by fraud. The defendant concealed from Shanmugham that he had collected 35535 dollars and 50 cents on account of dividend in respect of the shares. Had Shanmugham known that this huge amount had been realised by way of dividend he would not have parted with the shares with all their accrued benefits for the sum of 18000 dollars. The defendant was under a fiduciary obligation to Shanmugham to inform him of the true state of affairs. In the High Court it was not suggested that Shanmugham had the means of discovering the truth with ordinary diligence and it is now too late to raise this contention.

3. Mr. Shastri next contended that the suit was barred by limitation. The suit is for obtaining relief on the ground of fraud and is governed by Article 95 of the Indian Limitation Act, 1908. The starting point of limitation is the date when the fraud is known to the party wronged. The fraud was committed on January 7, 1924. The Subordinate Judge found that the fraud was discovered on or about April 16, 1924. We accept this finding. It may be noted that this finding was not challenged in the High Court. The defendant was outside India for several months in 1924 and 1926. The suit was instituted on September 14, 1927. It is common case before us that if the period of the defendant's absence from India is excluded under Section 13 of the Indian Limitation Act, 1908, the suit is not barred by limitation. Section 13 reads:-

"In computing the period of limitation prescribed for any suit, the time during which the defendant has been absent from India and from the territories beyond India under the administration of the Central Government shall be excluded."

4. It is to be noticed that the agreement dated January 7, 1924 was entered into between Shanmugham and the defendant at Malacca. The cause of action for the suit arose at Malacca and at the time of the accrual of the cause of action the defendant was at Malacca. Mr. Sastri argued that in these circumstances Section 13 has no application. We are unable to accept this contention.

5. On the date of the filing of the suit the defendant was residing at Pothamangalam with the jurisdiction of the Court of the Subordinate Judge, Devakottai. That Court had jurisdiction to entertain and try the suit and the Indian Limitation Act was applicable to the suit though the cause of action may have arisen outside India. In computing the period of limitation prescribed for the suit, "the time during which the defendant has been absent from India" has to be excluded under Section 13. The words of the Section are clear and full effect must be given to its language. The Section makes no exception for cases in which the cause of action arose in a foreign country or for cases in which the defendant was in a foreign country at the time of the accrual of the cause of action. In all such cases the time during which the defendant has been absent from India must be excluded in computing the period of limitation.

6. In *Atul Kriato Bose v. Lyon and Co.*, (1887) ILR 14 Cal 457 the defendants were foreigners and they never came to India on or after the date of the accrual of the cause of action. The Calcutta High Court held that Section 13 applied and that the suit was not barred by limitation. The Court was not impressed with the argument that according to this construction a defendant who was in England when a cause of action against him accrued, and has remained there ever since might be liable after an indefinite time to be sued in a Calcutta Court. In *Mathukanni v. Andappa*, AIR 1955 Mad 96 the plaintiff and the defendant who were residents of Mannargudi in India had gone to Kaula Lampur to earn their livelihood, and while there the defendant executed a promissory note to the plaintiff on November 16, 1921. In 1925 the plaintiff brought a suit on the promissory note in the District Munsif's Court of Mannargudi. The cause of action in the suit arose outside India. A Full Bench of the Madras High Court held that the plaintiff was entitled to the benefit of Section 13 and in computing the period of limitation he was entitled to exclude the time during which the defendant was absent in Kaula Lampur. We agree with this decision. The Full Bench rightly overruled the earlier decisions in *Rathina v. Packiriswami*, AIR 1928 Mad 1088 and *Subramania Chettiar v. Maruthamuthu*, AIR 1944 Mad 437. We hold that the suit is not barred by limitation.

7. Mr. Shastri argued that the suit is bad for non-joinder of the other partners of the P.M.S. Firm. The point was not taken in the Courts below. It is not open to the appellant to take this point at this late stage.

8. The High Court valued 625 shares representing the original 2 1/2 shares in the Rubber Estate at 31250 dollars on the footing that the value of each share on January 7, 1924 was 50 dollars. There is force in Counsel's criticism that this valuation is erroneous. The Trial Court did not record any finding as to the value. The High Court said that in 1930 the value of the shares was 31250 dollars, and as there was a boom in the post-war period and a slump had set in since 1921, the value on January 7, 1924 would be 31250 dollars. The parties relied on the testimony of Tan Siew Giab. He proved Exhibit A-74, a list of transfers of shares in the Rubber Estate between June 29, 1920 and September 14, 1931. From the list it appears that the price per share on June 29, 1920 was between 23 and 20 dollars; on March 29, 1923, 20 dollars; on September 5, 1923, 10 dollars; on April 11, 1924, 20 dollars; on August 10, 1925, 10 dollars and on January 22, 1930 and February 28, 1930, 50 dollars. The price of the shares went up in 1930. But it is common case that the shares should be valued as on January 7, 1924. On the material on the record we assess the value of a share on that date to be 20 dollars. The value of 625 shares would therefore be 12500 dollars. Having regard to this finding the decree passed by the High Court requires modification.

9. The High Court held that the defendants were liable to pay (1) 35535 dollars and 50 cents on account of dividend, (2) interest thereon at 6 per cent per annum from the date of their receipt till November 28, 1958, (3) 10250 dollars after deducting from the value of the shares amounting to 31250 dollars the sum of 18000 dollars received by the plaintiff on January 7, 1924 and another sum of 3000 dollars given up by the plaintiff. Having regard to our finding the defendants are liable to be debited under the last head with 12500 dollars and are entitled to be credited with 18000 dollars and 3000 dollars. Thus under the last head the defendants are entitled to a net credit of 8500 dollars. The result is that the defendants are liable to pay 35535 dollars 50 cents minus 8500 dollars, that is to say, 27035 dollars 50 cents and interest thereon at 6 per cent per annum. From the material on the record it is not possible to find out the precise dates of receipt of the dividends. Counsel on both sides are agreed that we should allow interest on 27035 dollars and 50 cents at 6 per cent per annum from January 7, 1924 up to November 28, 1958 and further interest at 6 per cent per annum from November 28, 1958 until payment. The agreed rate of exchange is Rs. 156 per 100 dollars.

10. Counsel on both sides have worked out the figures and on that basis the defendants are liable to pay Rs. 42174 and 60 paise for principal and Rs. 88292 and 49 paise for interest up to November 28, 1958 aggregating to Rs. 130467 and interest on Rs. 42174 and 60 paise at 6 per cent per annum from November 28, 1958 until payment.

11. The appeal is allowed in part. The decree passed by the High Court is reduced to Rs. 130467 with interest at 6 per cent per annum on Rs. 42174 and 60 paise from November 28, 1958 until payment. Directions II, III, IV, V and VI incorporated in the High Court decree are affirmed. The parties will pay and bear their own costs in this Court. The second respondent will be at liberty to retain his costs out of the estate of the first respondent in his hands.

Appeal partly allowed.

