

Meeenakshisundaram Chettiar

Vs

Venkatachalam Chettiar

Civil Appeal No. 504 of 1979

(R. S. Sarkaria, P. S. Kailasam, O. Chinnappa Reddy JJ)

23.02.1979

JUDGMENT

KAILASAM, J. –

1. Special Leave Petition (Civil) No. 1021 of 1979 is filed by the plaintiff in the suit O.S. No. 83 of 1969 on the file of the Subordinate Judge, Devakottai against the two orders passed by the High Court of Judicature at Madras in Appeal No. 408 of 1972 holding that the suit had not been properly valued for court-fee and directing the petitioner to pay court-fee on the valuation of Rs. 9,74,598.35 and requiring that the deficit court-fee both on the plaint and the memorandum of appeal be paid within six weeks from the date of the order. On hearing the petitioner we directed notice to the respondents calling upon them to show cause why special leave should not be granted and the appeal allowed and remitted to the High Court for disposal of all the issues. On hearing the respondents we granted special leave petition and the appeal is thus heard.

2. The appellant filed the suit praying for a decree against the respondent/defendant to render true and correct account of all transactions of the respondent as petitioner's agent from January 22, 1965 and also of all the amounts received by him as the agent of the petitioner including the amount recovered by him from Alagappa Chettiar and pay to the petitioner the amount found due on such rendition of accounts. In the written statement filed by the defendant it was contended that the suit is not properly valued and proper court-fee has not been paid. The trial court framed an issue as to whether the suit had been properly valued and proper court-fee had been paid. It answered the issue holding that the plaint has been properly valued and proper court-fee has been paid. The suit was dismissed by the trial court on the ground that the plaintiff has not proved that the defendant is liable to account and that the suit was barred by limitation. On an appeal by the plaintiff to the High Court, the High Court found that the plaint made it clear that apart from the money which the defendant is liable to pay to the plaintiff as his agent, the plaintiff has quantified the amount at Rs. 9,74,598.35 as payable by the defendant to him which is made clear in allegations in paragraphs 6, 7, 8 and 9 of the plaint and therefore the plaintiff ought to have valued the suit at Rs. 9,74,598.35. As the appeal was disposed of on the ground that the plaint had not been properly valued we are concerned in this petition in determining whether the conclusion arrived at by the High Court is correct.

3. The High Court has passed its conclusion on a reference to paragraphs 6, 7, 8 and 9 of the plaint. We will now consider the pleadings in the case. In paragraph 5, it is stated that on January 22, 1965, the plaintiff executed a General Power of Attorney at Karaikudi authorising the defendant to transact all his business, sell his properties, receive the sale price and other monies etc. this paragraph refers to the General Power of Attorney executed by the plaintiff in favour of the

defendant on January 22, 1965. The terms of the power of attorney will be referred to in due course. Paragraphs 6, 7, 8 and 9 of the plaint which have been relied on by the High Court may be set out :

6. On March 27, 1965, the plaintiff and the defendant retired from the said partnership and the other two brothers continued the business under the same name, Alagappa taking on the shares on the plaintiff and defendant and all their assets in the firm for a consideration of his paying 6,50,000 dollars equivalent to Rs. 16,12,000 at the rate of Rs. 248 per 100 dollars to each of them, so that Alagappa became entitled to 3/4 share and Annamalai to 1/4 share in the continuing firm.

7. As the plaintiff's agent and on behalf of the plaintiff, the defendant on or about April 13, 1965 received from Alagappa 6,50,000 dollars equivalent to Rs. 16,12,000 at the rate of 248 rupees per 100 dollars for the 1/4th share of the plaintiff in the said firm taken over by Alagappa.

8. The defendant from Madras has sent to the plaintiff at Kottaiyur Rs. 25,000 on October 25, 1965, Rs. 1,30,750 on February 7, 1966, Rs. 25,311.65 on February 7, 1965 (Rs. 25,000 plus Rs. 311.65 for interest) and Rs. 4,56,340 on August 11, 1967.

9. The defendant as plaintiff's agent is bound to render true and correct account to the plaintiff of all the amounts received by him in the course of the agency, to wit, from January 22, 1965 the amounts received from Alagappa.

In paragraphs 6 and 7 the plaint refers to the plaintiff and the defendant retiring from the partnership and Alagappa taking the shares of the plaintiff and the defendant for a consideration of his paying equivalent to Rs. 16,12,000 to each of the plaintiff and the defendant. In paragraph 7 it is stated that the defendant as plaintiff's agent received Rs. 16,12,000. Paragraph 8 refers to certain payments which the plaintiff received from the defendant. Paragraph 9 of the plaint states that the defendant as plaintiff's agent is bound to render true and correct account to the plaintiff of all the amounts received by him in the course of agency, to wit, from January 22, 1965, the amounts received from Alagappa. It may be noted that the relief sought for is for rendering true and correct account to the plaintiff of all the amounts received by him in the course of agency. The Power of Attorney was given on January 22, 1965 and thus the relief is not confined to the amount payable by Alagappa alone.

4. In paragraph 10 which is not taken note of by the High Court the plaintiff alleged that on September 2, 1967 and October 4, 1967, the plaintiff wrote to the defendant requiring him to send the accounts of the agency. These letters were refused. Again on December 5, 1967, the plaintiff issued a lawyer's notice to render accounts and for payment of the amounts due from him. This notice was also returned. The defendant did not render any accounts. At this stage reference may be made to the Power of Attorney executed by the plaintiff in favour of the defendant on January 22, 1965.

5. The plaintiff by the Power of Attorney dated January 22, 1965, constituted the defendant as his Attorney and authorised the defendant to act for the plaintiff. It is sufficient to state that the power authorises in general the defendant to manage all the affairs of the plaintiff. Paragraph 3 of the Power of Attorney empowers the defendant to pay and settle all the debts of the plaintiff and obtain full and effectual receipts and releases for the same. Paragraph 5 empowers the defendant amongst

other things to sign and execute any discharge or release in connection with Charges or Bills of Sale. Paragraph 10 gives the power to the defendant to charge or mortgage any of the plaintiff's property and paragraph 11 to borrow such sums of money and upon such terms as the Attorney shall deem expedient. Paragraph 19 confers the power on the defendant to invest moneys upon mortgages or charges of land etc. In short there can be no dispute that complete power of management is given to the defendant and the defendant could, in exercising this power, discharge debts, invest moneys on behalf of the plaintiff etc. When the plaintiff in paragraph 7 of the plaint demanded the agent to render true and correct account to the plaintiff of all the amounts received by him in the course of agency i.e. by virtue of the power conferred on January 22, 1965, the plaintiff is entitled to know as to what amounts he had invested or otherwise dealt with. At the date of the plaint the plaintiff was not aware as to the amount of moneys that were due by the defendant to him. The Letters and the lawyer's notice sent by the plaintiff to the defendant were unanswered. If the defendant had invested or otherwise dealt with moneys according to the power conferred on him, nothing would be due to the plaintiff on accounts being taken. The relief claimed for in the plaint in paragraph 14(a) of the plaint is for directing the defendant to render true and correct account of all transactions made by the defendant as the plaintiff's agent from January 22, 1965 and also for all the amount received by the defendant on the plaintiff's behalf as his agent including the amount recovered by him from Alagappa and pay the plaintiff what may be found due to him. This paragraph makes it clear that what was required was not only an account of the amount recovered by the defendant from Alagappa but also an account of all the transactions of the defendant as the plaintiff's agent from January 22, 1965.

6. A reading of the written statement also makes it clear that the plaint was understood by the defendant as a suit for accounting of his management as a power of attorney agent. In paragraph 7 of the written statement the defendant states that out of 6,50,000 dollars got for the plaintiff's one-fourth share, 40,000 dollars were invested in fixed deposit in plaintiff's name with the Indian Overseas Bank, Kuala Lumpur and 10,000 dollars in plaintiff's V.C.T.M. Accounts on April 10, 1965. On the same day the remaining 6,00,000 dollars were invested with Alagappa Chettiar himself who had credited the amount in plaintiff's name in his accounts. If the defendant was able to prove these contentions, the accounts as required by the plaintiff would have been satisfactorily rendered and very little would have been due by the defendant to the plaintiff on accounting. The High Court was in error in coming to the conclusion that the plaint is clear that apart from the money which the defendant is liable to pay to him as his agent, the plaintiff has quantified the amount at Rs. 9,74,598.35 as payable by the defendant to him. In our view, the plaint has been misread. Though paragraphs 6, 7 and 8 refer to the transactions in which the plaintiff is entitled to Rs. 16,12,000 paragraphs 10, 11 and 14(a) make it clear that the suit was for accounting not only regarding Rs. 16,12,000 but also for the management by the defendant as power of attorney agent. The power, as already noted, confers a right on the defendant to invest moneys. If the defendant as shown in the written statement itself, is able to establish that in the course of his management he had invested moneys according to the power conferred on him, he would have properly accounted for his management. In the written statement the defendant himself had pleaded that the moneys which he received from Alagappa have been remitted to the plaintiff by investment and otherwise. The conclusion arrived at by the High Court is, therefore, unsupportable.

7. The provision relating to the levy of court-fee for a suit on accounts is found in Section 7(iv)(f) of the Court Fees Act, 1870 which runs as follows :

7. The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows :-

(iv) In suits -

(f) for accounts -

according to the amount at which the relief sought is valued in the plaint or memorandum of appeal.

In all such suits the plaintiff shall state the amount at which he values the relief sought.

Reading this provision by itself the amount of court-fee payable in suits for accounts is according to the amount at which the relief sought is valued in the plaint or memorandum of appeal. The plaintiff is required to state the amount at which he values the relief sought. In suits for accounts it is not possible for the plaintiff to estimate correctly the amount which he may be entitled to for, as in the present case, when the plaintiff asks for accounting regarding the management by a power of attorney agent he might not know the state of affairs of the defendant's management and the amount to which he would be entitled to on accounting. But it is necessary that the amount at which he values the relief sought for should be a reasonable estimate. Section 35(1) of the Tamil Nadu Court Fees and Suits Valuation Act, 14 of 1955, is as follows :

In a suit for accounts, fee shall be computed on the amount sued for as estimated in the plaint.

Sub-section (2) of Section 35 provides :

Where the amount payable to the plaintiff as ascertained in the suit is in excess of the amount as estimated in the plaint, no decree directing payment of the amount as so ascertained shall be passed until the difference between the fee actually paid and the fee that would have been payable had the suit comprised the whole of the amount as ascertained, is paid. If the additional fee is not paid within such time as the Court may fix, the decree shall be limited to the amount to which the fee paid extends.

While Section 35(1) permits the plaintiff to pay the court-fee on the amount estimated by him, sub-section (2) safeguards against the loss of revenue as it requires that no decree for any amount in excess of the amount as the estimated in the plaint shall be passed unless the difference between the fee actually paid and the fees that would have been payable had the suit comprised the whole of the amount as ascertained, is paid. But here again it is necessary that the plaintiff should give a fair estimate of the amount for which he sues. Order 7, Rule 11, of the Civil Procedure Code, requires the court to return the plaint if the relief claimed is undervalued. Order 7, Rule 11 runs thus :

11. The plaint shall be rejected in the following cases :-

(b) Where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

This section casts a duty on the court to reject the plaint when the relief claimed is undervalued. If on the materials available before it the Court is satisfied that the value of relief as estimated by the plaintiff in a suit for accounts is undervalued the plaint is liable to be rejected. It is therefore necessary that the plaintiff should take care that the valuation is adequate and reasonable taking into account the

circumstances of the case. In coming to the conclusion that the suit is undervalued the court will have to take into account that in a suit for accounts the plaintiff is not obliged to state the exact amount which would result after the taking of the accounts. If he cannot estimate the exact amount he can put a tentative valuation upon the suit for accounts which is adequate and reasonable. The plaintiff cannot arbitrarily and deliberately undervalue the relief. A Full Bench of the Andhra Pradesh High Court in a decision in Chillakuru Chanchuram Reddy v. Kanupuru Chenchurami Reddy (ILR 1969 AP 1042 (FB), after elaborate consideration of the case law on the subject has rightly observed there must be a genuine effort on the part of plaintiff to estimate his relief and that the estimate should not be a deliberate underestimation.

8. On a consideration of the entire circumstances of the case we are not satisfied that the estimate of the relief as given by the plaintiff is inadequate or unreasonable or a deliberate underestimation. In the result, we allow the appeal, set aside the judgment of the Madras High Court and remit it back to the High Court for disposal of all the issues arising in the appeal. The costs will abide by the result.

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