Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Annamalai Chetty v. *Murugasa Chetty and another, from the High Court of Judicature at Madras; delivered the 25th May* 1903.

Present at the Hearing:

LORD MACNAGHTEN.
LORD LINDLEY.
SIR ANDREW SCOBLE.
SIR ARTHUR WILSON.

[*Delivered by Lord Lindley.*]

The Plaintiff and the Defendant in the action which has given rise to this Appeal are French subjects living and trading in Pondicherry. The Plaintiff sued the Defendant Murugasa Chetty in Pondicherry on a promissory note, and on the 20th March 1896 the Plaintiff obtained Judgment by default for Rs. 13,968 with interest and costs. Execution proceedings were taken in Pondicherry on this Judgment, but nothing was recovered. On the 20th July 1896 the Defendant's firm was declared insolvent, at the instance of other creditors, by the Pondicherry Court; and on the 23rd September the insolvency was declared to have effect retrospectively from the 8th January 1896, which was anterior to the Plaintiff's Judgment and indeed to the commencement of the action in which it was obtained. In the insolvency proceedings Syndics were appointed as usual, and the Plaintiff applied for payment out of the estate; but it does not appear that he obtained payment of any dividend.

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On the 8th October 1896 this action was commenced in the District Court of South Arcot, which is in the Madras Presidency, and near Pondicherry. The action was by the same Plaintiff against the same Defendant, Murugasa Chetty, and was based on the Judgment already obtained against him in Pondicherry. The Receiver appointed by the Court in Pondicherry was also made a Defendant to represent the Syndics.

In order to get over any difficulty which might arise as to the jurisdiction of the Arcot Court to entertain the action, the Plaintiff described the Defendant Murugasa Chetty as residing in British Indian Territory, *i.e.*, Cuddalore and other places, and as having houses of business and carrying on business there. The Defendant put in an appearance to this action and a statement and supplemental statement of defence, denying these allegations and denying the jurisdiction of the Court to entertain the action. He also impeached the validity of the promissory note and judgment by default, and, lastly, he relied on the insolvency proceedings as a defence to the action even if the Court had jurisdiction to entertain it.

The Receiver was also allowed to appear and put in a defence, which he did. He denied the jurisdiction of the Court to entertain the action; and he further relied on the insolvency proceedings as invalidating the Judgment, and also as furnishing a defence to the action upon it, if still in force, and if the Arcot Court had any jurisdiction to entertain the action.

The following issues were settled:—

I. Is this Court prevented from entertaining the suit by reason of the cause of action not having arisen and Defendant not being resident or carrying on business within its jurisdiction?

II. Did or did not the Defendant reside or carry on business within the jurisdiction of this Court on the date when cause of action arose ?

III. Was the French judgment on which the suit has been brought according to French law null and void on the date of suit and is the present claim based on the French judgment, therefore, not sustainable in this Court ?

IV. Is it open to the Defendant to raise the contention in this suit that the promissory note on which the French judgment was passed was obtained from the Defendant by the Plaintiff fraudulently ?

V. And, if so, was the promissory note obtained by the Plaintiff from the Defendant fraudulently ?

VI. What is the relief, if any, that the Plaintiff is entitled to ?

The parties were directed to file all the documents they relied on; and French law books might be filed at the hearing.

Considerable evidence was adduced on both sides upon the question of carrying on business in British Indian territory, but there was no evidence worth mentioning that the Defendant ever resided in British India; nor was there any evidence that the cause of action arose from any transaction which took place therein. It was proved that the Defendant had relatives and a share of property in British India, and that a cousin named Kandasami Chetty managed this property and paid money to the Defendant. On the other hand there was no evidence worth mentioning to support the Defendant's charges of fraud by which he sought to impeach the promissory note and Judgment sued upon, and this part of the case was subsequently abandoned by the Defendant's counsel.

The insolvency proceedings in Pondicherry were all put in evidence, but no opinion appears to have been obtained from any expert in French law as to the legal effect of those proceedings either on the Judgment recovered by the Plaintiff in Pondicherry before they in fact commenced, or on the discharge of the Defendant from liability to pay the Judgment debt.

The District Judge states that the only issues really contested before him were the 1st and 2nd; no argument was put forward on the 3rd, but he looked up the French law as best he could in the Code Napoléon, and he came to the conclusion that the Judgment sued upon was not null and void when the action in the Arcot Court was commenced, and he therefore found the third issue for the Plaintiff. He decided that it was not competent for him to go behind the French Judgment, and this disposed of the fourth and fifth issues. He found however as a fact that the Defendant did carry on business in British India, viz., in Cuddalore, where the action was commenced, and he accordingly gave Judgment for the Plaintiff with costs.

The Defendant appealed from this decision to the High Court at Madras which reversed the Judgment and dismissed the action with costs, on the ground, first, that it was not proved that the Defendant did in fact carry on business in British India when the action was commenced; and on the further ground that the insolvency proceedings were a bar to the action. They came to this conclusion on the authority of a decision of this Board in 1827, viz., *Quelin* v. *Moisson* (1 Knapp 265).

In both Courts in India it was apparently assumed that the question of jurisdiction turned on Section 17 of the Code of Civil Procedure, and that although the Defendant was a foreigner, and although the cause of action arose in a foreign country, and although the Defendant did not

personally reside within the local limits of the jurisdiction of any Court in British India, and was not even temporarily in Arcot when sued there, yet he could be sued in the Arcot Court if he carried on business through an Agent in the local limits of that Court's jurisdiction.

This assumption appears to their Lordships to require more attention than it has received.

Their Lordships see no reason for doubting the correctness of the decision of the case of *Girdhar Damodar* v. *Kassigar Hiragar* (Ind. L. R. 17, Bombay 662), where the Defendant was a native of Cutch and the cause of action arose within the local limits of the jurisdiction of the British Indian Court in which the action was brought. But that case does not cover the present one.

It is not, however, necessary to pursue this matter, for it is admitted by all parties and it is plain that this Appeal must fail unless their Lordships agree with the District Judge in coming to the conclusion that at the time of the commencement of this suit, viz., on the 8th October 1896, the Defendant was by his agent carrying on business in Cuddalore or some other place within the jurisdiction of the Court. The burden of proving this is clearly on the Plaintiff; he has given evidence himself and called witnesses, and his and their evidence, until carefully examined, seems sufficient to establish such trading, especially as the Defendant was within reach and was not called to deny or explain their statements. This omission was naturally made the most of by the Appellant's Counsel. But it must be remembered that the Defendant was a bankrupt and in great difficulties, and was naturally very reluctant to expose himself to a long and hostile cross-examination. After carefully considering the evidence their Lordships

have come to the conclusion that the District Judge fell into the error of treating Kandasami Chetty as the agent of the Defendant. This mistake is clearly pointed out by the High Court. Kandasami Chetty's acts and his payments to the Defendant are all attributable to his being the manager of joint family property, of which the Defendant had a share; and their Lordships entirely concur with the High Court in holding that such a person is not the agent of the members of the family so as to make them liable to be sued as if they were the principals of the manager. The relation of such persons is not that of principal or agent, or of partners; it is much more like that of trustee and *cestui que trust.* Those witnesses who say they saw the Defendant trading in Cuddalore do not speak of the critical time. An attempt was made to show that the joint property was divided long ago, and that Kandasami Chetty was not acting as manager of family property in which the Defendant had an interest. But this attempt failed, for although some money was divided, the rest of the joint property was not decreed to be partitioned until 1897.

In short, the moment the error of treating Kandasami Chetty as the Defendant's agent is corrected, the rest of the evidence all crumbles away.

This conclusion renders it unnecessary to consider the effect of the Defendant's insolvency either on the validity of the Judgment sued on or on the insolvency affording a defence to the action if the Judgment is still in force. *Quelin* v. *Moisson* (1 Knapp 265), goes far to show that the insolvency would afford a defence; but their Lordships might have thought it right not to decide this point in the absence of evidence of persons skilled in French law.

Their Lordships will humbly advise His Majesty to dismiss the Appeal and the Appellant must pay the costs of the Respondent Murugasa Chetty, the other Respondent not having appeared.