

Privy Council Appeal No. 8 of 1927.

V. P. R. V. Chockalingam Chettyar - - - - - *Appellant*

v.

E. N. M. K. Chettyar Firm and others - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT RANGOON.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 6TH DECEMBER, 1927.

Present at the Hearing :

VISCOUNT SUMNER.

LORD ATKINSON.

LORD SINHA.

SIR JOHN WALLIS.

SIR LANCELOT SANDERSON.

[*Delivered by* SIR LANCELOT SANDERSON.]

This is an appeal by the plaintiff against a judgment and decree, dated the 29th September, 1925, of the High Court of Judicature at Rangoon, which affirmed a judgment and decree of the District Court of Pegu, dated the 7th June, 1924, by which the plaintiff's suit was dismissed with costs.

The suit was instituted in November, 1922, and thereby the plaintiff prayed for a declaration that he was the owner of the properties described in the schedule to the plaint, delivery of possession of the said properties, and mesne profits.

The material facts were as follows :—

An undivided Hindu Chetty family of Pallatur, in the Rannad district of Madras, carried on an extensive money-lending business under the style of the K.P. firm in different places, including Pegu, in Burmah—and one, K. P. Ramanathan Chetty, was the Karta or manager thereof.

On the 10th February, 1906, the said K. P. Ramanathan Chetty, as the manager of the joint family, executed a power of

attorney in favour of one Singaram Chetty, who was then at Pegu acting as agent for the firm under a salary agreement.

The power of attorney authorised Singaram to act under the style of Kana Pana, or K.P. Singaram Chetty, to use the name of Ramanathan Chetty and, amongst other things, to sell or exchange all or any of the immovable property of or to which Ramanathan Chetty was or should at any time thereafter become possessed or entitled, for any estate or interest whatsoever or which he then had or at any time thereafter should have power to dispose of.

The properties in suit, which are situated at Pegu, belonged to the above-mentioned joint family, and were undoubtedly part of the subject-matter of the said power of attorney.

In 1908 the business of the K.P. firm was in a critical condition, and on the 6th April, 1908, a trust deed was executed between Ramanathan Chetty for himself, and as head and manager of the undivided family, and certain other members of the family of the one part, and V. M. Somasundaram Chettyar of the other part.

Somasundaram was to collect the debts owing to the family, pay the creditors, and carry on the business.

By the terms of the deed Somasundaram was given "a right over, by way of trust, all the properties, assets and interests mentioned in schedule A and B," for the purpose of selling the same.

The trust deed contained other powers, such as management, the appointment and removal of agents, including the agents then working in the K.P. firm.

One, M. S. M. Maygappa Chettyar, was appointed coadjutor to counsel and advise the trustee, and it was provided that the trustee should obtain the consent in writing of the coadjutor before appointing agents, or selling or mortgaging immovable properties in connection with the trust.

It was further provided by Clause 21 of the deed that—

"all properties, assets, claims and suits that may come under dispute (or to court) of the K.P. firm have in this way been transferred to the trustee. He has power to receive them as they are paid, to convert them all into money and, if convenient, to transfer (or assign) them to creditors."

In 1911 the coadjutor mentioned in the trust deed died, and no other coadjutor was appointed.

On the 4th January, 1912, Somasundaram, purporting to act as trustee by virtue of the powers conferred upon him by the above-mentioned deed, appointed Singaram Chetty his agent, to transact, conduct and manage the affairs, concerns and matters in which he was interested as trustee, and to use the name of Somasundaram Chetty, trustee to the said estate.

On the 23rd June, 1912, Singaram, by a registered deed of that date, purported to sell to E. N. M. K. Muttaya Chetty, the first respondent, for the consideration of Rs. 12,500, the properties in suit. This deed was not produced at the trial, but a copy of it was put in by consent of the parties at the hearing of this appeal.

The other respondents are purchasers of some of the properties from the first respondent.

On the 1st August, 1913, the trustee was discharged.

On the 7th January, 1918, on the application of a creditor, Ramanathan Chetty individually, and as managing member of the joint family, was adjudicated insolvent by the District Judge of Ramnad, who directed that all the personal assets of Ramanathan and the joint family assets should vest in the Official Receiver.

On the 26th January, 1920, the appellant bought the properties in suit at a public auction for the sum of Rs. 580, and the property was conveyed to him by two deeds, dated the 8th May, 1920, and the 7th December, 1921, and executed by the Official Receiver. The appellant instituted this suit, as already stated, on the 6th November, 1922, basing his title to the properties on the two above-mentioned sale deeds.

The first respondent relied upon his alleged purchase on the 23rd June, 1912.

The learned additional District Judge dismissed the plaintiff's suit with costs.

On appeal, the High Court held that Singaram continued as agent for the K.P. firm in the Pegu district from 1906 until after the conveyance to the first respondent, that the power of attorney granted in 1906 to Singaram continued unimpaired and uncancelled, and that he had ample power to convey the property and give a good title.

The High Court dealt with certain questions of fraud and collusion, to which reference need not now be made, as they have not been raised on the hearing of this appeal.

The learned counsel, who appeared for the appellant, relied mainly upon two points.

In the first place, it was contended that the power of attorney of 1906 in favour of Singaram came to an end by reason of the execution of the trust deed of the 6th April, 1908. It was argued that by the trust deed the whole of the property of the undivided family was transferred to the trustee, that Ramanathan and the family had thereby deprived themselves of all power to sell the property, and that thereafter as the principal had no power to sell, the agent, Singaram, likewise had no authority or power to sell the property.

It was also argued on behalf of the appellant that the power of attorney given by the trustee on the 4th January, 1912, was of no effect, as far as the sale of immovable properties was concerned, inasmuch as the trustee had not obtained the consent in writing of a coadjutor to the sale thereof as provided by the deed.

The last-mentioned point may be disposed of at once.

It was not seriously contended on behalf of the respondents that they could rely on the power of attorney executed by the trustee on the 4th January, 1912, as authority for the sale by Singaram of the properties, and their Lordships are of opinion that the appellant's contention on that point may be taken to be correct.

In the second place, it was argued that the trust did not come to an end when the trustee was discharged in August, 1913, that the Court on a proper application would have appointed another trustee, and that the property was still subject to the trust and vested in the trustee.

The learned counsel for the respondents replied to these points by arguing, first, that the trust deed of the 6th April, 1908, did not include the immovable property in Pegu which is now in suit, and secondly, that there was a finding of fact by both the Courts in India that the power of attorney in favour of Singaram, dated 10th February, 1906, had not come to an end, but that it was in force and of full effect at the time Singaram sold the property to the first respondent.

It is clear that the immovable properties in Pegu are not specifically mentioned in the trust deed.

The properties mentioned in Schedule A are situated at Pallatur and the other places mentioned therein, and they do not include the immovable properties at Pegu, the subject of this suit.

Schedule B includes "the firm under the mark of K.P. at Pegu and all the rights such as money-lending, &c."

The property mentioned in the schedule to the plaint consists of four lots of paddy land, two houses, and two lots of garden land—situated in Pegu.

In their Lordships' opinion the property so claimed in this suit cannot be said to be covered by the description of the properties in the above-mentioned two schedules to the trust deed.

This opinion is confirmed when reference is made to the provisions of the Registration Act III, of 1877—which was in force at the time of the execution of the trust deed, dated 6th April, 1908. The deed was registered, and if it had been intended to make the immovable property at Pegu subject to the trust for sale, it would have been necessary to insert in the deed a description of such property sufficient to identify the same, as was in fact done in the case of the property at Pallatur and other places referred to in Schedule A of the trust deed.

It was, however, argued on behalf of the appellant that the terms of Clause 21 of the deed, which have already been stated, are sufficient to vest all the property of the K.P. firm, including the immovable property at Pegu, in the trustee.

The deed has to be construed as a whole, and upon such a construction it is not possible, in their Lordships' opinion, to hold that the above-mentioned words are sufficient to transfer to the trustee the immovable properties at Pegu, which have not been mentioned in the deed or the schedule containing the description of the immovable properties which, it was intended by the parties, should be transferred to the trustee.

Their Lordships, therefore, are of the opinion that the properties, which are the subject-matter of the suit, were not transferred to the trustee by the deed of the 6th April, 1908, and that the authority given to Singaram to sell the property was not terminated by reason of the execution of that trust deed.

It was further argued on behalf of the appellant that Singaram was appointed agent at Pegu in 1905 by a salary agreement which usually exists for three years, that he returned to India in or about 1909, and that the power of attorney which had been given to him in 1906 must be considered to have come to an end when he left Pegu and returned to India.

It appears, however, that Singaram returned to Pegu in 1911 and again acted as agent for the K.P. firm.

The learned assistant District Judge, who tried the suit, held that the original power of attorney of 1906 in favour of Singaram was evidently never withdrawn or cancelled.

The High Court considered that it was clearly established that Singaram continued as agent of the K.P. firm in the Pegu district from 1906 until after the conveyance in question in the suit, and the learned Judges of the High Court were also of opinion that the trial Judge was fully justified on the evidence in holding that his powers under the power of attorney granted in 1906 continued unimpaired and uncanceled.

These are concurrent findings, and it was argued on behalf of the respondents that they are findings of fact, and, therefore, that their Lordships should not interfere with them.

It may be that, strictly speaking, the question, to which the findings are relevant, is not merely one of fact, and that the question whether the power of attorney of 1906 was still effective at the time Singaram conveyed the property to the first respondent is a mixed question of law and fact. However that may be, their Lordships, after consideration of the evidence see no sufficient reason for disagreeing with the above-mentioned conclusions of the two Courts in India in respect of this matter.

Their Lordships, therefore, are of opinion that Singaram had authority to convey the property and to give a good title to the first respondent, and that the appeal should be dismissed with costs. Their Lordships will humbly advise His Majesty accordingly.

In the Privy Council.

V. P. R. V. CHOCKALINGAM CHETTYAR

v.

E. N. M. K. CHETTYAR FIRM AND OTHERS.

[DELIVERED BY SIR LANCELOT SANDERSON.]

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