Privy Council Appeal No. 18 *of* 1947

N. K. M. S. P. Visalakshi Achi - - - - - *Appellant*

v.

R. M. M. L. Muthiah Chettiar and others - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 13TH OCTOBER, 1948

Present at the Hearing:

LORD DU PARCQ
LORD NORMAND
SIR JOHN BEAUMONT

[*Delivered by* LORD NORMAND]

This is an appeal from the judgment of the High Court at Madras reversing the judgment of the Subordinate Judge of Ramnad and dismissing the appellant's suit. The question for determination is whether the appellant is entitled to recover from the respondents a sum (with accrued interest) which her father-in-law deposited on the occasion of her marriage in her name with the firm known as M.A.M.S., of which he and the respondents or their predecessors were partners.

The material facts, together with agreed or acceptable translations of the crucial documents, are set out with so much clarity and precision in the judgment of the High Court that their Lordships are content to refer to it without repeating what has there been said.

In their Lordships' view the decision turns upon the meaning and effect of the letter written on 24th January 1946 by the appellant's father-in-law, Meyyappa, to the Rangoon agent of the M.A.M.S. firm (Exhibit II) and of the draft letter (Exhibit IIa) enclosed with it, in terms of which he directed his firm to acknowledge the deposit. The acknowledgment was duly sent (Exhibit A) and it conformed to the instructions received from Meyyappa, except that it credited the appellant's husband as well as herself with the deposited sum. This, however, was an error which has rightly been disregarded by the Courts in India, and has not been made the basis of any argument addressed to their Lordships.

In their Lordships' opinion these documents are not ambiguous and in this opinion they are in full agreement with the learned Subordinate Judge from whom moreover the learned Judges of the High Court would not have differed up to this point but for subsequent events which will call for consideration. It scarcely admits of doubt that the firm M.A.M.S. undertook to hold the sum of Rs.14,000 and to account for it to the appellant in whose name it was credited, but that the appellant's family were to have over it a power of "direction to pay." The appellant was then a minor and she is illiterate; it was therefore natural that provision should

be made for protecting her interest by entrusting to her family a power to control expenditure. That power could of course be exercised only on her behalf. The respondents made much of the statement in Exhibit II that as the son of a previous marriage of the appellant's husband had his money separate the appellant's family had expressed a wish that a similar provision should be made " for this also ". Since this is an agreed translation their Lordships take the words " for this also " as they stand and do not proceed, as did the Subordinate Judge, on the footing that the word translated " this ", being feminine, means in effect the appellant. " For this also " in the context of the translation may be paraphrased " on this occasion also." The respondents argued that the mention of the son of the previous marriage and of his separate enjoyment of his estate showed that the appellant's family were urging Meyyappa to make provision, not for the appellant herself, but for any issue or any male issue who might be born of her marriage with Meyyappa's son. This argument is in their Lordships' opinion without foundation. First, there is no proof that the son of the previous marriage received his separate estate through a provision made in favour of the issue of the marriage of his parents, and not through a provision made in favour of his mother of estate to which he succeeded after her death; and second, the deposit of a sum in the appellant's name is not consistent with the intention ascribed to the parties by the argument to settle a sum for her issue *nascituri*. It was their consideration of a subsequent arrangement that induced the learned judges of the High Court to put on the foregoing documents a meaning different from that which they so manifestly bear.

In 1919 on the day of the death of the appellant's husband, Meyyappa and the appellant's half brother entered into an agreement (Exhibit IV). It provided for the adoption by the appellant of her husband's son by the previous marriage; for the transfer to him of the Stridhanam jewels, moneys, etc., of his natural mother and of the Stridhanam moneys, etc., of the appellant; for the transfer from the appellant's family to Meyyappa of the document relating to the amount credited to the appellant as asthi; for the payment by Meyyappa of Rs.3,500 to the appellant for viseshasilavu to be spent as she pleased during her life and to be returned on her death, if there were a balance, to Meyyappa. In 1921 the adoption provided for by this document took place and the appellant in February 1922 received from Meyyappa Rs.3,500. Exhibit A was handed to Meyyappa with an endorsement by a half-brother of the appellant, directing that the deposited sum and interest should be paid to the order of Meyyappa in accordance with the muri, Exhibit IV. The High Court treats the arrangement of 1919, embodied in Exhibit IV, as both implementing and exegetical of the arrangement of 1916 embodied in Exhibit II and IIa and A. Exhibit IV however deals with matters which are in no way related to the arrangement made in 1916, such as the adoption of the son of the previous marriage and the transfer to him of the Stridhanam property of his natural mother and of the appellant. But there are other and more serious objections to using Exhibit IV as exegetical of the documents of 1916. The appellant was still a minor in 1919 and her half brother was not her legal guardian. He had therefore no authority to represent her or bind her by an agreement entered into by him, and his only authority over her affairs was to control expenditure out of the deposited sum in accordance with the power of direction conferred on the appellants' family in 1916. It would have been *ultra vires* to authorize payment of the capital sum deposited to Meyyappa; but it is not clear from the documents of 1919 and 1921 that it was intended that Meyyappa should have the right to appropriate the deposited sum, and it may be that it was intended only that he should have the power of direction and control of expenditure till then vested in the appellant's family. There is no proof that the appellant was aware of any agreement between her half brother and Meyyappa by which Meyyappa would receive the deposited sum, and it is improbable that she could have been willing to surrender her Stridhananam property and her rights in the deposited sum and to accept in their place Rs.3,500 for viseshasilavu.

Their Lordships are further of opinion that the quarrel in 1931 between the appellant's adopted son and the adopted son of Meyyappa about the division of Meyyappa's estate, and the subsequent arbitration proceedings are irrelevant. The appellant was not a party to these proceedings. The result is that the firm M.A.M.S. in breach of their obligation paid over to Meyyappa a sum to which the appellant was entitled, and the respondents as partners or as representing partners of that firm now dissolved, are under a liability to which effect was given by the decree of the Subordinate Judge.

Their Lordships will humbly advise His Majesty that the appeal should be allowed, that the judgment of the High Court should be set aside and that the judgment of the Subordinate Judge should be restored. The respondents must pay the costs of the appeal to the High Court and of this appeal.

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In the Privy Council

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DELIVERED BY LORD NORMAND

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