

~~SL 62~~

33, 1956

No. 48 of 1955.

# In the Privy Council.

ON APPEAL  
FROM THE SUPREME COURT OF CEYLON.

UNIVERSITY OF LONDON  
W.C.1  
20 FEB 1957  
FACULTY OF ADVANCED  
LEGAL STUDIES

BETWEEN  
M. R. M. M. M. R. MURUGAPPA  
CHETTIAR . . . . . (Plaintiff) *Appellant*  
AND  
MUTHTHAL ACHY AND OTHERS . . . . . (Defendants) *Respondents*.

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## Case for the Respondents

1. This is an appeal from the Judgment and Decree of the Supreme Court of Ceylon dated the 19th July, 1954, setting aside the Judgment and Decree of the District Court of Colombo dated the 12th October, 1951, whereby it was ordered that the Respondents as heirs to the extent to which they had benefited from the estate of K.R.K.N.L. Letchiman Chettiar deceased should jointly and severally pay to the Appellant the sum of Rs.16658-17 with legal interest thereon at 5 per cent. per annum until payment in full and costs of the suit. p. 98.  
p. 107.  
p. 85.  
p. 98.

20 2. The respective parties to this appeal are members of the Chettiar community which, as one of its main occupations, carries on the business of money-lending.

3. There were originally two Plaintiffs in this action since one of them, the present Appellant, was at the time of the plaint in the action was filed, a minor. The action was therefore brought by one P. Vellasampillay as the Appellant's next friend and the present Appellant as Plaintiffs. On the present Appellant coming of age, an order was made discharging the next friend and granting leave to the Appellant to proceed with the action in his own name. p. 4, l. 26.

30 4. The Appellant claimed a sum of Rs.22,445.52 from the Respondents to this appeal as heirs of one K.R.K.N.L. Letchimanan Chettiar, deceased. p. 18.  
In his plaint the Appellant alleged that one Vellasampillai acting as his agent, had, in 1930, deposited with the said Letchimanan Chettiar, a sum of Rs.18,700/-; which amount the said Letchimanan Chettiar had agreed to pay back together with interest calculated according to the rate customary and prevalent among the Chettiar community; that the said Letchimanan Chettiar subsequently, on the 9th April, 1943, deposited a sum of Rs.20,488.18 in Curatorship Case 3836, in respect of the assets of the Appellant; that Letchimanan Chettiar died on the 15th March, 1945;

that the Respondents to this appeal being his heirs had adiated his inheritance and were therefore liable to account to the Appellant for any balance due.

p. 22.

5. The Respondents pleaded that the money in question was the property of Muthiah Chettiar, father of the Appellant; that Muthiah Chettiar's estate had not been administered and that the Appellant could not therefore maintain this action; that this money was left with Letchimanan Chettiar by the Appellant's mother for safekeeping, to be dealt with as the said Letchimanan Chettiar thought fit, for the use of the undivided Hindu family of which the Appellant was the co-parcener; 10 that accounts were rendered from time to time to the Appellant; that the Appellant having accepted those accounts was estopped from claiming anything not set out in those accounts.

p. 88, l. 1.

6. The action was heard by Mr. N. Sinnethamby, District Judge of Colombo. The learned Judge accepted the evidence of Vellasamy as to the circumstances in which the money in question came to be deposited and also as to the terms stipulated for repayment. He held that the evidence of Vellasamy was borne out by the evidence of one Nadaraja in an earlier case, 18107/M wherein he admitted that moneys were deposited with various firms by Vellasamy for, and on behalf of, M.R.M.M.M.R. and that 20 as regards payment of interest Vellasamy's evidence could be accepted inasmuch as it is supported by the Defendant's own books with regard to interest. The learned judge also considered the two defences in law that had been taken on behalf of the Respondents, viz.: (A) estoppel and (B) wrong parties being sued and held against them on both. He therefore ordered that decree be entered for the Appellant, against the Respondents "jointly and severally as heirs to the extent to which they have benefited from the estate of Letchimanan Chettiar."

p. 90, l. 26.

p. 92, l. 30.

p. 101, l. 43.

7. The Respondents thereupon appealed to the Supreme Court of Ceylon and the appeal was heard by Gratiaen and Fernando, JJ. In his 30 judgment Gratiaen, J., stated "The main ground of appeal which was pressed before us relates to the issues of fact. It was also argued, as a matter of law, that the money deposited with the deceased in 1929 was the money of Muthiah Chettiar—so that, although it was no doubt invested for the ultimate benefit of the joint Hindu family of which the Plaintiff was the sole co-parcenary member, the only person to recover it from the deceased or his heirs was a duly appointed representative of Muthiah's estate."

p. 102, l. 19.

8. Gratiaen, J., referred to the fact that the trial in the action which had commenced on the 13th December, 1949, had been heard by three 40 successive judges before it was eventually concluded on the 6th September, 1951, and stated "In the result, the learned Judge was faced with the task of assessing the evidence of the chief witness who had testified before him on three dates covering a period of nearly 9 months, and of testing it in the light of his earlier evidence recorded before two other judges in December, 1949, and October, 1950. Having regard to these long delays, the advantage which a trial judge normally enjoys of forming his personal impression of a witness' credibility (based on demeanour) was considerably reduced."

9. Referring to the circumstances in which the alleged transaction between Vellasamy and Letchimanan Chettiar had taken place, Gratiaen, J., stated that “the inherent difficulty in deciding the issues of fact in this litigation was more fundamental.” He said :—

10 “The Plaintiff based his claim on Vellasamy’s version of a conversation which allegedly took place between him and the deceased man Letchuman over 20 years before the trial commenced. No independent witness was present at that conversation, and the suggested agreement was not contemporaneously or even subsequently reduced to writing. In addition, the court was necessarily deprived of the advantage of hearing Letchuman’s explanation of the circumstances in which his firm received the money, and the precise nature of his obligations in regard to the payment of interest. The situation therefore necessarily called for a very cautious judicial approach.” p. 102, l. 28.

20 10. Gratiaen, J., next dealt with the correct judicial approach in the adjudication of claims against the estate of a deceased person, and stated “The court’s duty is to approach the case ‘with great jealousy because the claim is brought forward against the estate of a deceased person when that person, who was a chief actor in the transaction impugned, was dead’—*per* Fry, L.J., in *re Garnett; Gandy vs. Macaulay* (1885), 31 Ch. D.1 at 16.” p. 103, l. 1.

11. In regard to the finding of the learned District Judge on the evidence of Vellasamy, Gratiaen, J., stated :—

30 “I find no indication in the judgment under appeal that the learned Judge specially directed his mind to the standard of proof laid down by these authorities. Besides, his main reason for believing Vellasamy’s evidence was that he considered it to be ‘corroborated’ by certain entries in the deceased’s books of accounts—whereas they are equally consistent whether with the view that Letchuman had in fact undertaken (and discharged) obligations less onerous than those imputed to him by Vellasamy.” p. 103, l. 17.

“As I read the judgment under appeal, the learned Judge’s acceptance of the Plaintiff’s case was largely based on his objective assessment of Vellasamy’s testimony, and not on his personal impression of the demeanour of the witness.”

12. Gratiaen, J., went on to say :—

40 “In these circumstances, and in view of the non-direction to which I have previously referred, it is our duty to decide for ourselves whether Vellasamy’s version can safely be acted upon in regard to two crucial issues :—” p. 103, l. 28.

(1) Was the money deposited with K.R.K.N.L. in pursuance of a contract directly entered into *between Vellasamy* and the deceased ?

(2) If so, had the deceased bound himself *unconditionally*—i.e., even after the year 1933—to let the sum deposited accumulate at ‘nadappu vatti’ rates of compound interest until repayment ? ”

Gratiaen, J., answered these questions in the negative.

13. Finally Gratiaen, J., arrived at the following conclusion :—

p. 105, l. 27.

“ I am very conscious of the limits which necessarily circumscribe the right of an appellate tribunal to disturb the conclusions arrived at by a Judge of first instance on questions of fact. In the present case, however, I am satisfied that it is our duty to set aside the judgment under appeal. The learned Judge had not reminded himself of the special vigilance which ought to be exercised whenever a court of law adjudicates upon belated claims against a dead man's estate. In addition, he paid insufficient attention to certain improbabilities inherent in Vellasamy's version. Finally, 10 he has treated items of evidence as corroboration which were in truth corroborative only of matters which were not in controversy. Indeed, I take leave to doubt if Vellasamy's evidence would have brought *conviction* to the learned Judge's mind if he had himself approached the case with ' great jealousy ' as he should have done. I would allow the appeal and make order dismissing the Plaintiff's action with costs in both courts. In the view which I have taken, it is unnecessary to decide the question of law raised by Mr. Thiagalingam.”

14. Fernando, J., agreed with the conclusions reached by Gratiaen, J., 20 and stated :—

p. 106, l. 24.

“ In the circumstances of this case, where the evidence as against Letchuman needs to be tested with more than ordinary care, it was in my opinion unsafe in view of these and other contradictions, to rely completely on Vellasamy's account of the precise undertakings to which Letchuman bound himself by the alleged agreement.”

15. The Respondents submit that the Decree of the Supreme Court of Ceylon dated the 19th July, 1954, is right and should be affirmed for the following among other 30

## REASONS

- (1) BECAUSE the learned District Judge did not correctly approach the consideration by him of the evidence of Vellasamy ;
- (2) BECAUSE the learned District Judge came to a wrong conclusion on the evidence of Vellasamy ;
- (3) BECAUSE, as the Supreme Court rightly held, the learned District Judge treated items of evidence as corroboration which were corroborative only of matters not in controversy ; 50
- (4) BECAUSE the Appellant is estopped from asserting his claim ;

- (5) BECAUSE the Appellant could not, in law, sue the Respondents personally in this action ;
- (6) BECAUSE the judgment of the learned District Judge of Colombo was wrong ;
- (7) BECAUSE the judgment of the Supreme Court was right and should be upheld.

DINGLE FOOT.

SIRIMEVAN AMERASINGHE.

**In the Privy Council.**

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**ON APPEAL**

*from the Supreme Court of Ceylon.*

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**M.R.M.M.R. MURUGAPPA**

**CHETTIAR (Plaintiff) . Appellant**

**AND**

**MUTHTHAL ACHY and**

**Others (Defendants) . Respondents.**

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**Case for the Respondents.**

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