

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Mootiah Chetty and others v. A. V. Soobramonian Chetty and others, from the Court of the Recorder of Rangoon ; delivered 9th June 1891.*

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Present :

LORD HOBHOUSE.

LORD MACNAGHTEN.

LORD MORRIS.

SIR RICHARD COUCH.

MR. SHAND (LORD SHAND).

[*Delivered by Mr. Shand.*]

The appeal in this case relates to a banking business which was carried on in Rangoon from 1863 to 1878 by Sethumbram Chetty and others, members of a family living in the neighbourhood of Madura, in the Madras Presidency, and in which considerable profits were realized on the amount of capital employed. The parties are agreed as to the terms on which the copartnership existed from 1863 to 1869. They are further agreed that in the latter year an account was made up showing the profits which had been realized during the six preceding years, and bringing out as at that date the sums of capital and profits belonging to each of the partners. The controversy between them has reference to the period from May 1869 until January 1878, when, in consequence of the death of Sethumbram Chetty, who had much the largest interest in the business, the copartnership was dissolved and had to be wound up.

The Plaintiffs in their plaint averred that it had been agreed between the partners that after the 10th of May 1869 each share of the business should be of the amount and value of Rs. 4,000; that Sethumbram Chetty, now represented by the 1st, 2nd, and 3rd Defendants, should have four shares; that Annamallay Chetty the 1st Plaintiff, and the 2nd and 3rd Plaintiffs should have  $2\frac{1}{2}$  shares; that the 4th Defendant Arnachellum Chetty, who was afterwards made a Plaintiff in the suit, should have  $1\frac{1}{4}$  shares; and that a small part of a share should be set aside for charitable purposes. It was further alleged that the business had been carried on until its close upon this agreement; and the Plaintiffs claimed to have the partnership accounts ascertained and stated on that footing accordingly. The learned Recorder of Rangoon by his judgment and decree has given full effect to this claim. A detailed investigation into the partnership accounts has followed, and judgment and decree has been granted in the Plaintiffs' favour for the sums brought out as due to them respectively, interest having been allowed to each of the partners at the rate of  $12\frac{1}{2}$  per cent. on the sums at their credit from the date on which the business was closed till the institution of the suit in the Court of Rangoon.

The Defendants who have appealed from these judgments have maintained, as they did in the Court at Rangoon, that the business having been admittedly carried on from 1863 to 1869 on the agreement that Sethumbram Chetty should have  $2\frac{1}{6}$ th shares, Subramaniam Chetty, the ancestor and predecessor of the three original Plaintiffs,  $\frac{1}{8}$ ths of a share, and Peria Curpen Chetty, now represented by certain of the Defendants,  $\frac{5}{16}$ ths of a share, no such change took place in the latter year in the arrangements and agreement

of the partners as the Plaintiffs allege, but that what occurred in 1869 was merely that an account showing the shares of capital and accruing profits of each partner, after debiting their respective drawings, was made up, the profits being only apportioned, and allowed to remain as capital, without any further change being made in the partners' interests, and that capital was not drawn out or added to by any of the partners.

The appeal raises no point of law. The question is one of fact to be determined entirely on the evidence written and parole adduced before the Court in Rangoon. Their Lordships having heard a full argument and considered that evidence have found no reason for holding that the judgment of the Court of Rangoon, in favour of the Plaintiffs, ought to be set aside. They are further of opinion that the judgment is sound, and in accordance with the great preponderance of the evidence. This being so, it is unnecessary to go over in detail the matters on the proof hearing on the question of the alleged new arrangement in 1869 for a modification of the shares of the partners in the future capital and profits of the business. Their Lordships are satisfied that the Recorder was right in finding it to have been proved that there was such a new arrangement in that year, and that to the effect alleged by the Plaintiffs. They agree in holding that this arrangement was reduced to writing by the witness Pallaneappa Chetty, that the agreement or "pungadu" was written by him on a cadjan or palm leaf, and was signed by the parties interested, at first by Sethumbram Chetty and Annamallay Chetty, and at a later time by Arnachellum Chetty; and they regard the evidence of the Plaintiffs on this point as most

materially strengthened, not only by the evidence of certain of the arbitrators who were called in to settle disputes which arose between the partners in their accounts, and who depose that they had the written agreement before them, but also by the fact that the Defendants refrained from adducing Mootiah Chetty, one of themselves, as a witness in the proceedings at Rangoon, after a body of evidence had been led tending strongly to show that the deed had passed into his hands after the death of his father, Sethumbram Chetty, into whose custody it had been given.

Their Lordships are also of opinion that it has been proved that the deed making the new or modified arrangement was acted on by the parties, (first) by the withdrawal by Sethumbram Chetty of the surplus capital beyond 16,000 rupees, representing his four shares in the business after 1869, or at least of the greater part of that surplus, and by the other partners making up and putting into the business the sums required to complete their shares; and (secondly) by the partnership accounts made up seven years after the new arrangement was made, in accordance with which the profits were ascertained and divided.

It may be added that the new arrangement appears to have been only a natural and reasonable one, inasmuch as it gave somewhat larger advantages to Annamallay Chetty and Arnachellum Chetty than they would have obtained under the original partnership, for it was contemplated that with an increasing business they should in future give a personal superintendence, such as they had not previously done, as in point of fact they did; and it is difficult, if indeed possible, to reconcile the actings of the partners in their dealings with

their accounts after 1869,—the withdrawal by Sethumbram Chetty of 7,000 rupees from the business, and the payment in of sums by the other partners to make up their capital,—with the view maintained by the Defendants that the interests of the partners were not to undergo any change.

Their Lordships will humbly advise Her Majesty to dismiss the appeal, and to affirm the decrees complained of, including the award of interest to the Plaintiffs, as to which they see no reason to differ from the view taken by the Recorder. The Appellants must pay the costs of the appeal incurred by the Respondents who have appeared.

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