

Privy Council Appeal No. 29 of 1945

V. C. A. R. Annamalai Chettiar - - - - - *Appellant*

v.

M. N. M. M. Ramanathan Chettiar (since deceased)
and another - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 5TH MARCH, 1947

Present at the Hearing :

LORD THANKERTON
LORD UTHWATT
LORD DU PARCQ
SIR MADHAVAN NAIR
SIR JOHN BEAUMONT

[*Delivered by* LORD THANKERTON]

On this appeal it can be stated that the present appellant started execution proceedings in 1938 against the second respondent, and the first respondent, who is the plaintiff in the present action, then put in a claim under Order 21, Rule 58. That claim was for the raising of the attachment on the ground that the property belonged to him by virtue of a sale deed by the second respondent, and was in his possession. The claim was considered in the execution proceedings with the result that it was defeated and he was left to his remedy by ordinary action under Order 21, Rule 63. He then, within a very short time, filed the present suit, in which he was the plaintiff, against the appellant and the judgment debtor.

The case was tried by the Subordinate Judge and there was an appeal to the High Court. As their Lordships learn from the Judgment of the High Court only one ground was maintained before them by the present appellant, a ground which had not formed part of any of the grounds on which the Subordinate Judge had decided in his favour.

The only ground on which the present appellant sought in the High Court to justify the dismissal of the suit was that some weeks before the conveyance of the property to the appellant, the second respondent received a sum of Rs.30,000 in cash. He maintained that in those circumstances it must be presumed that the debts which the second respondent owed the appellant were discharged by the second respondent out of this amount.

The debts which the first respondent now maintains were the consideration for the deed of sale in question were a promissory note for a certain sum, certain costs and certain interest amounting to about Rs.10,000. That was the consideration including the promissory note stated on the face of the deed of sale.

Accordingly the promissory note having been produced there was *prima facie* evidence on the part of the plaintiff, the first respondent, that the consideration had really passed, as stated in that deed. The sole remaining ground relied on by the present appellant is really a suggestion that that consideration did not pass because the debt was already discharged.

It is clear to their Lordships in those circumstances that the burden would be on the present appellant to prove that that discharge had taken place, and not the first respondent to prove it had not taken place. That would be to prove a negative.

Counsel for the appellant has very frankly admitted that there is no evidence of any kind to establish that such payment had been made out of the Rs.30,000 and it seems quite clear to their Lordships that there are no other circumstances from which it could be possible in any way to presume any such payment or discharge.

In those circumstances it seems clear to their Lordships that the judgment of the High Court was right and this appeal should be dismissed, the judgment of the High Court should be affirmed and the appellant should pay the costs of the first respondent in this appeal. The second respondent has not appeared in the appeal. Their Lordships will humbly advise His Majesty accordingly.

In the Privy Council

V. C. A. R. ANNAMALAI CHETTIAR

v.

M. N. M. M. RAMANATHAN CHETTIAR
(since deceased) AND ANOTHER

DELIVERED BY LORD THANKERTON

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