

**P. K. P. S. Pichappa Chettiar and others**       -       -       -       -       *Appellants*

*v.*

**Chokalingam Pillai and others**       -       -       -       -       *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS.

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE  
PRIVY COUNCIL, DELIVERED THE 21ST JUNE, 1934.

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*Present at the Hearing :*

LORD BLANESBURGH.

LORD WRIGHT.

SIR LANCELOT SANDERSON.

*[Delivered by SIR LANCELOT SANDERSON.]*

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This is an appeal against a decree of the High Court of Judicature at Madras, dated the 9th September, 1929, reversing the decree of the Court of the Subordinate Judge of Ramnad, at Madura, dated the 18th January, 1927.

The question for determination in this appeal is whether the respondents and/or their deceased uncle Virappa Pillai were partners of the appellants in the business of money-lenders and bankers carried on at Colombo under the style of P.K.P.S., and if Virappa Pillai was a partner, whether his partnership was on his own account or as managing member of the Hindu joint family to which he and the respondents belonged.

The suit was brought on the 8th of April, 1924, by P. K. P. S. Pichappa Chettiar against (1) K. V. R. Virappa Pillai, (2) Chokalingam Pillai, (3) Shanmukhan Pillai (a minor by his guardian *ad litem* the second defendant), (4) P. K. P. S. Palaniyappa Chettiar, (5) P. K. P. S. Raman Chettiar, and (6) P. K. P. S. Chidambaram Chettiar.

Defendants (4) (5) and (6) as members of the firm of P.K.P.S. were throughout associated with the plaintiff in interest as against defendants (1) (2) and (3).

Virappa Pillai died after the institution of the suit, and the above-mentioned defendants (2) and (3) are on the record as his legal representatives, as well as in their personal capacity.

It appears that the appellants, viz., the plaintiff and defendants (5) and (6), and Palaniappa Chettiar (defendant No. 4), hereinafter called the "Chetties," carried on the business of money-lenders and bankers under the style of P.K.P.S. in India and elsewhere, and though closely related they were divided.

The respondents, viz. Chokalingam Pillai and Shanmugan Pillai, defendants 2 and 3, belong to an undivided Hindu joint family. Kuranthappa Pillai was the head of this family, but he had retired from active life before 1908.

He had two sons, Virappa Pillai (the first defendant), who from 1908 was the managing member of the joint family, and Ramaswami Pillai.

Kuranthappa died about 1919 and Ramaswami in 1914 or 1915; the respondents are the sons of Ramaswami.

The plaintiff alleged that he and defendants 4, 5 and 6 together styled P.K.P.S., with the family of the defendants 1 to 3, and the late Ramaswami Pillai, represented by the first defendant as the family manager, had since 1908 been carrying on in partnership in Colombo as money-lenders and bankers under the style of P.K.P.S. a business which although separate was in effect a branch of the P.K.P.S. business carried on elsewhere.

It was alleged that the capital of the firm was Rs. 25,500, the total shares being  $4\frac{1}{4}$ —divided as follows:— $\frac{1}{8}$  share, viz., Rs. 750, for the deity Bhumiswarar;  $3\frac{1}{8}$  shares, viz., Rs. 18,375, for P.K.P.S., i.e., the plaintiff and defendants 4, 5 and 6; and  $1\frac{1}{8}$  shares, viz., Rs. 6,375, for K.V.R., i.e., the family of the defendants 1 to 3 and the late Ramaswami Pillai.

There are no written articles. The partnership was alleged to be a partnership at will.

It was alleged by the plaintiff that the business of the said partnership in Colombo was managed successively by Ramaswami and Virappa as agents for the partnership until about 1915, when Ramaswami died, and that then Virappa continued the management until about 1916, when one Lakshmana Pillai relieved him of the agency. The said Lakshmana was relieved by Subrahmanyan Chetti, who in turn was relieved about September, 1923, when Virappa again took up the management, and acted as agent until February, 1924, when he returned to India.

The plaintiff further alleged that the partnership was profitable until about the year 1916, since which date the business was carried on at a loss.

The plaintiff alleged that he pressed Virappa to settle accounts and to pay the amount alleged to be due from him, and he further alleged that an agreement in respect thereof was arrived at. Among other prayers, he claimed specific performance of the alleged agreement. The Subordinate Judge held that the agree-

ment was not proved, and refused the prayer for specific performance. This finding has not been disputed and no question in this appeal arises in respect of that part of the case.

The prayer, which is material to the present appeal, was for a declaration that the alleged partnership was dissolved on the 26th of March, 1924, or from the date of the suit, and a direction for accounts of the partnership dealings, including the personal accounts of the partners.

The defendants 2 and 3 (*i.e.*, Chokalingam Pillai and Shanmukhan Pillai) filed a written statement denying that the family of these defendants were partners in the plaintiff's firm, and alleged that Virappa and Ramaswami had been acting merely as agents for the said firm and that neither of them had any interest therein.

The learned Subordinate Judge held that the partnership alleged by the plaintiff was true, but that it was not binding on the third defendant, who was a minor: he further held that, as far as the moneys drawn by the defendants 1 to 3 were concerned, the entire family property was liable, because the family had the advantage of the said moneys and most of the family properties were purchased with the money got from the partnership firm.

The defendants 2 and 3 appealed to the High Court at Madras, which allowed the appeal. The ground of their decision was that the plaintiff had not made out that there was a partnership with these defendants subsisting on the date of the plaint, that even if such a partnership existed it was dissolved in 1916, and that inasmuch as the suit was not instituted until 1924, it was barred by limitation.

The learned Judges of the High Court in the course of their judgment said that it was difficult to see how a claim against the then appellants based on joint family business could be supported as the Subordinate Judge had done.

The High Court therefore made a decree setting aside the decree of the lower Court, and dismissing the plaintiff's suit.

From this decree the plaintiff and defendants 5 and 6 have appealed to His Majesty in Council.

Their Lordships do not consider it necessary to refer at any length to the evidence to which their attention was drawn with much care by learned counsel at the hearing of the appeal; it is sufficient to say that in their opinion the evidence, both documentary and verbal, shows conclusively that "K.V.R." was a partner with the Chetties in the business in Colombo and that "K.V.R.'s" share in the capital was  $1\frac{1}{2}$  share or Rs. 6,375, as alleged by the plaintiff. This is made abundantly clear by the entries in the daybooks and ledgers which were used in connection with the said business, which was managed by Ramaswami and Virappa in turn.

Further, it is clear that "K.V.R." stood for Virappa. Their Lordships consequently have come to the conclusion that Virappa

became a partner with the above-mentioned share in the business carried on in Colombo in the style of P.K.P.S. in May, 1908.

As already mentioned, the High Court considered that the partnership, if any, came to an end in 1916.

Their Lordships cannot find any sufficient evidence to justify a finding that the position of Virappa was altered in 1916, or that he changed the capacity in which he had been acting before 1916. There is an entry in the ledger of "P.K.P.S." dated the 30th June, 1918, showing the share capital: it is there stated that Kn Vira's, *i.e.*, Virappa's, share was  $1\frac{1}{16}$ , or Rs. 6,375, and as late as the 22nd November, 1923, Virappa gave evidence in certain proceedings in the Court of the Chief Court of Pudukkotta State, in which he stated as follows: "There was another business conducted at Colombo under the *vilasam* P.K.P.S. I was the agent therein. The first plaintiff was the principal person for the P.K.P.S. firm. He died: second plaintiff is his son. The third, fourth and fifth plaintiffs are partners. *I too have a share.*"

Two powers of attorney dated the 10th March, 1918, and the 28th October, 1919, and an entry of the registration of the firm in Colombo dated the 29th July, 1919, were relied upon as showing that Virappa was not a partner at the above-mentioned respective dates.

Their Lordships are of opinion that the terms of the powers of attorney are not inconsistent with the continuance of the partnership.

The registration, which gives the names of the Chetties as partners, and does not include the name of Virappa, is certainly a matter which supports the respondents' contention.

The effect of that entry, however, is materially weakened by the correspondence which took place in 1922 between Virappa and Nachiappa with respect to questions relating to income tax, and by the fact that as late as November, 1923, Virappa solemnly affirmed in his above-mentioned evidence that he then had a share in the business of P.K.P.S. at Colombo. There is no doubt that in that year he was in control of the said business in Colombo.

Considering these matters and the whole of the evidence, their Lordships are of opinion that Virappa continued to be a partner in the said firm of P.K.P.S. in Colombo until the institution of the suit in April, 1924, so that there is no question of limitation so far as his legal representatives are concerned.

There remains the question whether Virappa carried on his share of the partnership business for the benefit of his family, so as to make the respondents, or either of them, liable to any extent.

In considering this question it is material to notice that Chokalingam (defendant No. 2) was born in 1899 or 1900 and

Shanmukham (defendant No. 3) was born in 1913—so that in 1908 Chokalingham was a minor and Shanmukham was not born.

Further there is no allegation that a business like that started by the Chetties and Virappa in 1908 was an occupation of the family of Virappa. In fact, Virappa's family was not a trading family.

In their Lordships' opinion, the law in respect of the matter now under consideration is correctly stated in Mayne's Hindu Law (9th edition) at page 398, as follows :—

“ Where a managing member of a joint family enters into a partnership with a stranger the other members of the family do not ‘*ipso facto*’ become partners in the business so as to clothe them with all the rights and obligations of a partner as defined by the Indian Contract Act. In such a case the family as a unit does not become a partner, but only such of its members as in fact enter into a contractual relation with the stranger : the partnership will be governed by the Act.”

In this passage reference is made to the Indian Contract Act, which would be applicable to the facts of this case. It is to be noted that the sections referring to partnership in the said Act have been repealed and are now embodied in the Indian Partnership Act, 1932.

Even assuming, therefore, that Virappa was the manager of his joint Hindu family in 1908, his entering into partnership with the Chetties in that year would not “*ipso facto*” make the other members of his family partners, and there is no reliable evidence that Chokalingam, the second defendant, ever agreed with the Chetties to become a partner, or that the Chetties on their side ever agreed to take him as a partner.

The learned Subordinate Judge seems to have thought that the above-mentioned defendant ratified Virappa's action in continuing the partnership. In the first place, this is not a case of ratification, and, secondly, in their Lordships' opinion, there is no evidence to justify such a conclusion.

Shanmukham (the third defendant) was a minor even at the date of the suit, and there can be no possible ground for holding him to be a partner in the said business.

Finally, it was argued on behalf of the plaintiff that the second and third defendants are liable to the extent to which their family benefited by Virappa's drawings from the firm.

The evidence as to such alleged benefit is very meagre and depends on two or three answers in the cross-examination of Chokalingam (the second defendant), and if the family did benefit by Virappa's drawings, which is not unlikely, there is no evidence as to the extent of such benefit.

But in view of the conclusions at which their Lordships have arrived, viz., that Virappa, and Virappa only, was a partner with the Chetties in the Colombo business, and that the second and third defendants had no interest therein, there is no ground for the plaintiff's contention that the plaintiff should be allowed as



of course and without further investigation to follow the money, if any, which Virappa drew as his share from the partnership business and used for the benefit of his family.

The result is that the appeal must be allowed in so far as the plaintiff's claim against the defendants 2 and 3 in their capacity of legal representatives of Virappa is concerned, and the decree of the High Court, which dismissed the suit *in toto*, must be set aside.

In lieu of the Subordinate Judge's decree there must be a declaration that Virappa was a partner to the extent of the above-mentioned share, viz. :  $1\frac{1}{8}$  of  $4\frac{1}{4}$ , with the Chetties in the Colombo business, that the said partnership began on the 15th May, 1908, and was dissolved as from the date of the institution of the suit, and the usual direction for the taking of accounts between the parties to the partnership.

The appeal must be dismissed so far as the claim of the plaintiff against the defendants 2 and 3 in their personal capacity is concerned, and the suit against them in that capacity dismissed.

The plaintiff must pay to the defendants 2 and 3 in their personal capacity their costs of the proceedings in both the Courts in India, and the plaintiff and the defendants 5 and 6 must pay to the said defendants their costs of the appeal to His Majesty in Council.

The defendants 2 and 3, in their capacity as legal representatives of Virappa and to the extent of Virappa's estate, must pay the plaintiff's costs in the Courts in India and the appellants' costs of this appeal.

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In the Privy Council.

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DELIVERED BY SIR LANCELOT SANDERSON.

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