

V. Rm. Km. M. Kulandaivelan Chettiar - - - - Appellant

v.

The Official Receiver of South Arcot 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 28TH JULY, 1949

Present at the Hearing :

LORD SIMONDS

LORD MORTON OF HENRYTON

LORD REID

SIR JOHN BEAUMONT

SIR MALCOLM MACNAGHTEN

[*Delivered by* LORD REID]

The appellant is the son of Muthappa Chetti, the second defendant and third respondent in this suit, and the deceased Deivanai Achi who were both members of the Nattukottai Chetti community. On the occasion of their marriage in 1897 a hundi or bill for Rs.3,062—8—0 was given by the bride's family to the husband's father Muthayya Chetti and an entry was made in the books of Muthayya Chetti's firm on 16th December, 1897, in the following terms :—

| | Rs. | a. | p. |
|--|-------|----|----|
| " Credit—In respect of sending the hundial obtained from V.T.M. for streedhanam amount to R.M.A.R.A.R. of Madras as per the letter of the said person, principal Rs.3,062—8—0 ; interest Rs.66—3—6 ; in all as per the two items together with Madura current rate of interest as settled in the presence of 1. P.R.K.M. and and 2. A.A.R.S. as on the 17th of the current Avani (31st August 1897) | 3,128 | 11 | —6 |

V.T.M. was the bride's family vilasam and P.R.K.M. and A.A.R.S. were members of the family. So far there is no dispute but there is no later admittedly authentic entry in any account or other writing which identifies or expressly refers to the stridhanam and there is no agreement as to what happened to it.

The Nattukottai Chetties are a community whose hereditary calling is money lending and banking. The appellant's case is that it is customary in the community for a bride's parents to give money presents to her but to hand over such money in the shape of cash or hundies to the senior member of the husbands' family to be invested and held in trust for the issue of the marriage, and that such investment may be made by using the money in the husband's family business or by lending it to another business : in either case the money is to be accumulated at compound interest and is the subject of a trust. The appellant alleged and sought to prove that in accordance with this custom the above mentioned sum was held and accumulated by his grandfather's firm until 1908 when it amounted to Rs.8,643—6—3, and that it was then withdrawn from this firm at the instance of his mother's family and divided into two parts, Rs.5,143—6—3 being invested with Somasundaram and Rs.3,500 being invested with Chinnayya Chettiar. Somasundaram and

Chinnayya were brothers and maternal uncles of the appellant's father. It is alleged that Somasundaram and Chinnayya accepted these sums in trust to accumulate at compound interest. Somasundaram was adjudged insolvent in 1928 and it is alleged that the trust fund then amounted to Rs.50,000 and that the appellant is entitled to a charge over his entire estate for this amount. The respondent, the Official Receiver of South Arcot, has opposed this claim in the interest of the creditors.

This is not the first suit in which this matter has been litigated. In Somasundaram's insolvency proceedings the appellant's mother made a claim in March, 1932, founding on the alleged deposit of Rs.5,143—6—3 with Somasundaram in trust in 1908 and claiming over Rs.40,000. Somasundaram had lived for nearly three years after being adjudicated insolvent, but no claim was made during his life when his evidence about the alleged deposit would have been available: the claim was made a few weeks after his death and no good reason was given for the delay. The Official Receiver after hearing evidence and examining a number of the documents which are founded on in the present suit found that it was not proved that any part of the stridhanam had been deposited with Somasundaram and this finding was affirmed by the District Judge, South Arcot, and by the High Court at Madras. The appellant's mother died before the hearing of the appeal by the High Court and the present appellant was made an appellant in that suit as legal representative of his mother. The appeal to the High Court in that suit was dismissed on 1st October, 1937.

The present suit was brought by the appellant on 10th April, 1939. It was dismissed by the Subordinate Judge at Devakottai on 27th February, 1941, but the High Court allowed an appeal and the suit was remanded. On 4th September, 1943, the Principal Subordinate Judge found in favour of the appellant and an appeal was taken against this decree by the present first respondent, the Official Receiver, South Arcot, representing Somasundaram. This appeal was allowed by the High Court on 15th August, 1945, and the suit dismissed so far as the present first respondent is concerned. Against that decision the present appeal is taken to His Majesty in Council. One of the grounds of judgment of the High Court was that it had not been proved that the sum of Rs.5,143—6—3 deposited with Somasundaram's firm was part of the stridhanam of the appellant's mother. It will be convenient first to consider this question because unless the appellant can show that part of his mother's stridhanam was deposited with Somasundaram this appeal must fail and the other questions involved in the case do not arise for decision.

There is no doubt that the sum of Rs.5,143—6—3 was paid to Somasundaram. This appears from a hundi of 25th October, 1908, granted by the appellant's grandfather's firm in favour of Somasundaram's firm and from certain letters and entries in the books of other firms. But none of these entries identifies this money as coming from any particular source. The books of Somasundaram's firm for this period were not available. Accordingly there is no written evidence—apart from a draft hundi which will be referred to later—to show that this sum was part of the appellant's mother's stridhanam. The appellant relies on evidence given by his grandfather in the earlier suit and by his great uncle and his father in this suit. This evidence is not entirely consistent but its purport is that in 1908 the mother's family or the mother herself wished the stridhanam to be transferred to Somasundaram's firm: the amount of the stridhanam was found to be Rs.8,643—6—3 and the first proposal was to invest the whole with the one firm. With this in view there was written out by Somasundaram or his brother a draft of a hundi to be granted by the appellant's grandfather in favour of his father. But it was then decided to split the stridhanam and invest Rs.5,143—6—3 with Somasundaram and the balance of Rs.3,500 with his brother. The draft hundi is produced: it begins "Credit to V.R.M.K.M.M. and Debit to V.R.M.K.M. in respect of the stridhanam amount paid to self by V.T.M. people . . .". If this document is genuine it would go far to establish the appellant's case. But it is in quite a different form from the

hundies admittedly granted a few days later. According to the witnesses the only reason for not completing the earlier draft was the decision to split the sum into two parts. In that case there was no reason why the form of the draft should be altered and there is no adequate explanation of the omission of the vital reference to stridhanam from the two hundies in favour of Somasundaram and his brother which were granted a few days later. It is said, however, that when Somasundaram received the money he gave a cadjan voucher which identified the money. It is remarkable that that voucher is said to have been lost whereas the useless draft hundi has been preserved. It is equally remarkable that although Somasundaram's brother is alleged to have received the rest of the stridhanam at the same time and in the course of the same transaction, and that brother was still alive, no attempt was made to get his evidence.

Although the appellant's mother and her family are said to have urged the transfer of the stridhanam to Somasundaram and his brother for greater safety they appear to have been singularly lax in failing to obtain any proper voucher or accounts after the transfer. It is said that the appellant's mother asked for accounts several times without success and indeed demanded payment of money from Somasundaram, yet for over two years after his insolvency she remained silent, only making a claim after he had died. The appellant's grandfather states that he also asked for a voucher, but that he was told by Somasundaram that there was a credit entry in the account and given as a voucher an unsigned ainthogai or balance sheet which is produced. This is a most improbable story. In the first place it is unlikely that a money-lender would voluntarily disclose the names of all his customers and the state of their accounts when a simple voucher for the one sum of money in question could so easily have been given; and further this document is useless as a voucher because all it shows is an entry under "particulars of credit" of "V.R.M.K.M.M. Rs.6,074—13—8". There is nothing to indicate that this sum was stridhanam or that the wife had any interest in it. Finally Somasundaram's books are available from about 1912 onwards and there is no entry in them of any sum due to the appellant's father or mother which could be the stridhanam. The appellant attempts to explain this by alleging a deliberate breach of trust by Somasundaram. The appellant's grandfather was heavily in debt to Somasundaram: there is an entry in the balance sheet referred to above of a debit of Rs.17,487. It is said that Somasundaram, though well aware that the sum at the credit of the appellant's father was trust money, applied it to reduce the debit of the grandfather. It does not seem possible that this could be done without its coming to the knowledge of both the father and the grandfather within a comparatively short time; certainly the grandfather must have become aware that his debt had been reduced; yet the father denies all knowledge of it and the grandfather says nothing about it. In their Lordships' judgment the actions of all parties concerned since 1908 are so difficult to reconcile with there having been any deposit of trust money with Somasundaram that the evidence given by the appellant's relations cannot be accepted. That being so the appeal must fail.

The appellant was also met by a plea of *res judicata*. This would be a good plea if his mother had such an interest in the stridhanam as entitled her to represent the estate so that the decision against her in the earlier suit is binding on those who would take it after her. In order to avoid the plea the appellant would have to show that his mother's interest fell short of such an interest. In the ordinary case a woman's interest in stridhanam is undoubtedly such that a decision against her with regard to it binds all who claim it after her. But it is said that by a custom of the Nattukottai Chetti community a woman of that community has no right to her stridhanam, the whole interest being in her children; or at least that her interest is of such a limited character that her children have an independent right and are not bound by any decision against her. It is further said to be a part of the custom of that community that the stridhanam is deposited with a family firm on trust so that that firm has a right to use the money in its business

but is nevertheless bound as trustee to account for the money together with compound interest on it as trust money. This would mean that on the insolvency of the family firm the family can claim a charge over the whole of the firm's assets to the prejudice of the other creditors. Both parts of this alleged custom involve such a radical alteration of the ordinary law that their Lordships would not be prepared to recognise it without much more definite evidence than that given in this case. Several cases were cited in which a custom of this community has been held to be established in one form or another. It is unnecessary for the decision of this case to express any opinion about these cases and therefore their Lordships do not propose to do so.

Their Lordships will humbly advise His Majesty that this appeal should be dismissed. As the appellant is proceeding *in forma pauperis* there will be no order as to costs.

In the Privy Council

V. RM. KM. M. KULANDAIVELAN
CHETTIAR

v.

THE OFFICIAL RECEIVER OF SOUTH
ARCOT AND OTHERS

DELIVERED BY LORD REID

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