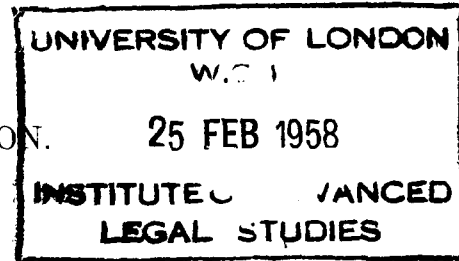


10,1957

No. 27 of 1953.

In the Privy Council.

ON APPEAL  
FROM THE SUPREME COURT OF CEYLON.



BETWEEN—

NAGAMMAI ACHI, Widow of A. T. K. P. L. Muttiah Chettiar and PALANIAPPA CHETTIAR, Son of V. R. M. T. Arunachalan Chettiar, both of Sirukoodalpatti in Ramnad District South India substituted in place of the late A. T. K. P. L. Muttiah Chettiar pursuant to Order in Council dated the 17th March, 1955 - *Appellants*

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— AND —

A. R. L. LAKSHAMANAN CHETTIAR of No. 42, Kaluwella Street, Galle - *Respondent.*

CASE FOR THE RESPONDENT.

RECORD.

1. This is an Appeal from a Judgment and decree of the Supreme Court of Ceylon dated the 25th November, 1948, which reversed a Judgment and decree of the District Court of Galle, dated the 27th May, 1946.

20 2. The main question for determination is whether the Respondent is liable to the Appellant to the extent of Rs. 8,500/- with legal interest thereon at 5% from the 3rd October, 1934, and the sum of Rs. 5,706 with legal interest thereon at 5% from the 15th January, 1938, and costs. The District Court at Galle held he was liable—while the Supreme Court of Ceylon on appeal, held that he was not.

3. The facts of the case are as follows:—

30 The Plaintiff is a professional money lender who resides in India. The Defendant was his agent and attorney at Colombo from about 1919 to the 28th January, 1933. Amongst the debtors of the Plaintiff were two persons, I. M. Alles and C. D. A. Samaranyake, both of Galle. Alles died while a sum of Rs. 6,500, and interest, was owing to the Plaintiff's firm on promissory note for Rs. 7,000. Alles' estate was administered by his executor, Mr. W. R. de Silva. Samaranyake died while a sum of Rs. 7,000 was due to the Plaintiff's firm. One, E. C. Abeygoonewardena, who had intermeddled with the estate of

p. 129.

Samaranayake, was sued by the Defendant as the Plaintiff's attorney in D.C. 27002, and a decree had been obtained on the 23rd September, 1929, for a sum of Rs. 8,619/20, with legal interest and costs. Of this sum Rs. 2,695 had been recovered and accounted for by the Defendant.

p. 136. 4. On the 25th January, 1933, three days prior to his leaving the service of the Plaintiff and departing for India, the Defendant by P.20 assigned this decree to one, A. L. A. S. M. Alagappa Chetty, for an alleged consideration of Rs. 3,000. Alagappa had himself substituted as Plaintiff in D.C. 27002 and has recovered a sum of Rs. 5,706/81 (*vide* 10 P.19). The Defendant has also prior to the 28th January, 1933, endorsed promissory note P.1 granted by Alles to the same Alagappa Chetty, who has recovered from the executor of Alles' estate the sum of Rs. 8,500, on p. 148. the 3rd October, 1934.

p. 1. 5. It is the Plaintiff's case that the Defendant assigned the decree and endorsed the note to Alagappa without Plaintiff's authority and with fraudulent intention, that no consideration received from Alagappa has been accounted for, that the assignment and endorsement had been made for the Defendant's benefit and that through Alagappa has collected the sums mentioned, and that the Defendant is liable to pay 20 the said sums to the Plaintiff.

p. 2. 6. The position of the Defendant is that the Plaintiff's business was failing and as he was in insolvent circumstances the Plaintiff directed the Defendant to close the business at Colombo, to assign the decree to Alagappa and to endorse the note and to write off in the books the amount due on the note. The Defendant executed these directions. He received no consideration of any nature from Alagappa, nor did Alagappa pay sums recovered by him to the Defendant. After the termination of his services the Defendant rendered an account to Plaintiff of his stewardship. The Plaintiff was satisfied and gave him a written 30 discharge dated the 28th April, 1934. Therefore the Plaintiff is not entitled to maintain this action.

pp. 16-19. 7. The District Judge framed a number of issues which he answered and held as follows:—

(1) That the Defendant wrongfully, unlawfully, fraudulently and without the consent and approval of the Plaintiff endorsed the promissory note P.1 and assigned the decree in case No. 27002 for the sum of Rs. 3,000 to Alagappa Chetty, thereby misappropriated the said note and decree or their proceeds.

pp. 79-87. (2) That the said Alagappa recovered a sum of Rs. 8,500 on P.1 40 and a sum of Rs. 5,706/81 under the said decree and the Plaintiff was entitled to recover the said sums from the Defendant.

(3) The frauds in connection with P.1 and the decree were discovered by the Plaintiff on or about February, 1942.

(4) The Defendant neglected and failed to hand over to the Plaintiff a sum of Rs. 3,000 alleged to be paid by Alagappa as consideration for the assignment of the decree in D.C. 27002.

10 (5) The consideration of Rs. 3,000 alleged to have been received by the Defendant prior to the execution of the deed was not paid in the presence of the Notary. The learned Judge did not think the consideration of Rs. 3,000 was paid by Alagappa to the Defendant. It was only a colourable transaction to enable the Defendant to collect the monies due on the decree through Alagappa as his agent. Therefore it is not Rs. 3,000 but Rs. 5,706/81 which the Plaintiff is entitled to recover from the Defendant.

(6) That the said Alagappa Chetty collected the two sums of Rs. 8,500 and Rs. 5,706/81 for and on behalf of the Defendant and the latter became the trustee of these two sums for the Plaintiff, who is entitled to recover the said two sums with interest thereon at 5% from the Defendant.

20 (7) The Defendant wrongfully and fraudulently represented to the Plaintiff that the two debts were irrecoverable and after the recovery of the same fraudulently and wrongfully concealed the fact of collection from the Plaintiff.

(8) Defendant realised the sum of Rs. 5,706/81 through Alagappa Chetty. There was no direct evidence that Alagappa Chetty paid the Defendant this sum, but it is unlikely that Alagappa Chetty double-crossed the Defendant of the amount collected by him on the assignment.

(9) The Defendant did not endorse P.1 or assign the decree at the direction and on the orders of the Plaintiff.

30 (10) The Defendant rendered an account to the Plaintiff of the Defendant's transactions as Plaintiff's agent, but failed to disclose the fact of his assigning the decree and endorsing the note. All the account books were left with the firm and were available to the Plaintiff. No letters written by the Plaintiff to the Defendant were handed to the Plaintiff.

(11) The Plaintiff on the 28th April, 1934, gave the Defendant a complete discharge and acknowledged that the Plaintiff had no present or future claims against him.

40 (12) The Defendant did not hand over the books and papers to the Plaintiff relying on a representation that the Defendant was discharged from all present and future claims.

(13) The Plaintiff's causes of action were not prescribed.

8. On the 27th May, 1946, the District Judge accordingly delivered judgment and by a decree of the same date ordered the Defendant to pay to the Plaintiff the sum of Rupees Eight thousand and five hundred (Rs. pp. 79-87.

pp. 87-88. 8,500) together with legal interest thereon at the rate of 5% per annum from 3rd October, 1934, and the sum of Rs. 5,706/81 together with legal interest thereon at 5% per annum from the 15th day of January, 1938, respectively till payment in full and the costs of this action.

pp. 90-99. 9. Against the said decree and judgment of the District Court, the Defendant appealed to the Supreme Court of Ceylon disputing his liability. The appeal was heard by the said Supreme Court (Howard and Canekerratne JJ.) and on the 25th November, 1948, they delivered their judgment. The learned Judges held, disagreeing with the District Judge that the Defendant was not liable to the Plaintiff in respect of the latter's claim and allowed the Defendant's appeal with costs. 10

p. 100. 10. On the 25th November, 1948, a Decree was accordingly passed ordering that Judgment be entered for the Defendant with costs in the Supreme Court and District Court.

11. The learned Chief Justice in delivering the judgment of the Supreme Court made the following significant observations after a careful consideration of all the facts and law involved:—

p. 92, ll. 43-49. "It will be observed that the Plaintiff's case against the Defendant has been based on the contention (a) that the assignment of "the decree in case No. 27002 and the endorsement of the promissory note P.1 to Alagappa Chetty were fraudulent transactions, and (b) "that apart from fraud the Defendant was a trustee of these sums "and liable to account for the same to the Plaintiff. Both these contentions have been answered by the learned Judge in favour of the "Plaintiff . . . . . 20

p. 97, ll. 27-50.  
p. 98, ll. 1-10. "In my opinion this is not a claim to recover trust property or "the proceeds thereof still retained by a trustee. Nor was the trust "property or proceeds thereof previously received by the Defendant "and converted to his use. Nor in view of the learned Judge's findings referred to in (5) was part of the trust property or its proceeds "converted to the use of the Defendant. In the absence of fraud or "fraudulent breach of trust to which the Defendant was party or "privy the claim should have been brought within six years from "the 28th January, 1933. As the action was not instituted till the "29th January, 1942, the Prescription Ordinance applies and the "claim is statute barred. 30

"The next point for consideration is whether the learned "Judge was right in holding that the Defendant, when he endorsed "P.1 and assigned the decree in case No. 27002 to Alagappa, was "guilty of fraud or fraudulent breach of trust. The following passage "occurs in the judgment:— 40

"It is admitted that the Defendant assigned the Samarana-yake decree and assigned Alles' note to Alagappa Chetty.

“That being so the burden rests on him to prove that he did so  
“at the instance of the Plaintiff.”

“The burden of proof is thus placed on the Defendant. In  
“*A. L. N. Narayanan Chettiyar and Another v. Official Assignee,*  
“*High Court Rangoon, and Another* (1941) A.I.R. (P.C.) 93 it was  
“held that fraud like any other charge of a criminal offence whether  
“made in civil or criminal proceedings must be established beyond  
“reasonable doubt. A finding as to fraud cannot be based on  
“suspicion and conjecture. The burden of proof in regard to fraud  
10 “has therefore been placed by the learned Judge wrongly on the  
“Defendant. For this reason the judgment cannot stand. Even  
“with the burden so placed I am of opinion that the Defendant has  
“raised a reasonable doubt as to whether he was guilty of fraud  
“when he assigned the decree and endorsed P.I in favour of  
“Alagappa Chetty. It has not been established that the Defendant  
“obtained any financial advantage for these transfers. His power  
“of attorney ceased on the 28th January, 1933, from which date he  
“was no longer the agent of the Plaintiff. From that date Chinniah  
20 “held the power of attorney and was the agent of the Plaintiff” . .

“The Plaintiff concedes that Alagappa was instructed to assist  
“the Defendant in settling his affairs by recovering as much as could  
“be recovered. This evidence of the Plaintiff raises a reasonable  
“doubt as to whether he is speaking the truth when he says he did  
“not instruct the Defendant to transfer the rights in Samaranyake’s  
“and Alles’ debts to Alagappa. I think that fraud has not been  
“established beyond all reasonable doubt.”

p. 99, ll. 25-31.

12. The Plaintiff (Appellant) has appealed against the said decree  
of the Supreme Court to Her Majesty in Council, but it is submitted for  
the Defendant (Respondent) that this appeal ought to be dismissed with  
30 costs, for the following, among other,

#### REASONS.

1. BECAUSE the Prescription Ordinance applies and the claim of the Appellant is barred by Statute.
2. BECAUSE the burden of proof in regard to fraud was wrongly placed on the Defendant by the District Court.
3. BECAUSE in any case fraud on the part of the Defendant has not been proved beyond all reasonable doubt.
4. BECAUSE the Judgment of the District Court is wrong and that of the Supreme Court right.

In the Privy Council.

**ON APPEAL**

FROM THE SUPREME COURT OF CEYLON.

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BETWEEN—

**NAGAMMAI ACHI and PALANIAPPA  
CHETTIAR**

*Appellants*

— AND —

**A. R. L. LAKSHAMANAN CHETTIAR**

*Respondent.*

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**CASE FOR THE RESPONDENT.**

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HY. S. L. POLAK & Co.,  
20/21, Tooks Court,  
Cursitor Street,  
E C.4.  
Solicitors for the Respondent.