Privy Council Appeal No. 96 of 1928.

Annamalai Chettiar and others - - - - - *Appellants*

v.

A.M.K.C.T. Muthukaruppan Chettiar and another - - - *Respondents*

A.M.K.C.T. Muthukaruppan Chettiar and another - - - *Appellants*

v.

Annamalai Chettiar and others - - - - - *Respondents*

(*Consolidated Appeals*)

FROM

THE HIGH COURT OF JUDICATURE AT RANGOON.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL DELIVERED THE 14TH OCTOBER, 1930.

Present at the Hearing:

LORD TOMLIN.
LORD THANKERTON.
SIR LANCELOT SANDERSON.

[*Delivered by* LORD THANKERTON.]

The parties to this appeal are Chettiar money-lenders and bankers. The plaintiff-respondents represent the firm of A.M.K. Chettiar, and the defendant-appellants represent the N.R.M.A. Chettiar firm. Other defendants to the suit, who are not appellants, represented the S.K.T. Chettiar firm and the R.M.A.T. Chettiar firm. The respondents A.M.K. derive their interest under an assignment from R.M.A.T. and the appellants under an assignment from S.K.T. and another Chettiar firm T.A.R.M. The effect of these assignments is in issue in the suit.

Prior to the death of one Vijayan Servai, in March, 1904, S.K.T. had made considerable monetary advances to him, and

after his death up to 1906 they had made certain further advances to the administrator of his estate. These advances had been secured by a mortgage for Rs. 10,000 dated the 22nd September, 1902, and other securities in favour of S.K.T. In fact the money for these advances was provided jointly by S.K.T., R.M.A.T., and another Chettiar firm, T.A.R.M.; the interest of the last-named firm was subsequently taken over by S.K.T., and T.A.R.M. need not be further considered. It is now agreed that R.M.A.T. provided one-fourth of the advances.

In March, 1906, the heirs of Vijayan Servai filed a suit for administration of his estate, to which the administrator of his estate and S.K.T. were called as defendants, in the District Court of Moulmein. The suit was defended.

On the 26th September, 1906, an indenture was executed to which S.K.T., T.A.R.M. and N.R.M.A. were parties, but to which R.M.A.T. were not parties. By that deed S.K.T. and T.A.R.M. transferred and assigned to N.R.M.A., the present appellants, all the outstanding debts due from the estate of Vijayan Servai, all interest accruing from 21st June, 1906, and their securities, all as set out in schedules annexed to the indenture. It further provided as follows :—" The said S.K.T. and T.A.R.M. are freed and discharged from all responsibilities for all cases now pending in the District Court of Amherst and from all cases that may be brought hereafter by anyone in connection with the outstandings and securities hereby transferred and assigned." Thereafter S.K.T. acted as attorneys for N.R.M.A. in the administration suit. It may be explained that the administration suit was No. 21 of 1906 of the District Court of Thaton, which sits at Moulmein, the headquarters of the Amherst District, although variously described as the District Court of Moulmein or of Amherst.

On the 13th May, 1907, the District Court of Thaton made a decree in favour of S.K.T. for Rs. 67,023–1–6, but, on appeal to the Chief Court of Burma, the decree was set aside by the Chief Court on the 16th August, 1909, and an order made that S.K.T. should be struck out as parties to the suit. In a review of judgment, however, the Chief Court on the 2nd May, 1910, directed that the suit be remanded for making a preliminary decree and that S.K.T. be regarded as claimants under the said decree to be creditors of the estate and that their claims be taken to have been made on the 25th June, 1906. On the remand the District Court on the 14th August, 1911, passed a preliminary administration decree and, *inter alia*, ordered that an account be taken of all the liabilities of Vijayan Servai. Thereafter N.R.M.A. were made co-claimants with S.K.T. After the account had been taken, a decree was passed on the 17th November, 1919, declaring that Rs. 1,70,520–1–6 was due to N.R.M.A., the assignee of S.K.T., and directing the sale of the mortgaged properties, the mortgagees to be satisfied out of the proceeds.

Before the first decree of the District Court had been set aside by the Chief Court, R.M.A.T., by an assignment dated the

20th March, 1908, had transferred to the respondents A.M.K. *inter alia* " One-fourth share in the decree passed against V.V.R. Vijayan Servai in Civil Regular Suit No. 21 of 1906 of the District Court Amherst against which appeal is pending in Chief Court Lower Burma." It is not now disputed that thereafter A.M.K. contributed their share of the expenses of S.K.T. and N.R.M.A. in the conduct of that case until 1909, and that on the 14th March, 1909, they received a sum of Rs. 1379 from the Receiver in the suit, who was a member of the firm S.K.T.

In accordance with the decree of the 17th November, 1919, the property was put up to Court auction and was purchased by the appellants N.R.M.A. at the price of Rs. 1,00,060, which was set off against the decretal amount. The sale was completed and possession given to the appellants on the 24th June, 1920.

The administration suit is still pending, but on 19th September, 1923, the respondents instituted the present suit in the District Court of Thaton. The original plaint was amended and parties agreed to go to trial on the amended plaint, which is dated the 28th August, 1924. The relief sought was (1) a declaration that the respondents are the owners of an undivided quarter share of the lands purchased by N.R.M.A. in 1920, for partition of the lands and for an account of mesne profits, and (2) an account of the monies received by S.K.T. and N.R.M.A. as creditor claimants in the administration suit and an account of the expenses incurred therein.

By decree dated the 4th May, 1926, the Trial Judge dismissed the suit with costs, but, on appeal, the High Court of Judicature at Rangoon by decree dated the 18th May, 1927, upheld the respondents' claim for an account of a one-fourth share of the proceeds of the administration suit come to the hands of the appellants N.R.M.A., but rejected the respondents' claim to a share of the lands.

The appellants have taken the present appeal against the decree of the High Court in regard to the proceeds of the administration suit, and the respondents have taken a cross-appeal in regard to the lands.

Three questions arise in the appeal, viz. :—

1. Whether the right title and interest of R.M.A.T. in respect of their share in the joint advances is now vested in the respondents A.M.K. by virtue of the assignment of 20th March, 1908.
2. Is the suit barred by limitation ?
3. Have the respondents a right of action against the appellants N.R.M.A. ?

The cross-appeal raises the question whether the respondents A.M.K. are entitled to a one-fourth share of the lands purchased by the appellants N.R.M.A. in 1920.

On the first point their Lordships agree with the conclusion of the High Court. The appellants maintained that the instrument was not the transfer of an actionable claim under section 130

of the Transfer of Property Act, 1882, in view of the definition of " actionable claim " in section 3 of the same Act, in respect that the debt was secured by the mortgages and other securities. But R.M.A.T. was not a creditor in these securities which were granted by V.S. to S.K.T., and R.M.A.T.'s only claim was against S.K.T. The appellants further maintained that by its terms, the instrument only assigned to A.M.K. the interest of R.M.A.T. in the actual decree of the 13th May, 1907, which was subsequently set aside. This was the view taken by the Trial Judge, but the High Court held this construction to be erroneous, and that the instrument transferred to A.M.K. all the interest of R.M.A.T. in any monies recovered by S.K.T. in the administration suit. Their Lordships concur in this view and for the reasons given by the High Court.

It will be more convenient to deal with the second contention last.

The third contention raises the question of the nature of the original right of R.M.A.T. as against S.K.T. The Trial Judge held that it was a partnership right which was not assignable by R.M.A.T. to the respondents, that the liability of S.K.T. was not transferred to the appellants by the assignment of the 26th September, 1906, and that there was no privity of contract between the respondents and the appellants such as to confer a right of suit. The High Court appear to have proceeded on the view that though there was originally a partnership between S.K.T. and R.M.A.T. that partnership had been dissolved and in its place " a new agreement had been entered into whereby the N.R.M.A. firm had the right to collect the debts but subject to the obligation to pay one quarter of these debts to the A.M.K. firm."

The learned judges state :—

> " It is true there is no contract here between the N.R.M.A. and the R.M.A.T. firms, but it seems to us clear that the parties have since accepted the position and have recognised that the N.R.M.A. firm are under an obligation to pay to the R.M.A.T. firm, or their transferees in interest, a one-fourth share of what they have received."

After referring to the payments by and to the respondents A.M.K. in course of the administration suit, they further state :—

> " It would not appear that the plaintiffs have helped in the litigation since 1909, but it is sufficiently clear that their position as purchasers of R.M.A.T.'s rights had been recognised by the N.R.M.A. firm then. It is in our opinion shown that there was a privity of contract between the plaintiffs and the N.R.M.A. firm."

In the opinion of their Lordships there was not a partnership between S.K.T. and R.M.A.T. but they are of opinion that R.M.A.T., having provided a share of the moneys necessary to make the advances, had an equitable right to call S.K.T. to account for their share of the advances when recovered, and that on assignation by S.K.T. to N.R.M.A. in 1906 of Vijayan Servai's indebtedness and the securities, N.R.M.A. took subject to the equitable right of R.M.A.T. to claim an account, and that A.M.K. as assignees from R.M.A.T., are now entitled to claim an account.

As regards the question on the cross-appeal, their Lordships agree with the conclusion of both Courts below. The respondents A.M.K.—appellants in the cross-appeal—relied on section 258 of the Contract Act of 1872 and section 88 of the Trusts Act of 1882.

But the appellants N.R.M.A. were not partners of the respondents, and, as regards the Trusts Act, the respondents were unable to show that N.R.M.A. in purchasing the property, had availed themselves of their fiduciary relationship to A.M.K., or that their interests of N.R.M.A. in so doing, were adverse to the interests of A.M.K. The respondents A.M.K. were unable to show that the price paid by N.R.M.A. was not a proper one or that N.R.M.A. had not money or credit of their own sufficient to satisfy the price.

Finally the question of limitation falls to be considered in relation to the respondents' claim for an account. Their Lordships agree with the appellants' contention that section 10 of the Limitation Act does not apply, as this is not a trust for a specific purpose. A specific purpose must be " a purpose that is either actually and specifically defined in the terms of the will or the settlement itself, or a purpose which, from the specified terms, can be certainly affirmed." *Khaw Sim Tek* v. *Chuah Hooi Gnoh Neoh* (1921), 49 I.A. 37, at p. 43. The appellants sought to apply article 62 of the Act, which applies to " money payable by the defendant to the plaintiff for money received by the defendant for the plaintiff's use." But, in their Lordships' opinion Article 62 does not apply to an equitable claim against a trustee liable to account for an account and ascertainment of what may be due. (*Gooroo Das Pyne* v. *Ram Narain Sahoo* (1884), 11 I.A. 59 at p. 65.) In their Lordships' view the case falls under article 120, under which the time begins to run when the right to sue accrues. In a recent decision of their Lordships' Board, delivered by Sir Binod Mitter it is stated, in reference to article 120, " There can be no ' right to sue ' until there is an accrual of the right asserted in the suit and its infringement or at least a clear and unequivocal threat to infringe that right by the defendant against whom the suit is instituted " (*Musammat Bolo* v. *Musammat Koklan* delivered 3rd July, 1930). Counsel for the appellants admitted that he was unable to specify any date at which the claim to an account here in suit was denied by the appellants. Accordingly this contention fails.

It follows that their Lordships will humbly advise His Majesty that the appeal and cross-appeal should be dismissed, and, in respect that neither party has been successful, there will be no order as to costs except that, in accordance with the Order in Council of the 7th May 1929, granting special leave to cross-appeal, the costs of the application for special leave to cross-appeal must be paid by the cross-appellants.

In the Privy Council.

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DELIVERED BY LORD THANKERTON.

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