APPELLATE CIVIL.

Before Mr. Justice Shephard and Mr. Justice Subramania Ayyar.

(In Appeal No. 179 of 1894.)

CHINNARAMANUJA AYYANGAR AND OTHERS (DEFENDANTS Nos. 2 to 5), APPELLANTS,

1896. February 24, 27.

v.

PADMANABHA PILLAIYAN AND OTHERS (PLAINTIFFS Nos. 1 to 3 AND DEFENDANT No. 1), RESPONDENTS.*

(In Appeal No. 186 of 1894.)

SORIMUTHU PILLAI AND OTHERS (DEFENDANTS Nos. 19 to 21), APPELLANTS,

v.

PADMANABHA PILLAIYAN AND OTHERS (PLAINTIFFS), RESPONDENTS.*

Partnership—Payment to a partner in fraud of his co-partners not a valid discharge—Constructive notice.

The defendants, other than the first defendant, styling themselves the 'agricultural association,' entered into three rental agreements, two of them dated April 23, 1891, and the third dated June 21, 1891, with the plaintiffs and the first defendant for the cultivation of certain lands belonging to an undivided family of which the plaintiffs and first defendant were members and took possession of and cultivated the said lands.

On the 17th June 1891 an agreement, of which the second defendant had notice, was entered into between the plaintiffs and first defendant to the effect that the first plaintiff should be the managing member of the family and should be entitled to receive the rent and give receipts for the same. Subsequently disputes arising between plaintiff and first defendant, the other defendants made payments of rent to first defendant alone:

Held, that these payments were not a valid discharge as against the claim of the plaintiffs on its being proved that second defendant had notice of the agreement of 17th June and that notice to him must be taken to be notice to his partners, the other defendants.

By an agreement between the defendants any one partner was empowered to take a lease, such lease to be binding on all the partners as if executed by them. The leases were not signed by the 13th defendant (now represented by appellants 19, 20 and 21) who was admittedly a partner and took actual part in the management of the affairs of the firm after the leases were executed:

* Appeals Nos. 179 and 186 of 1894.

CHINNA-RAMANUJA AYYANGAR v. PADMANABHA PILLAIYAN.

Held, that it was intended that the leases should operate as if all the members had executed them and that the representatives of 13th defendant were bound.

APPEALS against the decrees of S. Gopalachariar, Subordinate Judge of Tinnevelly, in original suit No. 40 of 1892.

The facts of the case were as follows :—

Suit to recover from defendants 2 to 18 the sum of Rupees 9,180-6-7, being the balance of rent with interest due for kar and pisanam of Andu 1067 (July 1891 to July 1892) in respect of the properties described in schedules I to III under three separate rent agreements (counterparts of lease) executed by defendants 2 to 5 for themselves and on behalf of the other members of the agricultural association on 23rd April and 17th June 1891, in favour of first plaintiff and first defendant (who are uncle and nephew). Plaintiffs 2 and 3 are the younger brothers of the first defendant, who has been made a party defendant on the ground that he has declined to join plaintiffs in instituting the suit.

Defendants 19 to 21 were added as representatives of the 13th defendant upon his death after the institution of the suit.

The plaint sets forth that the family of plaintiffs and first defendant is a joint one, of which first plaintiff is the head and manager.

That the properties described in schedules I to III belong to the family.

That the properties in schedule I were leased out by first plaintiff and first defendant to defendants 2 to 5 as representing the agricultural association for a term of nine years from Chittirai 1066 (April 1891) under a registered lease deed and counterpart passed between the parties on 23rd April 1891.

That similarly the properties in schedule II were leased out under similar documents, also dated 23rd April 1891.

That similarly the properties in schedule III were leased out under similar documents, dated 17th June 1891, between first plaintiff and first defendant on the one hand and second defendant on behalf of the said association on the other.

That defendants 2 to 18 accordingly took up and held possession of the properties.

That on 17th June 1891, *i.e.*, the date of the third lease, an agreement was executed between first plaintiff and first defendant

with the attestation of second defendant and with the knowledge of the other defendants to the effect that first plaintiff was the head and manager of the family and that the said rent should be paid to first plaintiff who should give a receipt therefor.

That defendants 2 to 18 have not paid the rent even after repeated demand on the expiry of the due dates, and deducting the amount credited in plaint, which was collected by Government by attachment of paddy towards kist, the remaining portion of the paddy, money and straw due under the agreements is still due and unpaid, and interest is also payable thereon at one per cent. since the due dates.

Defendant No. 1 admitted the claim. Defendants 2 to 5 disputed the claim and alleged that the full amount of rent due had been paid.

Defendants 6 to 9, 12, 15 and 16 plead that, though they joined the association originally, *i.e.*, in March 1889, they disconnected themselves from it with the consent of defendants 2 to 5 and 13 in April 1889 alone and executed a release deed subsequently, *i.e.*, on March 1892, that they were not aware of the leases obtained by defendants 2 to 5 and 13, and were not members of the association at the time of the leases, that they never enjoyed the properties and are not liable for the rent, that defendants 2 to 5 have exceeded their authority in getting these leases, which are therefore not binding on them, that as more than the rent due at the time of the said release appears to have been paid up, nothing is due from them, and that plaintiffs have impleaded them while fully knowing of their disconnection from the association.

The 13th defendant denies his knowledge of the leases and enjoyment thereunder, charges the association with several irregularities, and states that he had told second defendant that he wanted to disconnect himself from the association, and that he is not bound by the leases and has been unnecessarily made a party.

On 13th defendant's death, defendants 19 to 21 were joined as his heirs. They have put in a written statement adopting his defence and stating that, in any event, they are not liable after his death.

The Subordinate Judge found that with regard to certain payments made by defendants 2 to 5 to defendant No. 1, that these payments were binding on the plaintiffs. He further found

CHINNA-RAMANUJA AYYANGAR v. PADMANABHA PILLAIYAN.

that a sum of Rs. 1,700 had not been paid to the plaintiffs, and that defendants were not entitled to a reduction owing to excessive rain if such excessive rain occurred. The Subordinate Judge decreed that part of the plaintiffs' claim was proved and ordered payment by defendants 2 to 5 of Rs. 3,915-2-8 with interest and proportionate costs. The Subordinate Judge exonerated defendants 6 to 12 and 14 to 18 on the ground that they had disconnected themselves with the agricultural association previous to the leases which formed the subject matter of the present suit, and held that defendants 19 to 21, the representatives of 13th defendant deceased were liable for the aforesaid amount with interest and costs to the extent of the 13th defendant's share in the assets of the agricultural association, and that the defendants 19 to 21 were liable to the extent of the assets, if any, received from the estate of the 13th defendant deceased.

Defendants 2 to 5 appealed in appeal No. 179 of 1894 and the respondents 1 to 3 filed a memorandum of objections, contending that defendants 2 to 5 were not justified in making payments to the first defendant without the consent of the first plaintiff.

Sundara Ayyar for appellants.

Krishnasami Ayyar for respondents.

JUDGMENT.—The question is whether the appellants are liable on the rental agreements executed by four of the defendants, but not executed by the deceased person whom they represent. The plaint alleges that the documents were executed on behalf of the agricultural association of which the deceased was a member. The 13th issue raises the question "whether the defendants 2 to 5 "executed the lease deeds on behalf of the defendants 6 to "18 also"; but there is no finding on that issue. Admittedly it is not stated in the documents that the executants were acting on behalf of others, nor do they sign in that capacity.

The only questions argued are with reference to the third issue. We see no reason for differing from the Subordinate Judge in his finding as to non-payment of Rs. 1,700, and in the finding that there was no such extraordinary rain as to make the special clauses applicable. The finding with regard to this point is that there was really no payment and no valid discharge. The appeal is dismissed with costs.

JUDGMENT ON MEMORANDUM OF OBJECTIONS:—It is admitted by the second defendant that a month after the arrangement made

between his lessors he became aware of it, and that in February 1892 the defendant had express notice of the same arrangement. The Subordinate Judge also in effect finds that the defendant was aware of it from the outset. But he observes there is no evidence to show that this defendant or his co-lessees assented to the arrangement and agreed to pay the rent to the plaintiff only, and accordingly he holds that payments made to the first defendant are valid notwithstanding the arrangement. The Subordinate Judge is, in our opinion, mistaken in supposing that the assent of the lessees was necessary, that otherwise they were at liberty to disregard the arrangement. A payment made by a debtor to one of two joint-creditors, between whom it has been agreed that the other only shall receive the sum, cannot, when made with notice of the agreement and in defiance of it, be treated as a valid payment in discharge of the debt. (See *Phillips* v. *Clogett*(1).) Such a payment may properly be described as made in fraud of the person who was entitled to receive the money. The lessees, other than the second defendant, were his partners and must be held to be bound by the notice which he had. The plaintiffs have in their memorandum of objections claimed Rs. 4,590. They are entitled to the sum of Rs. 2,965, notwithstanding that on taking accounts between them and the first defendant the latter may prove to be entitled to some part of it. Each party will pay and receive proportionate costs. The memorandum of objections is, therefore, allowed.

In appeal No. 186 of 1894, defendants 19 to 21 and heirs of defendant No. 13 deceased appealed against the judgment and decree of the Subordinate Judge in so far as it affected their interest.

Sankara Menon for appellants.

Krishnasami Ayyar for respondents.

JUDGMENT.—The question is whether the appellants are liable on the rental agreements executed by four of the defendants, but not executed by the deceased person whom they represent. It is not denied that the deceased was a partner, nor was it argued in the Court below that the executants had exceeded their powers in taking the leases. There is satisfactory evidence that the deceased took part in the management of the affairs of the firm after the leases were taken. By the agreement under which the partners

(1) 11 M. & W., 84.

CHINNA-RAMANUJA AYYANGAR v. PADMANABHA PILLAIYAN.

worked any one partner was empowered to take a lease and execute any necessary document, such documents being taken to be binding upon all the partners as if executed by them. In result, therefore, it must be taken that, although the other members of the firm are not mentioned in the agreements, and did not execute them, it was intended that they should operate as if all the members were parties to them.

We are unable to agree with the opinion expressed by Farran, J., in *Ragoonathdas Gopaldas* v. *Morarji Jutha*(1). In the case cited by him (*Walters* v. *Northern Coal Mining Company*(2)) it was sought to make the *cestui que trust* liable upon a covenant in a lease executed by the trustee. There was no remedy at law, because the covenant was contained in a deed, and, according to the rules of English law, no person who is not a party to a deed can be sued upon the covenant contained in it. All that was held was that the landlord could not treat the *cestui que trust* as liable to him in equity on the ground of the relation between him and his trustee. There is no relation of that character between the executants of the agreement in the present case and the deceased. We know of no authority for the position maintained by Farran, J., that there is an exception in the case of leases from the general rule laid down in *Beckham* v. *Drake*(3). The suggestion that in the case of a lease there is a transfer of property is met by the case of mortgage as to which there is no doubt that, although executed by one person, it may be binding upon the partner or others who have authorized the act (see *Juggeewundas Keeka Shah* v. *Ramdas Brijbookundas*(4). There is nothing to show an intention to make the executants only liable and to exclude the liability of the other partners. We must dismiss the appeal with costs.

The memorandum of objections is allowed.

---

(1) I.L.R., 16 Bom., 574.
(2) 5 De G.M. & G., 629.
(3) 9 M. & W., 79.
(4) 2 M.I.A., 487.