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Act applies to such petitions, I do not think that an order of this kind should be revised on this ground.

The order of the learned District Munsif appointing the mother as guardian in the place of the son necessarily follows from his finding of the existence of an adverse interest in the son. The civil revision petitions are accordingly dismissed with costs. One Vakil's fee.

K.W.R.

APPELLATE CIVIL.

Before Mr. Justice Madhavan Nair and Mr. Justice Jackson.

1934, January 30.

VATAKKETHALA THOTTUNGAL CHAKKU'S SON MATHU (PLAINTIFF), APPELLANT,

v.

ACHU AND TWELVE OTHERS (DEFENDANTS 1 TO 10 AND LEGAL REPRESENTATIVE OF DEFENDANT 5), RESPONDENTS.*

Transfer of Property Act (IV of 1882), sec. 6 (e)—Debt—Assignment of—Exact amount of debt not mentioned—Data for ascertaining same available in document—Validity of assignment.

V had contracted with a railway company to execute certain works for them. He entered into a sub-contract in connexion with the same with three persons by which he agreed to retain ten per cent of the moneys paid to him by the railway company and pay the balance to them. M was the assignee of the right of the sub-contractors to recover their shares of the said amounts from V. Before the assignment the value of the works executed had been ascertained and the amounts had been received by V from the railway company. In a suit by

* Appeal No. 132 of 1932.

M as assignee against the heirs of V and others to recover the amounts due to the sub-contractors, held that, inasmuch as the data to fix the definite amount due to the sub-contractors were available before the assignment, the mere fact that a calculation would have to be made before determining the exact amount would not make that amount any the less a debt due to the sub-contractors validly assignable in law and that such an assignment does not offend against the terms of section 6 (*e*) of the Transfer of Property Act.

APPEAL against the decree of the Court of the Subordinate Judge of South Malabar at Calicut in Original Suit No. 7 of 1930.

Advocate-General (*Sir A. Krishnaswami Ayyar*) with him *P. S. Raghavarama Sastri* for appellant.

T. R. Venkatarama Sastri with *N. Rama Ayyar* for respondents.

Cur. adv. vult.

The JUDGMENT of the Court was delivered by MADHAVAN NAIR J.—The plaintiff is the appellant. Defendants 1 to 6 are the heirs of one Veeran Haji. The plaintiff's suit out of which this appeal arises was for rendition of accounts by defendants 1 to 6 and for recovery from them personally and from the assets of the deceased Veeran Haji the sum found due on taking accounts, which is estimated to be about Rupees twenty-five thousand. The plaintiff sued as the assignee of the rights of defendants 7 to 11.

The facts are these. The deceased Veeran Haji who died in 1927 was a railway contractor. He had entered into a contract with the South Indian Railway Company in 1924 for doing "earthwork in the Shoranur-Nilambur line". In connexion with this work he appointed as his sub-contractors defendants 7 and 8, and one

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Antony, the deceased husband of defendant 9 and father of defendants 10 and 11. Under the terms of the contract, Veeran Haji, after taking a commission of ten per cent on "earthwork" and two and a half per cent on "culvert work" on the amount of money paid by the railway company, had to give the whole of the balance amount to the sub-contractors. It is alleged in the plaint that, deducting the sum of Rs. 61,424-14-0 received on several occasions from the deceased Veeran Haji, a sum of Rs. 25,000-7-8 is still due to defendants 7, 8 and 9 to 11 for the work done by them.

In Original Suit No. 76 of 1927 eighth defendant sued defendants 7, 9, 10 and 11 for dissolution of the sub-contract partnership entered into between defendants 7 and 8 and the deceased Antony and for recovery of his share of the profits. The eighth defendant was appointed receiver by the Court. Under the orders of the Court, he sold the right of the sub-contractors to recover the amount of debt from Veeran Haji (i.e., due from his heirs and from his assets) in public auction. The plaintiff in the present suit purchased this right for Rupees eight thousand seven hundred and deposited the sale value in Court. After the confirmation of the sale the receiver under the orders of the Court executed an assignment deed to the plaintiff authorizing him to recover the debt. This assignment deed, referred to as Exhibit A in the judgment of the lower Court but not admitted by it in evidence, has been admitted by us for the purpose of this appeal subject to the proof of its genuineness. The plaintiff's suit to recover the amount claimed is based on this deed of assignment.

Exhibit A, the assignment deed, after reciting the sub-contract between the deceased Veeran Haji and defendants 7, 8 and Antony and referring to Original Suit No. 76 of 1927, proceeds as follows :—

"In that suit I was appointed receiver for realizing the above amount from Veeran Haji as also for performing other duties regarding the partnership. On sale by auction after due advertisement within the Court premises, the amount thus due from Veeran Haji under orders from Court to sell it by public auction as a debt due to the partnership, you have bid for rupees eight thousand seven hundred and deposited the whole purchase money under orders from Court. Hereby also I empower you under orders from Court to recover the debt (Edavadu) sold under orders from Court by me as receiver and purchased by you in auction and assign to you the same. None of us but you alone have hereafter any right or voice in realizing the full amount as per accounts due to Anthappan, the heirs of the deceased Anthony and me as sub-contractors under Veeran Haji from Veeran Haji's heirs and assets or to alienate it in any way. This assignment deed is executed under orders from Court."

Defendants 1 to 6 contended, *inter alia*, that the assignment in favour of the plaintiff is not valid and that the plaintiff is not entitled to institute the suit. Issue 7 relates to this plea and it runs as follows :—

"Is the assignment relied upon by the plaintiff true and valid?"

Treating this as a preliminary issue, the validity of the assignment deed was attacked on the ground that it offended the provisions of section 6 (*e*) of the Transfer of Property Act which says that "a mere right to sue cannot be transferred." It was contended on behalf of defendants 1 to 6 that, having regard to the terms of Exhibit A, the suit is not to recover a debt or a liquidated sum, that the assignment of a right to

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recover an unliquidated sum is only an assignment of a bare right to sue, and is therefore invalid. On the contrary, the plaintiff contended that having regard to the facts of the case, there was clearly a debt due from the deceased Veeran Haji to defendants 7, 8 and 9 to 11, and that it was this debt that had accrued that was transferred under Exhibit A, and the suit does not therefore offend the terms of section 6 (*e*) of the Transfer of Property Act.

The learned Subordinate Judge held that it is clear from the assignment deed itself that what has been really sold is the right to recover the amount that might be found due by Veeran Haji on the taking of accounts and not merely rupees twenty-five thousand at which the amount due had been estimated, and being of that opinion he dismissed the suit accepting the contentions of defendants 1 to 6.

The arguments urged in the lower Court have again been urged before us. We may say that the arguments in support of the appeal advanced by the learned Counsel for the appellant, which we will presently refer to, do not help him. He referred us to two classes of cases—one of which relates to suits where the principal assigned his rights to recover moneys due to him by his agent on taking accounts; see *Ramiah* v. *Rukmani Ammal*(1), *Madho Das* v. *Ramji Patak*(2) and *Rajeswar Saha* v. *Sheikh Yadali*(3). Generally stated these cases may be said to proceed on the principle that "the right assigned is substantially a right to money belonging to the principal which

(1) (1912) 24 M.L.J. 313. (2) (1894) I.L.R. 16 All 286.
(3) (1932) 57 C.L.J. 46.

is in the hands of the agent" and is therefore assignable though "it may be that, before it can be ascertained what sum is due, accounts may have to be taken, if necessary, but this fact would not by itself turn the transaction into a mere right to sue"; see observations of ABDUR RAHIM J. in *Ramiah* v. *Rukmani Ammal*(1). It is clear that the case before us does not fall within this principle. Having regard to the facts, on no reasoning can it be said that the position of defendants 7, 8 and 9 to 11 is that of principals who have assigned their rights to sue their agent for moneys due from him. The second class of cases relates to the principle now embodied in section 29 (2) of the Indian Partnership Act that

> "if the firm be dissolved, or if the transferring partner ceases to be a partner, the transferee is entitled as against the remaining partners to receive the share of the assets of the firm to which the transferring partner is entitled, and, for the purpose of ascertaining that share, to an account as from the date of the dissolution."

The argument based on this principle was not advanced before the lower Court. However, it may be said that the facts do not show that the deceased Veeran Haji and defendants 7, 8 and 9 to 11 ever formed a partnership. The relation between them was not that of persons who have agreed to share the profits of a business carried on by all or any of them acting for all. There was no doubt a partnership between defendants 7, 8 and 9 to 11, but between them and the deceased Veeran Haji there was no partnership. Veeran Haji had simply employed them as sub-contractors to work under him.

(1) (1912) 24 M.L.J. 313.

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Though the above line of argument does not help the appellant we think he is entitled o succeed having regard to one admitted fact in the case, which in our opinion clearly shows that a debt had accrued to defendants 7, 8 and 9 to 11 by the time of the assignment deed, Exhibit A, and that such a debt being assignable in law, the plaintiff's suit is maintainable. It is not disputed, and the fact is referred to in the plaint also, that on the 12th April 1929, though by that time Veeran Haji had died, the final amount due to him was paid by the railway company. The assignment deed in favour of the plaintiff is dated 1930. Under the sub-contract, as already stated, Veeran Haji is entitled to take from the amount paid to him by the company a commission of ten per cent on earthwork and $2\frac{1}{2}$ per cent on culvert work and the whole of the balance should go to the sub-contractors (see paragraph 7 of the plaint). When the value of the work of Veeran Haji was ascertained and the amount due was paid to him, the sum due to the assignors by the plaintiff became definite as it could be found out by process of arithmetical calculation. If this view is correct, as we think it is, then at the time of the assignment it must be held that a liquidated amount had become due to the assignors of the plaintiff. If so, the assignment of rights under Exhibit A amounts to an assignment of what is more than a mere right to sue for accounts and does not therefore offend the provisions of section 6 (*e*) of the Transfer of Property Act. The data to fix the definite amount due to defendants 7, 8 and 9 to 11 being available, the mere fact that a calculation will have to be made before determining

the exact amount will not make that amount any the less a debt due to defendants 7, 8 and 9 to 11 validly assignable in law. This reasoning finds support in the decision in the Court of Appeal reported as *O'Driscoll* v. *Manchester Insurance Committee*(1) brought to our notice by the learned Advocate-General at the end of the argument. In that case it was held that

> "where a panel doctor has done work under his agreement with the insurance committee, and the committee have received funds in respect of medical benefit from the National Insurance Commissioners, there is a debt owing or accruing from the insurance committee to the panel doctor which may be attached under Order XLV, rule 1, notwithstanding that as a matter of calculation the exact share payable to him may not yet have been ascertained."

It was there contended that "there cannot be a debt" until the amount has been ascertained. But this contention was repelled by SWINFEN EADY L.J. with the observation:

> "Here there is a debt uncertain in amount which will become certain when the accounts are finally dealt with by the Insurance Committee."

As in that case the insurance committee had admittedly "at all times ample funds in their hands for the purpose of paying what might be found due to Dr. Sweeny" and therefore there was in that learned Judge's opinion "a debt owing or accruing from the insurance committee to Dr. Sweeny", so in this case after the admitted payment of the money to Veeran Haji (i.e., his heirs) by the railway company they had ample funds in their hands for the purpose of paying what might be found due to defendants 7, 8 and 9 to 11, and so there was in our opinion a debt owing

(1) [1915] 3 K.B. 499

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or accruing from Veeran Haji's heirs to the assignors of the plaintiff, and this debt they could validly assign to the plaintiff. If we are prepared to accept this reasoning, Mr. Venkatarama Sastri frankly admitted that he has nothing to say against it.

For the above reasons we set aside the decision of the lower Court on the preliminary issue and remand the case for disposal after considering the other issues. The respondents will pay the appellant his costs here and in the Court below.

The court-fee will be refunded.

G.R.

APPELLATE CIVIL.

Before Mr. Justice Ramesam and Mr. Justice Cornish.

1934, January 15.

GOPALU PILLAI (FIRST DEFENDANT), APPELLANT,

v.

N. R. KOTHANDARAMA AYYAR AND TWO OTHERS (PLAINTIFF AND DEFENDANTS 2 AND 3), RESPONDENTS.*

Provincial Insolvency Act (V of 1920), ss. 39 and 40—Composition—Debt not included in—Later suit on the debt—Maintainability of—Presidency-towns Insolvency Act (III of 1909), ss. 30 and 8—Difference in language between the corresponding sections of the two Acts—Effect of—Promissory note in name of a member of a joint family—No endorsement of promissory note in favour of other members—Suit by all the members on the original debt—Maintainability of—Defendant not a joint promisee of a debt with plaintiff—Power of Court to pass a decree in favour of such defendant for his share of the debt after period of limitation.

N. and K. were brothers and members of a joint family. They were both entitled to a debt evidenced by a promissory

*Appeal No. 213 of 1929.