LETTERS PATENT APPEAL.

Before Sir Arthur Page, Kt., Chief Justice, and Mr. Justice Mya Bu

K.S.A.V. CHETTIAR FIRM *v.* MAHMOO.*

1934

Dec. 3.

Chettiar usage—Business by use of vilasam*—Agent's name after initials—Rights and liabilities of principal on instruments signed by agent—Negotiable instrument, right or liability of a person on—Personal liability of executant.*

It is a well-known and settled usage of Chettiars in India and Burma that they carry on business under names made up of a series of initials (vilasam) to which the local agent affixes his name. This is the ordinary way in which documents are signed by or on behalf of a Chettiar business man or firm, and the principal can sue or be sued on such documents.

M.V. Maya Nadan v. *Arunachalam Chettiar*, Ap. No. 190 of 1923, H.C. Mad.; *Mungumal Jessa Singh* v. *A.L.V.R.C.T. Firm*, 4 M.L.T. 309—*referred to.*

In the case of a negotiable instrument the question as to who is the person entitled to sue or be sued on the instrument depends upon the construction of its terms. Where in the body of a promissory note a specified person purports to contract in his personal capacity, and not a firm or the agent of a firm delineated by a *vilasam* or otherwise, then such person himself is liable and not the firm.

P.R.M.P.R. Chettyar v. *Muniyandi Servai*, I.L.R. 10 Ran. 257 ; *Ramgopal* v. *Sen*, I.L.R. 54 Cal. 380 ; *Sadasuk Jankidas* v. *Sir Kishen Pershad*, 46 I.A. 33—*referred to.*

S.R.M.C.T.S.S.P.A. Firm v. *V.K.M.K.*, C.R. No. 356 of 1932, H.C. Ran.—*dicta explained and disapproved.*

Chari for the appellant. In signing the promissory note in suit in favour of K.S.A.V. Ramiah Raja the defendant made himself responsible to the firm of K.S.A.V. The customary mode by which a Chettiar agent contracts on behalf of his principals is to prefix the *vilasam* of the firm to his name. This custom has been judicially recognized in *Muthar Sahib* v. *Kadir Sahib* (1) ; *Mungumal Jessa Singh* v. *A.L.V.R.C.T.* (2).

The decision in *P.R.M.P.R. Chettyar* v. *Muniyandi Servai* (3) did not purport to lay down anything

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* Letters Patent Appeal No. 3 of 1934 arising out of Special Civil Second Appeal No. 222 of 1933.

(1) I.L.R. 28 Mad. 544, 549. (2) 4 M.L.T. 309.

(3) I.L.R. 10 Ran., 257.

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more than that on the facts of that case the firm was not liable. The correctness of this decision was questioned in Civil Regular No. 356 of 1932 of this Court, but in the latter case the liability of the firm was clearly stated both in the body of the note and by the signature.

Thein Maung for the respondent. The chief requirement of a negotiable instrument is its certainty. The payee should be indicated clearly in the instrument. *Harkishore* v. *Gura Mia* (1). The promissory note in this case was made payable to K.S.A.V. Ramiah Raja. The register kept under the Burma Business Names Registration Act shows that Ramiah Raja is the sole proprietor of the firm. If that is so the present suit is not competent, and to allow a decree to be passed in favour of the present plaintiff would be to render the defendant liable to a double payment. *Jaswant Singh* v. *Gobind Ram* (2).

Chari in reply. A certificate granted under the Business Names Act is not in any way conclusive, and the plaintiff may adduce evidence to show who the partners are. In any case the point was not raised in the lower Courts, and no issue was raised in respect of it.

PAGE, C.J.—In this case the appellant is the sole proprietor of the K.S.A.V. Chettiar Firm of B. Road, Mandalay, and carries on business under the style or *vilasam* K.S.A.V.

The suit was brought in the Subdivisional Court of Mandalay by the appellant, trading under the *vilasam* K.S.A.V., to recover Rs. 5,762 as the principal and interest due under a promissory note executed

(1) I.L.R. 58 Cal. 752. (2) I.L.R. 14 Lah. 19.

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by the defendants in favour of K.S.A.V. Ramiah Raja. At the trial a decree was passed in favour of the appellant. An appeal to the District Court of Mandalay was allowed, and the suit was dismissed. On a further appeal being presented to the High Court Ba U J. confirmed the decree of the District Court. The appellant then obtained leave under the Letters Patent to file the present appeal.

A number of issues were raised and decided at the trial in favour of the appellant, but the District Court without considering the other grounds of appeal dismissed the suit upon the ground that, regard being had to the form of the promissory note, the appellant could not maintain the suit.

The promissory note was in the following terms :

" Mandalay—Rs. 2,000.

K.S.A.V. RAMIAH RAJA.

On 1st waning *Wagaung* 1287 the undersigned Ko Po Hla and Mahmoo of Nyaunghla North Village, Yenangyaung Township, do hereby promise to pay at once in full the sum of Rs. 2,000 (two thousand only) borrowed and taken from Kana Savana Ana Vana Ramiah Raja bearing interest at Rs. 2-8 per cent per mensem jointly or severally on demand made at any time and anywhere by the creditor personally or by their authorized agent. Accordingly this promissory note is signed with consent.

(Sd.) PO HLA.
(Sd.) MAHMOO."

It is not disputed that the words Kana Savana Ana Vana mean and are equivalent to the words K.S.A.V., and it is common ground that the defendants made themselves liable under the promissory note to K.S.A.V. Ramiah Raja. In paragraph (1) of the plaint it was alleged that

" at Mandalay, on the 1st *Wagaung lazok* 1287 B.E. equivalent to 4th August 1925 E.E. the defendants abovenamed by their

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promissory note hereto attached in original jointly and severally promised to pay to the plaintiff the sum of Rs. 2,000 bearing interest at Rs. 2-8 per cent per mensem."

The first defendant did not file an appearance or defend the suit. In paragraph (2) of his written statement the second defendant, who is the present respondent, admitted the allegations in paragraph (1) of the plaint, but by paragraph (8) of the written statement the second defendant denied that "the present agent of the plaintiff" was "legally empowered to file the suit." A power of attorney duly authorizing Muthuramalingam to file the suit on the plaintiff's behalf was produced at the trial, and the question that falls to be determined in the present appeal is whether the words "K.S.A.V. Ramiah Raja" in the promissory note disclosed that the K.S.A.V. firm was the payee under the promissory note with sufficient clearness to indicate to all and sundry into whose hands the instrument might pass that the K.S.A.V. firm was the party to whom the executants of the promissory note had bound themselves under the instrument [*Sadasuk Jankidas* v. *Sir Kishen Pershad* (1); *Ramgopal* v. *Sen* (2) and *P.R.M.P.R. Chettyar* v. *Muniyandi Servai* (3)].

It was not disputed by the learned advocate for the respondent—indeed it was common ground and I am satisfied—that the words "K.S.A.V. Ramiah Raja" would in Burma plainly indicate and disclose that the payee was a firm trading under the *vilasam* of K.S.A.V.; the contention on behalf of the respondent being that the proprietor of the firm in whose favour the defendants had executed the promissory note was Ramiah Raja and not the plaintiff. In my

(1) (1918) 46 I.A. 33. (2) (1927) I.L.R. 54 Cal. 380.
(3) (1932) I L.R. 10 Ran. 257.

opinion, however, having regard to the pleadings and the admissions of the respondent in his written statement it was not open to the respondent to contend that the proprietor of the K.S.A.V. firm was not the plaintiff, as he had expressly admitted that the plaintiff was the person to whom the defendants had promised by the promissory note to repay the principal and interest due thereunder. In these circumstances, in my opinion, there was no defence to the suit, and the decree of the Subdivisional Court ought to be affirmed.

In the course of the argument at the hearing of the appeal reference was made to the decision of the Judicial Committee of the Privy Council in *Firm of R.M.K.R.M.* v. *Firm of M.R.M.V.L.* (1) in which case their Lordships held, affirming the view expressed by Barrett-Lennard J., that in Penang

"when a local representative of a Chetty firm carries on the business under the *vilasam* (*i.e.* the letters) of the firm coupled with his own distinct name, the announcement to the external world in general is that, whether a co-partner with, or a mere agent of, other persons, he is to be looked upon as a principal."

I confess that I am surprised to learn that in Penang Chettiar money-lenders do business in the manner described by Barrett-Lennard J.; for it is clear and undoubted both in Burma and in Madras that with regard to Chettiar money-lenders

"who carry on most extensive business by means of agents in different parts of India, Burma, and the further East, it is well-known that they trade under names made up of a series of initials. Thus the first defendant's firm are known as the A.L.V.R.C.T. firm and the second defendant's as the N.P.L.S.P. firm, and in firm transactions the initials which are the name

(1) (1926) A.C. 761.

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of the firm are prefixed to the name of the signatory as may be seen in the correspondence and documents in the present case, and this is the ordinary way in which documents are signed on behalf of these firms, and may even be said to be the ordinary way in which these firms sign . . . Having regard to the well-known usage which has been proved in this case, and which has been adverted to if not judicially recognized in *Muthar Sahib Maraikar* v. *Kadir Sahib Maraikar* (1), I am of opinion that in this case the principal was sufficiently disclosed when the hundies were drawn on A.L.V.R.C.T. Chinnaya Chetty, which as I have pointed out is the name of the firm followed by the name of the agent. Having regard to the usage in question it is clear upon the face of the hundies that the drawers intended to contract with the firm and not with the agent. Various English cases have been cited, but they were all cases of construction of the language of the particular bill or note, and in none of them was there a well-established usage as there is here to indicate the meaning of the language used."

[*Mungumal Jessa Singh* v. *A.L.V.R.C.T.* (2) per Wallis J.]. Again, in *M.V. Maya Nadan and Brothers* v. *Arunachalam Chettyar and others* (3) Coutts-Trotter C.J. observed :

"There is no doubt that A. Ponsivalai Chetty entered into partnership with a firm trading under the *vilasam* of 'V.M.A.C. and Sons', and that partnership unquestionably traded under the style of 'V.M.A.C. and Sons and A.P.' . . . There is also no doubt that the partnership gave a power of attorney to Arunachellam to act as agent for the partnership. If, therefore, he signed the promissory note with the partnership signature and merely added his own name the inference would be irresistible that the operative signature was that of the firm, and that he merely added his own name as agent. It is true that he added no qualificatory words such as 'agent' or 'by' or 'per pro', but documents in that form are executed by Nattukottai agents every day, and are universally understood to be the firm's signature merely vouched as such by the agent who adds his own name."

(1) (1905) I.L.R. 28 Mad. 544 at p. 549. (2) (1908) 4 M.L.T. 309 at p. 313.
(3) Ap. No. 190 of 1923, H.C. Mad.

I should have thought that in Burma as in Madras the legal position of a Chettiar firm which contracts under a *vilasam* to which the local agent affixes his name was well settled and thoroughly understood. Nevertheless, a doubt has been cast upon the legal effect of this usage of the Chettiars by reason of certain observations passed by Cunliffe J. in Civil Regular No. 356 of 1932 (*S.R.M.C.T.S.S.P.A. Chettyar Firm* v. *V.K.M.K. and others*) ; in which case that learned Judge thought it his duty to animadvert upon the judgment of a Divisional Bench of this Court in *P.R.M.P.R. Chettyar* v. *Muniyandi Servai* (1). In the case tried by Cunliffe J. and also in the two Madras cases to which reference has been made it is well to point out that in the body of the instrument the party stated to be liable thereunder is described by the same *vilasam* as that which appears in the signature of the executant, although no doubt the agent whose name is affixed to the *vilasam* may not be the same ; whereas in *Muniyandi Servai*'s case the party undertaking liability to repay the loan is stated in the body of the promissory note to be a specified person who purported to contract in his personal capacity, and not a firm or the agent of a firm delineated by a *vilasam* or otherwise ; the signature of the executant (assuming that it was the signature of a firm) not being that of the person who undertook liability in the body of the instrument. Nevertheless, Cunliffe J. expressed the opinion that " *Muniyandi Servai*'s case was in many respects very similar to " the case then before him, regardless of the radical difference in the facts upon which the two cases fell to be decided ; and upon the footing that the two cases were substantially on all fours passed strictures upon the judgment in *Muniyandi Servai*'s

(1) (1932) I.L.R. 10 Ran. 257.

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case because it appeared to him to throw doubt upon the legality of the usage whereby Chettiar firms are wont to contract under a *vilasam*. *P.R.M.P.R. Chettyar* v. *Muniyandi Servai* (1), in my opinion, was a plain case which turned on its own facts, and I adhere to what I said in my judgment in that case, which with all due deference to Cunliffe J. I see no reason to think was not correctly decided. In *Muniyandi Servai*'s case my learned brother and I did not, and did not purport to, discuss or determine whether the well-established usage among Chettiar money-lenders of contracting under a *vilasam* was legal or not, as the question did not arise for consideration ; and it is, I think, sufficient to dispel any doubt as to the legality of the usage that may have arisen by reason of the observations of Cunliffe J. in Civil Regular No. 356 of 1932, and to dispose of the criticism passed by the learned Judge in that case upon the judgment in *Muniyandi Servai*'s case that we should hold, as we feel constrained to hold for the reasons that I have stated, that any misapprehension that may have arisen is due to the fact that Cunliffe J. (if we may say so with due respect), apparently failed to understand fully the burden and effect of the judgment the correctness of which he challenged.

As the learned District Judge decided the appeal before him upon the sole ground upon which it was also decided by Ba U J. in the High Court the learned advocate for the respondent now applies that the proceedings should be remanded to the District Court in order that one other issue in the appeal should be determined, namely, whether the suit was barred by limitation.

We are of opinion, however, that the evidence upon the record is sufficient to enable this Court to

(1) (1932) I.L.R. 10 Ran. 257.

pronounce judgment upon the issue of limitation, and we propose finally to determine the appeal (Order 41, rule 24).

The issue of limitation depends upon whether the plaintiff has proved that there was a payment of Rs. 50 by way of interest on the loan on the 27th of February 1930. If there was the suit was filed in time ; otherwise it must fail. Now, in paragraph (2) of the plaint seven payments of interest are alleged to have been made, the sixth payment having been on the 27th of February 1930. In paragraph (2) it is further alleged that the first six of the above payments "have been endorsed on the reverse of the promissory note and each of such endorsements has been duly signed by both the defendants." In paragraph (3) of the written statement the second defendant admitted having signed endorsements on the promissory note which, according to the plaintiff's statement to him, related to payments of interest made by defendant No. 1.

At the trial the plaintiff's agent Muthuramalingam stated that the payment of Rs. 50 in question was made by both the defendants at the plaintiff's shop, and that the endorsement in Burmese relating to that payment was written by the first defendant and was signed by both the first and second defendants. The second defendant on the other hand in his evidence stated that he signed the endorsements, including that of the 27th of February 1930, at the Rangoon Race Course, and that when he signed the document there was no signature thereon by the first defendant and no writing in Burmese. The defendant's evidence was corroborated by Maung Tha Tin, who stated that he was a race horse trainer. The learned trial Judge disbelieved the

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evidence of the defendant Mahmoo and of Maung Tha Tin on the issue of limitation, and held that there had been a payment of Rs. 50 on the 27th of February 1930, and that the suit was not barred by limitation. In my opinion not only was there evidence to support the finding of the learned trial Judge upon that issue, but the conclusion at which he arrived was correct ; and I am fortified in taking this view because the story told by the second defendant and Maung Tha Tin on this issue is inconsistent with the admission of the second defendant in paragraph (3) of his written statement, namely, that he had signed the endorsements on the promissory note which the plaintiff told him related to payments made by the first defendant. In my opinion the finding of the learned trial Judge upon the issue of limitation must be affirmed.

The result is that the appeal is allowed, the decrees of the District Court and of Ba U J. of the High Court are set aside, and the decree passed in favour of the appellant in the Subdivisional Court is restored. The appellant is entitled to his costs in all the Courts.

MYA BU, J.—All the points involved in the case having been, if I may very respectfully say so, fully and cogently discussed in the judgment of my Lord the Chief Justice in which I fully concur, I desire to add only a few remarks with reference to the adverse comments appearing in Civil Regular No. 356 of 1932 of this Court on the decision in *P.R.M.P.R. Chettyar* v. *Muniyandi Servai* (1). With all respect to the learned Judge who made the comments I venture to think that such comments

(1) (1932) I.L.R. 10 Ran. 257.

are due to lack of proper appreciation of the *ratio decidendi* in that case. A proper perusal of the judgment in *P.R.M.P.R. Chettyar*'s case to my mind is sufficient to show that the well-recognized practice in India and in Burma of describing a Chettiar firm in documents by the initials of the firm prefixed to the name of the partner or agent, the actual persons through whom the firm enters into the contract evidenced by the document is not infringed by anything said in the judgment; but that the fact that in the body of the promissory note in question the maker of the promissory note was not described in the fashion usually employed in denoting the firm of which the maker was either an agent or a partner, constitutes the ground of the dismissal of the suit filed against the firm on the promissory note. If this point is kept in view, in my opinion, there is no room for the fear expressed by the learned Judge in Civil Regular No. 356 of 1932, and it will be clearly seen that there was no lack of appreciation of the "time honoured custom" among the Chettiar community to which the ruling in *P.R.M.P.R. Chettyar*'s case is considered to have run counter.

With these remarks I concur in the judgment of my Lord the Chief Justice.