1931 *Present:* **Garvin S.P.J. and Maartensz A.J.**

RAMAN CHETTY *v.* SHAWE *et al.*

171—D. C. Colombo, 24,134.

Action brought by agent—Vilasam of firm—Death of plaintiff—Application by principal of firm to be added as party—Civil Procedure Code, ss. 13 and 18.

An action on a promissory note was instituted against the defendants by S. R. M. M. A. Raman Chetty. The initials S. R. M. M. A. were not the personal initials of the plaintiff, but formed the *vilasam* of a business of which the proprietor was the first respondent. The defendants filed answer, pleading, *inter alia*, that the action was not properly constituted and could not be maintained.

Held (on an application by the first respondent to be added as party plaintiff), that he was not entitled to be so added.

APPEAL from an order of the District Judge of Colombo, allowing the first respondent's application to be added as a party plaintiff. This was an action to recover a sum of Rs. 30,000 on a promissory note alleged to have been made by first defendant in favour of the second defendant company and endorsed and delivered by the latter to the plaintiff. The action was filed by one Raman Chetty who prefixed to his name the initials of a firm, the proprietor of which was the first respondent. The defendants filed answer denying liability on different grounds. Raman Chetty died in India and the second respondent was substituted as plaintiff in the action. The application of the first respondent to be added as party plaintiff was made on the ground that doubts had been raised whether the action should have been instituted in the name of Raman Chetty or the name of the first respondent. The learned District Judge allowed the application.

Hayley, K.C. (with him *Keuneman* and *Garvin*), for second defendant, appellant.

H. H. Bartholomeusz (with him *Nadarajah*), for first respondent.

[1] *(1918) 20 N. L. R. 289.*

August 4, 1931. GARVIN S.P.J.—

I agree.

This action was instituted in the name of S. R. M. M. A. Raman Chetty as plaintiff. The initials S. R. M. M. A. are not Raman Chetty's personal initials and are the *vilasam* of the business in which he was engaged. But there is no question as to the identity of the plaintiff. Indeed the first respondent to this appeal, Sir Annamalai Chettiar, originally filed papers to have himself substituted as the assignee of the rights of the plaintiff Raman Chetty upon a certain deed of assignment. Pending inquiry into this application, Raman Chetty died, and on the footing that his rights of action survived to his heirs his administrator was substituted plaintiff on the record. His application to be substituted was then renewed by the first respondent with a prayer that in the alternative the applicant be added as plaintiff. The learned District Judge took the view that no valid assignment had been made and refused the prayer for substitution; he allowed the applicant to be added as plaintiff. We were not invited to consider the claim to be substituted based on the alleged assignment and the argument in appeal was restricted to the claim to be added as a plaintiff.

It is said that the initials S. R. M. M. A. form the *vilasam* of a business of which the 1st respondent. Sir Annamalai Chettiar, is the proprietor and that at all times material to this action Raman Chetty was his agent in Colombo. The order permitting the first respondent to be added as plaintiff is supported on the ground that doubts have arisen as to the right of Raman Chetty to institute and maintain this action on behalf of the firm. The fact that Raman Chetty when suing prefixed the initials S. R. M. M. A. to his name is some indication that the action arose out of transactions in the course of the business carried on under that name. There is nothing to indicate an intention on Raman Chetty's part that anybody but himself should be plaintiff. Had he intended to bring the action in the name of Sir Annamalai Chettiar he could quite well have done so as he was the holder of his power of attorney. Even were it assumed that Raman Chetty was ultimately accountable to Sir Annamalai Chettiar the action is none the less a personal action by Raman Chetty notwithstanding that he affixed the initials S. R. M. M. A. to his name in accordance with the well known custom among Chetty traders, whereby the firm's initials are prefixed by the person bringing an action in respect of a transaction concluded by him whether he be sole proprietor, a partner, or only an agent.

The highest at which the case can be put so far as it is based on the circumstance that Raman Chetty prefixed the firm's initials to his name is that he thereby indicated that he was an agent. It was none the less his personal action.

The appellant contended that this is an action which under the general law is maintainable by an agent and I did not understand the respondent to dispute the proposition. Indeed, to do so would also involve the repudiation of the custom which admits the agent of a Chetty firm to sue on causes of action arising out of transactions concluded by him, prefixing the *vilasam* of the firm to his name as if he were principal.

Moreover this has been treated as Raman Chetty's personal action, the right to maintain which has survived to his administrator who is now the plaintiff.

Sir Annamalai Chettiar has failed to show that he has any right to be substituted in the place of the administrator. Neither the administrator nor the original plaintiff, if he were alive, needs the presence of Sir Annamalai Chettiar as added plaintiff to enable this action to be maintained. It is not contended that this action is not maintainable personally by Raman Chetty, or that he brought it in the mistaken belief that it came within the class of actions which an agent may maintain in his own name.

It was contended that it was Raman Chetty's intention that this should be an action by the firm and in the firm's name. There is no such thing as an action by a firm and in the firm's name. Our law requires that every action shall be instituted by and in the names of the person or persons by whom the right to maintain it is claimed. Assuming that the "firm" was Sir Annamalai Chettiar, the action should have been instituted in his name, if such was Raman Chetty's intention. I can see no indication of any such intention, though it is obvious that, if he was an agent, he or his estate would ultimately be accountable to his principal. As a matter of fact, he did not bring the action in the name of Sir Annamalai Chettiar but as one which was maintainable by him, and the latter at one time actually claimed to be his assignee. The presence of Sir Annamalai Chettiar as party plaintiff is not necessary to supplement and complete the right of the plaintiff to sue in respect of the cause of action averred, nor is it necessary for the final determination of any of the matters in dispute between Raman Chetty and the defendants. Since Raman Chetty's administrator has been substituted as plaintiff the effect of adding Sir Annamalai Chettiar will be to confront the defendants with two plaintiffs each of whom claims the right to maintain the action independently of the other, the one for the benefit of Raman Chetty's heirs the other for himself, between whom the Court will have to decide should judgment ultimately go against the defendants or either of them.

MAARTENSZ A.J.—

This is an appeal by the second defendant in this action from an order of the District Judge of Colombo, allowing the first respondent's application to be added as a plaintiff in the action.

The action is one for the recovery of a sum of Rs. 30,000 from the defendants. The main cause of action is founded on a promissory note dated September 16, 1926, alleged to have been made by the first defendant in favour of the second defendant company and endorsed and delivered by the company to the plaintiff.

The action was filed on June 21, 1927, by one Raman Chetty who prefixed to his name the initials or *vilasam* of the first respondent, a resident of India, whose attorney or agent he was in Ceylon. It is alleged and not denied that it is a custom among the Natu Kotta Chetties for an agent or attorney to prefix the *vilasam* of his principal to his own name to signify that he was acting as agent.

The first defendant filed answer on May 21, 1929. The second defendant company's answer was filed on September 21, 1927.

Both defendants deny liability, but on different grounds. It was stated in appeal that the first defendant had been tried and convicted of fraud, and there can be little doubt that nothing can be recovered from him.

Raman Chetty died in India in December, 1928, and the administrator of his estate was substituted as plaintiff in the action of June 5, 1930. He is the second respondent to this appeal.

On March 7, 1929, Messrs. Wilson & Kadirgamer, who were Raman Chetty's proctors, filed a proxy from first respondent authorizing them to have him substituted as plaintiff in this action. No steps appear to have been taken on this proxy till June 6, 1930, when, according to the journal entry, Messrs. Wilson & Kadirgamer filed a petition dated May 30, and an affidavit dated June 2, 1930, affirmed to by first respondent's attorney and moved that the first respondent be added as a plaintiff in the action.

I would observe in passing that there are various pleadings in this record which have not been stamped with the seal of the District Court to show the date on which they were filed in Court.

The grounds on which the application was made are set out as follows:—

(1) This action came to be instituted by Raman Chetty in the *bona fide* belief that he could sue for and on behalf of the firm of S. R. M. M. A. by prefixing the *vilasam* to his own name as sanctioned by the decisions of the Supreme Court.

(2) Doubts have arisen as to the right of the said Raman Chetty to institute this action or whether the action should have been brought in the name of the petitioner. Moreover, the said Raman Chetty by deed bearing No. 997 dated December 22, 1928, attested by J. A. Perera of Colombo, Notary Public, assigned and transferred this action to the petitioner, and the petitioner is now entitled to proceed with the said action and have himself added as a party plaintiff in the above action or substituted in place of the said Raman Chetty.

(3) The petitioner and the third respondent are advised that in all the circumstances of the case in order to secure a decree on the merits the petitioner should be joined as plaintiff.

(4) The petitioner is the proprietor and sole owner of the firm of S. R. M. M. A. and Raman Chetty was his agent in Ceylon.

When the application was made no objection had been taken to the constitution of the action.

On or about July 11, the appellant filed an amended answer, bearing date July 8, 1930. The amended answer is not dated by the District Court nor a minute made in the journal entries of the date on which it was filed.

Paragraphs 6, 7, and 8 of the amended answer averred as follows:—

(6) Further answering, the second defendant states that the original plaintiff could not have and maintain this action and that the said action is irregular and not properly before the Court and cannot be sustained on the ground (*a*) that no valid proxy

from the original plaintiff S. R. M. M. A. Raman Chetty has been filed and that Messrs. Wilson & Kadirgamer have not nor at any time had a valid proxy from the said original plaintiff, and (*b*) that the said original plaintiff has not disclosed his name, that the initials S. R. M. M. A. are not the initials of the persons Raman Chetty who purported to be the original plaintiff but the initials or *vilasam* of a firm or person trading under that *vilasam*, that the said Raman Chetty was not a partner in or owner of such firm or *vilasam* and that it is not competent for him to sue in the name of the firm S. R. M. M. A. The second defendant states that the substituted plaintiff cannot have and maintain this action being an action which was not properly constituted and could not be maintained.

(7) That the name of the person Raman Chetty who purported to be the plaintiff was Murugappa Raman Chetty or some name other than S. R. M. M. A. Raman Chetty and that he had not furnished a statement of particulars of the name S. R. M. M. A. Raman Chetty as a business name and had not complied with the provisions of Ordinance No. 6 of 1918, and could not have had or maintained this action and the substituted plaintiff cannot have or maintain the said action.

(8) Further, if the said original plaintiff purported to sue as agent of the firm or person trading as " S. R. M. M. A. " this action is wrongly constituted and cannot be maintained.

A motion in writing dated July 28 is on the record withdrawing the amended answer. This motion was consented to by Messrs. Wilson & Kadirgamer who have filed proxies for both respondents. The motion was, according to the stamp of the District Court, filed on August 5. No order appears to have been made on it.

I have set out the relevant averments of the amended answer as it was referred to by the District Judge in his order and was made use of by first respondent's counsel in his argument in support of the order appealed from.

The District Judge came to the conclusion that in view of a certain decision of the Privy Council, which I shall deal with later, it is doubtful whether the action had been instituted in the name of the right plaintiff, Raman Chetty, and that it was so commenced through a *bona fide* mistake of law, " in view of the conflict of decisions by our Courts as to the exact significance to be attached to a firm name which is prefixed to the name of an agent ". The first respondent was therefore added as a party in order that the Court may by its ultimate decision, if the plaintiffs are successful, decree judgment in favour of either of the plaintiffs who may be found successful.

The District Judge also expressed the opinion that, even if the first respondent was not entitled to be added under the provisions of section 13 of the Civil Procedure Code, the Court had power to add him as a party under section 18 of that enactment.

The District Judge held that the first respondent could not rely on the assignment referred to in his application, and as his decision on this point was not attacked by the first respondent it need not be referred to again.

It was contended in appeal that this was not a case where the action had been instituted in the name of the wrong person, or a case where it is doubtful whether it has been instituted in the name of the right plaintiff and that the trial Judge had misdirected himself with regard to the effect of the decision of the Privy Council in the case of *The firm of R. M. K. R. M. v. The Firm of M. R. M. V. L. R. M. K. R. M. Somasundaram Chetty v. M. R. M. V. L. Suppramaniam Chetty* [1] when he held that in view of the judgment in that case " it is not unreasonable to hold that it is doubtful that the action has been instituted in the name of the right plaintiff ". It was further submitted that there was no conflict of decision in our Courts, as stated by the District Judge, as to the exact significance to be attached to a firm name which is prefixed to the name of an agent.

The trial Judge has not cited the passage in the judgment of the Privy Council on which he bases his opinion that, in view of that judgment, it is doubtful that the present action has been instituted in the name of the right plaintiff. Counsel were unable to point to any passage which might be the basis of that opinion, nor were we able to find it ourselves.

The Privy Council judgment decided that when a contracting party brings an action on the contract against the party with whom he has contracted, who is in fact an agent, and obtains judgment, he cannot subsequently take proceedings on the same contract against the principal and the Court has no power in the second action to set aside the judgment in the first action, or to consolidate the two actions.

Lord Atkinson stated the facts thus:—

> " The appellants and the respondents are money lenders carrying on business in Penang; the respondents—plaintiffs—under the vilasam or mark of M. R. M. V. L. and the appellants—defendants—under that of R. M. K. R. M. The defendant firm is owned by one Ramasamy Chetty of Palavangudi, Ramnad District, Southern India. It is the practice of such firms to carry on their business through an attorney and agent and to describe and style the firm by its vilasam or mark coupled with the name of its Penang agent for the time being. Supramaniam Chetty was at all material times the attorney and agent of the plaintiff and A. N. S. Somasundaram Chetty the attorney and agent of the defendant firm. "

and continued as follows:—

> " The relation in which these attorneys or agents, when engaged in a money-lending business stand to their principals, whether the latter were individuals or firms, their functions and powers are well and authoritatively described by Barrett-Lennard J. in his judgment delivered in this case in the Court of Appeal. He said: ' First, 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. It is to be

[1] *(1926) L. R. Appeal Cases, 761.*

noted that the vilasam of a firm is not its full style. Next, a local representative of the type described does not label himself as simply an agent. He regularly sues as a principal on mortgage, deeds, bills of sale and promissory notes. The title of his co-partners or principals to immovables granted in form to him is never abstracted or otherwise shown on the occasion of any sale or qualified disposition. The rights of his principals or co-partners are in truth behind the curtain much to the disadvantage of the Government.' "

Later on he said:—

" It may possibly be, but it is not proved in evidence, that the plaintiff in suit No. 120, the attorney, agent or partner of or in the firm of M. R. M. V. L., was under the impression that he could obtain a judgment for Rs. 7,400 against the defendant, the attorney, agent or partner of or in the firm of R. M. K. R. M. which would not merely be a personal judgment against the attorney or agent but a judgment against the defendant attorney's firm. If the plaintiff attorney was under that impression it was wholly due to his ignorance of the law, and it is because he instituted and prosecuted to judgment suit No. 120 in that state of ignorance that he or his principal now asks to have this judgment set aside. No fraud was practised upon the plaintiff in that suit, or upon his principal; no false representation was made to them; no inducement held out to the agent to sue in the way in which he did; and no misleading steps were taken or acts done with the consent of the defendant attorney or his principal. It appears to their Lordships that the claim to have this judgment set aside resembles very much the case of a litigant who, with erroneous and exaggerated notions of his rights, brings an action to enforce these rights as he understands them and is beaten because the Judge comes to a wholly different conclusion as to the extent of those rights and directs judgment to be entered against him, and then the defeated litigant applied to have this judgment set aside because he had mistakenly formed an extravagant opinion of his own rights which misled him into litigation. "

There is nothing as far as I can see which suggests that R. M. K. R. M. had no right to sue on the contract.

The right of an attorney who carries on business with the *vilasam* of his principal prefixed to his own name to sue in that name was considered and recognized by the Full Bench of this Island in the case of *Letchemanan v. Sanmugam et al.*[1] The facts are as follows: *A* borrowed money on a promissory note from Letchemanan Chetty, who, being a Tamil, was carrying on trade as " Me. A. Ru. A. Ru. Letchemanan Chetty ". He received judgment under his name and moved for a writ of execution against *A*, whereupon *A* appeared in Court and proved that " Me. A. Ru. A. Ru. " represented two partners *R.* and *N.*; that they were both dead; and that their executors were trading under the style of

[1] *(1903) 8 N. L. R. 121.*

" Me. A. Ru. A. Ru. "; and contended that Letchemanan had no authority from them to continue the present action. Layard C.J. who delivered the leading judgment discussed our Procedure Code and previous decisions and held that it was impossible to hold that the judgment was entered up in favour of some unknown individual or individuals trading under the name and style of M. A. R. A. R. Dealing with the contention of the respondents (defendants) that by prefixing the initials M. A. R. A. R. to his name the plaintiff held out to the world that he was agent to a firm he said:

> " Their (defendants') conduct throughout the case shows that they were promising to pay Letchemanan Chetty the money, or that they knew Letchemanan was agent for some undisclosed principal. If they contracted with Letchemanan Chetty personally, he was entitled to sue; if, on the other hand, as now appears from Letchemanan Chetty's evidence, he was acting for an undisclosed principal and the defendants contracted with him in his own name, he can sue the defendants."

The case of *Meyappa Chetty v. Usoof* [1] was an action by R. M. M. S. T. Meyappa Chetty, the initials being the initials of the firm of which he was the agent, to recover the amount due on two promissory notes made by the first defendant in favour of the second and third defendants and endorsed by them to the plaintiff. The second defendant counter-claimed on a debt due to him from R. M. M. S. T. The District Judge in refusing to give the second defendant leave to defend unconditionally said: " There is nothing to show that the plaintiff has anything to do with the person to whom the second defendant says he made payment, and I do not believe this defence is made *bona fide*. The leave to defend will be allowed to the second defendant only, on his giving security for the full amount of the plaintiff's claim." Bonser C.J.'s judgment must be read in the light of the judgment of the District Judge. And all that he held was that the second defendant was entitled to leave to defend as " it seemed that the way in which Meyappu Chetty sued shows that he was the agent of the firm ". He nowhere held that it was an action by the firm.

I have examined the record and find that the alleged members of the firm were not named as partly plaintiffs. It is therefore an indirect authority for the form of the present action.

There is, as far as I can see, no conflict of decision which makes it doubtful whether Raman Chetty could have sued or whether his legal representative, the administrator respondent, could maintain the action.

It was argued by the respondent that the action had been instituted in the name of the wrong person as plaintiff because there was no such person as S. R. M. M. A. Raman Chetty. The answer to this argument is that the right of an agent to sue in this way has been fully recognized by the decisions of the Court.

It was next argued that Raman Chetty on his death ceased to be agent of his principal, but that is not a sound argument. If the action was maintainable by Raman Chetty the right to continue it vests in his legal representative.

[1] *(1902) 5 N. L. R. 265.*

The first respondent's application does not state why doubts have arisen as to the rights of Raman Chetty to institute the action. It was contended that the objection to Raman Chetty's suing in his name with the *vilasam* of the firm prefixed to it have been formulated in the amended answer, and although it was withdrawn for the time being the objections would be renewed.

As regards the objections set out in paragraph 6 of the amended answer, I am, as at present advised, unable to see that Raman Chetty in filing the action made a mistake either of fact or law.

It is, I think, obvious that the application to add the first respondent was made to meet the objection in paragraph 7 of the amended answer that S. R. M. M. A. were not Raman Chetty's initials and that he had not furnished a statement of particulars of the name S. R. M. M. A. Raman Chetty as a business name and had not complied with the provisions of Ordinance No. 6 of 1918, and could not have maintained the action.

We cannot decide now whether this objection is well founded or not. But assuming that it is, I do not think that the first respondent is therefore entitled to be added as a plaintiff.

It was argued that under section 13 of the Civil Procedure Code the Court had power to add or substitute parties for the purpose of securing an effectual adjudication though there is some personal bar in the way of the original plaintiff.

In support of this argument we were referred to the case of *Somittare v. Jasin* [1] and the English cases referred to by Wood Renton J. in his judgment. In that case the incumbent of a Buddhist temple sued to vindicate title to land and it was held that the land was temple property and the incumbent could not sue. Dealing with an application to add the trustee as a party plaintiff, which had been rejected by the trial Judge, Wood Renton J., said: "If, for instance, it had been shown in the present case that a trustee of the temple had been duly appointed, and that, by a *bona fide* mistake as to the requirements of the Buddhist Temporalities Ordinance, the appellant had sued in his own name, I see no reason why the trustee should not have been made a substituted party under section 13".

I respectfully agree with this decision which is in accordance with the principle that where a person who has no right to sue or only a partial right to sue on the cause of action is made plaintiff or sole plaintiff by a *bona fide* mistake the Court can substitute or add parties to secure an effectual adjudication upon the real question at issue in the action. But the position of a plaintiff who has the right to sue on the cause of action, but whose action must fail because of a plea of the nature set up in paragraph 7 of the amended answer is entirely different. In such a case it cannot be pleaded that the person suing was made a plaintiff owing to a *bona fide* mistake of fact or law, and a person cannot be added or substituted plaintiff against whom the plea cannot be set up.

I am of opinion, for the reasons given by me, that the appeal should be allowed with costs in both Courts.

Appeal allowed.

[1] *(1907) 1 A. C. R. 167.*