[IN THE PRIVY COUNCIL]

1956 *Present :* **Viscount Simonds, Lord Oaksey, Lord Tucker, Lord Somervell of Harrow, and Mr. L. M. D. de Silva**

M. R. M. M. M. R. MURUGAPPA CHETTIAR, Appellant, *and* MUTHTHAL ACHY *et al.*, Respondents

PRIVY COUNCIL APPEAL No. 48 OF 1955

S. C. 153—D. C. Colombo, 20,429

Evidence—Claim against a dead man's estate—Standard of proof required.

Plaintiff sued the heirs of a deceased person, L, on a parol contract entered into between V, who acted on behalf of the plaintiff, and L. The only question for decision in the present case was whether L agreed without qualification to pay interest at a particular rate on a certain sum of money. Upon this question the sole basis of the plaintiff's case was the parol testimony of V. V's evidence related to events which took place twenty years before he gave evidence.

Held, that when a claim is brought forward against the estate of a deceased person in a matter in which, if he were alive, he might have answered the claim, the evidence ought to be looked at with great jealousy and care.

APPEAL from a judgment of the Supreme Court reported in *57 N. L. R. 27.*

D. N. Pritt, Q.C., with *R. K. Handoo*, for the plaintiff appellant.

Dingle Foot, Q.C., with *Sirimevan Amerasinghe*, for the defendants respondents.

Cur. adv. vult.

July 26, 1956. [*Delivered by* Mr. L. M. D. DE SILVA]—

This is an appeal from a judgment of the Supreme Court of Ceylon allowing an appeal from a judgment of the District Court of Colombo whereby, in an action instituted in 1948 by the appellant (hereinafter called the plaintiff), then a minor and suing by his next friend, the respondents (hereinafter called the defendants) were ordered to pay to the plaintiff a sum of Rs. 16,658·17 with legal interest from date of decree.

The parties to the case are Chettiars.

The plaintiff pleaded that one Velasamy (who acted as the next friend of the plaintiff until the latter came of age in the course of the proceedings), acting on behalf of the plaintiff, had "deposited with one K. R. K. N. L. Letchumanan Chettiar a sum of Rs. 18,700 which amount

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the said Letchumanan Chettiar agreed to pay to the plaintiff together with interest thereon at the rate prevailing from time to time among the Chettiar Community the interest being added to the principal from time to time according to the custom prevailing and calculated in the manner customary among the Chettiars in their dealings with each other". The year of the deposit is given in the plaint as 1930 but it appeared after several days of trial from the plaintiff's books that it was 1929. The rates of interest described in the plaint have been referred to in the course of the proceedings by both sides as "*nadappu vatti*" and the rates for different years have been established by the evidence of one Ramasamy Chettiar.

The defendants are the heirs of Letchumanan who died in the year 1945. They admitted that a sum of money had been deposited with Letchumanan but denied the agreement with regard to interest averred in the plaint and raised other defences which are not now persisted in. In the books of Letchumanan Chettiar, which have been produced, the plaintiff has been credited in the months of September, October, November and December, 1929, with various sums amounting in the aggregate to Rs. 18,700, with interest at the *nadappu* rate till March, 1934, and thereafter with interest at the bank rate which was a much lower rate. An amount calculated at these rates (less an amount paid out at the instance of the plaintiff's mother which the plaintiff does not now claim) was deposited to the credit of the plaintiff in curatorship proceedings on the 9th April, 1943, and was drawn by the plaintiff in March, 1947.

The circumstances under which the money came to belong to the plaintiff and to be deposited, discussed in the judgments in the courts below, are not relevant to the questions which have arisen on this appeal.

The case for the plaintiff was based on an oral contract between Velasamy acting on behalf of the plaintiff and Letchumanan. No other ground was pleaded or urged and the only question for decision was (apart from certain questions of law since abandoned), and is, the question of fact whether Letchumanan agreed without qualification to pay interest at the *nadappu* rate during the whole period that the money was held by him.

Upon this question the only witness called by the plaintiff was Velasamy. He said that Letchumanan agreed to pay interest at the *nadappu* rate. His evidence does not qualify the agreement by introducing into it a named period during which *nadappu* interest was payable, or by introducing into it any other condition or circumstance upon which such interest ceased to be payable. If his evidence is accepted the plaintiff's case must succeed, and, equally, if his evidence is not accepted the plaintiff's case must fail as the sole basis of the plaintiff's case is that of a parol contract established by the parol testimony of Velasamy, the onus of proving the contract being on the plaintiff.

The learned trial judge accepted Velasamy's evidence and gave judgment for the plaintiff. The Supreme Court on appeal came to the conclusion that Velasamy's evidence should not be accepted, set aside the judgment

of the District Judge and dismissed the action. It held that the learned trial judge had failed to apply established principles pertaining to an action against the estate of a deceased person and, itself applying those principles, came to the conclusion that the plaintiff had not proved his case. Their Lordships are of the opinion that this decision should be affirmed.

Adopting a view expressed by Fry, L.J., the Supreme Court (Gratiaen, J.) said it was the duty of the court to approach the case "with great jealousy, because the claim is brought forward against the estate of a deceased person when that person, who was a chief actor in the transaction impugned was dead," *re Garnett, Gandy v. Macaulay.*[1] In the same case Brett, M.R., said :—

> "The law is that when an attempt is made to charge a dead person in a matter, in which if he were alive he might have answered the charge, the evidence ought to be looked at with great care ; the evidence ought to be thoroughly sifted and the mind of any judge who hears it ought to be, first of all, in a state of suspicion."

Their Lordships are of the same opinion.

There are no indications in the judgment of the learned District Judge, whether by way of an express statement or in the manner in which he commented on the evidence, that he had approached the case as he should have done. Their Lordships see no reason to disagree with the conclusion of the Supreme Court that the learned District Judge had failed to approach the case in the correct manner. The Supreme Court proceeded itself to consider whether Velasamy's evidence upon the crucial question could safely be acted upon, and came to the conclusion that it could not be relied on. It is a well established principle that an appellate court should not reverse the findings on the facts of a trial judge unless exceptional circumstances exist but the circumstances of this case were exceptional and fully justified the course of action taken by the appellate court. The conclusion which it arrived at appears to their Lordships to be equally justified.

The learned District Judge thought that Letchumanan's books afforded corroboration of Velasamy's statement that *nadappu* interest was payable because the books showed that *nadappu* interest had been paid till March, 1934. The Supreme Court considered this view fallacious because the question which arose for decision was, not what interest was payable up to March, 1934 (plaintiff had in fact been credited with and drawn out a sum calculated at the *nadappu* rate until March, 1934), but what interest was payable thereafter. Whether or not this evidence could be regarded as capable of amounting to corroboration, their Lordships are of opinion that, in the circumstances of this case, it was of little or no weight. The real point for consideration was the unexplained discontinuance of the *nadappu* rate from March, 1934, and the substitution therefor of a much smaller rate ; but this is just one of those points

[1] *(1885) 31 Ch. 1 at p. 9.*

which Letchumanan "if he were alive might have answered" (vide observations in *re Garnett* above). The point no doubt has to be borne in mind but it does not possess the same significance as an absence of explanation by Letchumanan during his lifetime would have had. It has also to be borne in mind that no suggestion has been made at any time during these proceedings that Letchumanan was a dishonest man.

Velasamy's evidence related to events which took place twenty years before he gave evidence. Of that evidence the Supreme Court (Fernando, A.J.) observed :—

"Even if plaintiff's principal witness Velasamy was making an honest attempt to give truthful evidence, his recollection of the circumstances of the alleged transaction with the deceased Letchumanan was at least confused and unreliable. To judge from the instructions he gave to the plaintiff's proctor for the purpose of filing suit, the sum of Rs. 18,700 was according to his recollection paid to Letchumanan in 1930, but his subsequent evidence was that the sum was deposited in instalments in the latter months of 1929. Velasamy's recollection of his meeting with Letchumanan on the occasion of the alleged agreement was also vague. He admitted that Letchumanan was in India at the time of Muttiah's death, but was unable to say when precisely Letchumanan returned to Ceylon and had the alleged conversation concerning the deposit of money. At one stage he even said that he did not see Letchumanan in 1929, but saw him in India in 1930 because he himself was then in India. Again, his statement that he personally handed over money to Letchumanan at the latter's place of business on several occasions is inconsistent with the entries in the book P 12 (kept by Velasamy) according to which the sums were delivered by one Somasundaram (also an employee of the deceased Muttiah).

"In the circumstances of this case, where the evidence as against Letchumanan needs to be tested with more than ordinary care, it was in my opinion unsafe in view of these and other contradictions, to rely completely on Velasamy's account of the precise undertakings to which Letchumanan bound himself by the alleged agreement".

Their Lordships find themselves in agreement with this view. In their opinion, without any reflection on Velasamy's honesty, his evidence, relating as it does to events which took place many years before the evidence was given, is faltering at many points ; in definiteness, accuracy and precision it falls short of the standard which would entitle it to be considered in a claim against the estate of a deceased person.

For the reasons which they have given their Lordships will humbly advise Her Majesty that the appeal should be dismissed. The appellant will pay the respondents' costs of this appeal.

Appeal dismissed.