

1950

Present: Jayetileke C.J. and Dias S.P.J.

NADARAJA PILLAI, Appellant, and MATILDA FERNANDO,
Respondent

S. C. 574—D. C. Chilaw, 12,793

Partnership—Vilasam of firm of Chettiars—Partner's right to sue in his own name.

A partner of a Chetty firm who enters into a contract in his own name prefixing thereto the vilasam or initials under which the firm trades is entitled to sue on the contract in his own name with those initials.

APPPEAL from a judgment of the District Court, Chilaw.

H. V. Perera, K.C., with C. Renganathan, for the plaintiff appellant.

E. B. Wikramanayake, K.C., with S. J. Kadingamer and R. S. Wanasundera, for the defendant respondent.

Cur. adv. vult.

September 19, 1950. JAYETILEKE C.J.—

The plaintiff, styling himself in his plaint as SSPNN Nadaraja Pillai, instituted this action to recover from the defendant the sum of Rs. 4,000 and interest on a promissory note alleged to have been made by her. The note is payable to SSPNN Nagaratnam Pillai and Nadaraja Pillai or to any of them.

The defendant denied that she signed the said note.

At the commencement of his evidence Nadaraja Pillai stated that he and Nagaratnam Pillai carried on business in partnership under the vilasam of SSPNN. At that stage counsel for the defendant suggested the following issue:—

Can the plaintiff Nadaraja Pillai in view of his evidence that SSPNN are the initials of a vilasam of which he is a partner and not his patronimics have and maintain this action in the name of the firm inasmuch as the note is payable to Nadaraja Pillai as a member of the firm?

The District Judge tried this issue as a preliminary issue and, after hearing argument, answered it in the negative and dismissed the plaintiff's action with costs. The present appeal is against that judgment.

There are three decisions of this Court which have a direct bearing on the point which, unfortunately, have not been cited at the argument in the Court below. It is clear from these decisions that the judgment of the learned District Judge is wrong. In *Letchemanan v. Sanmugam*¹ M. A. R. A. R. Letchemanan sued the defendants on a promissory note made by them in his favour for the recovery of a certain sum of money and obtained judgment. When he applied for execution of the decree the 1st defendant moved to have an adjustment recorded. In the course of the inquiry Letchemanan Chetty admitted that he instituted the action as the agent of one Ramanathan Chetty who was the principal of the firm of M. A. R. A. R. The District Judge held that M. A. R. A. R. was the real plaintiff and as Ramanathan Chetty was dead the plaintiff no longer represented the firm. He, accordingly, disallowed the application for writ. Letchemanan Chetty appealed against the order and the appeal was heard by a divisional Bench of this Court which held that, when the agent of a Chetty firm enters into a contract in his own name prefixing thereto the vilasam or initials under which the firm traded, he must be taken to have adopted those initials as part of his name, and, where he sues on the contract in his own name with those initials, he must be regarded as the plaintiff in the case entitled to enforce any decree that might be entered against the defendant. In *Mohamadu v. Lapaya*² the plaintiff, who was the agent in Ceylon of the Chetty firm of M. K. N. A., sued the defendant on a promissory note. His action was dismissed on the ground that he had no power of attorney from the firm of M. K. N. A. It was held that the note was in the plaintiff's favour, he being referred to in it by the trade name, and he was entitled to sue on it. Pereira J. said:—

“ In the present case the plaintiff has adopted the initials of his firm and with them and his own name had formed a trade name for himself. As between him and the partnership he may be an agent liable to account to the partnership, but as between him and the general public he is trading on his own account.”

In *Raman Chetty v. Shawe*³ S. R. M. M. A. Raman Chetty instituted an action against the defendants on a promissory note. 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 1st defendant. The defendants filed answer pleading *inter alia* that the action was not properly constituted. Thereupon, the 1st respondent moved to be added as a party plaintiff, and his application was allowed. On an appeal to this Court by the defendants, it was held that he was not entitled to be so added as Raman Chetty was entitled to maintain the action. Garvin J. said:—

“ The fact that Raman Chetty when suing prefixed the initials S. R. M. M. A. to his name in some indication that the action arose out of transactions in the course of the business carried on under that name.

¹ (1903) 8 N. L. R. 121.

² (1913) 4 Balasingham's Notes of Cases II.

³ (1931) 33 N. L. R. 16.

'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''.

The custom of a partner or an agent of a Natukotta Chetty firm trading in Ceylon to sue in this way has been recognised by our Courts for quite a long period. The plaintiff is, in my opinion, entitled to maintain the action. I would, accordingly, set aside the judgment of the learned District Judge and send the case back for trial in due course. The plaintiff will be entitled to the costs of July 4 and 13, 1949, in the Court below, and of the appeal.

DIAS S.P.J.—I agree.

Appeal allowed.
