

was not maintainable as the plaintiff had not registered the *vilasam* "M. S. P." under which he carried on business. The learned District Judge held that the plaintiff carried on business in his own name and that it did not require registration under the Business Names Registration Ordinance.

N. E. Weerasooriya, for defendant, appellant.—The District Judge has erred in holding that plaintiff's *vilasam* did not require registration under the Registration of Business Names Ordinance. It consists in addition to his own name—Poonanalingam—the name of his father, which is permissible, the name of his village. This addition of the village name makes it a trade name, which must be registered. Besides, his agent admits that he signs with the plaintiff's *vilasam* "M. S. P." prefixed to his own name. This strengthens the view that the *vilasam* amounts to a business name which must be registered. The case is on all fours with that of *Anamaly Chetty v. Thornhill*.¹

Cooray, for plaintiff, respondent.—Plaintiff has not taken the name of his village for purposes of business. It forms part of his ordinary name. The custom of prefixing the initial letter of the village name to a name is a common one in South India. Plaintiff is a trader from South India and is not a Chetty money lender. This case is different from *Anamaly Chetty v. Thornhill* (*supra*) because, in the latter, it was proved that the additional letter was taken in the course of business and had no relation to the Chetty's own name.

March 16, 1931. LYALL GRANT J.—

In this case we are satisfied that the appellant has no substantial defence to the claim. He bought the goods and has had the benefit of them. His defence was that he neither bought them nor took delivery, and on the evidence it is clear that this defence was rightly rejected by the learned District Judge.

1931

Present : Lyall Grant J. and Maartensz A. J.

POONANALINGAM PILLAI v.
HARMANIS APPU.

313—D. C. Colombo, 33,620.

Registration of business names—Plaintiff carrying on business in his name with the addition of name of village—Trade name—Registration—Ordinance No. 6 of 1918, s. 2 (b).

Where a person carried on business under a name which, in addition to his own name, included the name of his village,—

Held, that he did not carry on business under a trade name, which required registration under the Registration of Business Names Ordinance.

PLAINTIFF sued the defendant for the recovery of a sum of Rs. 357·68, value of goods sold and delivered. The defendant pleaded that the action

¹ 31 N. L. R. 97.

¹ (1927) 29 N. L. R. 225.

The defendant however raised the technical objection that the plaintiff who is an Indian merchant does not trade under his own name without addition, and that as he has not registered under the Business Names Ordinance of 1918 he is prohibited by the provisions of the Ordinance from recovering his debt.

There is no doubt that if the plaintiff does not trade under his own name he is prohibited from recovering by the provisions of section 9 of the Ordinance.

The plaintiff gave his name to the Court as M. S. Poonalingam Pillai, and it is undisputed that he carries on business under the name.

He has, however, admitted that "M" stands for "Manipalam," his native place, and the defendant alleges that the addition of the letter "M." to the plaintiff's original name involves the necessity of registration under the Ordinance.

What the defendant must establish however, is that M. S. Poonalingam Pillai is not the plaintiff's true full name. *Primâ facie* it is the full name by which he is ordinarily known or by which he usually designates himself and it is for the defendant to establish affirmatively that it is not his true and full name.

No attempt has been made to show that it is a name used for trade purposes and that it is not the plaintiff's ordinary name.

The appeal on this ground too must therefore fail. The appeal is dismissed with costs.

MAARTENSZ A.J.—

This was an action for the recovery of a sum of Rs. 357.68, the value of goods sold and delivered to the defendant.

The defendant pleaded that the goods were not sold to him and that the action was not maintainable as the plaintiff had not registered the *vilasam* "M. S. P." under which he carried on business. The learned District Judge rejected both pleas, and the defendant appeals from the decree entered against him.

I see no reason to disagree with the finding of the learned District Judge that the goods were sold to defendant and that the sum sued for is due from him.

The issues regarding the plea that the action was not maintainable owing to the non-registration of plaintiff's business name are as follows :—

- (1) Does the plaintiff carry on business under the *vilasam* of M.S. or M.S.P.?
- (2) Has the said *vilasam* been registered?
- (3) If not can plaintiff maintain this action?

The evidence on these issues is very meagre. The plaintiff stated that he carried on business under the name of M. S. Poonalingam Pillai, that "M." stands for the name of his village Manipalam and "S." for Savananaperumal Pillai, his father's name. Thymal Sunderam, plaintiff's agent, stated that he signed letters for his principal as "M.S.P. Thymal Sunderam" and that their note paper has the note heading "M.S.P."

The cash memo D has the *vilasam* "M.S.P." on the top right hand corner.

The learned District Judge held that the plaintiff does not carry on business under a trade name but in his own name and accordingly no registration was necessary.

It was contended in appeal that the addition by the plaintiff of the name of his village to his name brought him within the scope of section 2(b) of the Registration of Business Names Ordinance, No. 6 of 1918.

Section 2 (b) enacts that "every individual having a place of business in the Colony and carrying on business under a business name which does not consist of his true full names without any addition shall be registered in the manner directed by this Ordinance".

The question for decision is whether the addition of the name of his village rendered it necessary to register the name under which the plaintiff carried on business. The plaintiff adopted the name of his

village 25 years ago and used it as part of his full name ever since. There is nothing to prevent a man adopting a name and in the circumstances I am of opinion that it was part of the plaintiff's name when the Ordinance came into operation.

In the case of *S. P. A. Annamalay Chetty v. Thornhill*¹ there was evidence that the additional name of the plaintiff was used only for the purpose of his business and was omitted in the name inserted in the householders' lists.

This evidence is not forthcoming in this case and I hold that registration of the name was not necessary.

The appeal is dismissed with costs.

Appeal dismissed.
