



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A. (MD)No.780 of 2010

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V.E.Vairavan Chettiar ... 3rd Defendant / Appellant / Appellant

-Vs-

1.A.R.Ramasamy Chettiar

2.V.E.Annamalai Chettiar (died)

3.V.E.Arunachalam Chettiar (died)

4.V.E.Ramanathan Chettiar (died)

5.V.E.Muthu Chettiar

K.Santhanam (died)

6.A.N.Visalakshi Achi

7.S.Ravi

8.S.Ranganathan

9.S.Kunjithabatham ... Plaintiffs 2, 4 - 10 /
Defendants/ Respondents 1-
5, 7-10 / Respondents

10.AR.Oppilal
(10th respondent brought on record as the LRs of the deceased
R3 made in M.P. (MD)No.1 of 2013 dated 25.07.2013)

11.AR.Oppilal

(11th respondent brought on record as the LRs of the deceased R3)
vide order dated 22.08.2019)

(11th respondent has already been brought on record as R10 vide order
dated 25.07.2013) .

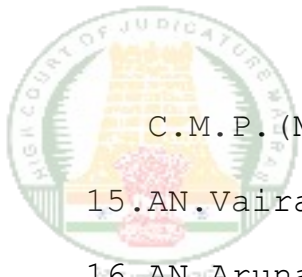
12.RM.Annapoorani Achi

13.RM.Vairavan

14.RM.Chidambaram

(R12 to R14 are brought on record as Lrs of the deceased

4th respondent vide Court order dated 22.08.2019 made in



C.M.P. (MD) Nos.3939, 3940, 3942, 3943 of 2017 & 4431 of 2018)

15.AN.Vairavan

16.AN.Arunachalam

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(R15 & R16 are brought on record as Lrs of the deceased 2nd respondent vide Court order dated 22.08.2019 made in C.M.P. (MD) Nos.3939, 3940, 3942, 3943 of 2017 and 4431 of 2018)

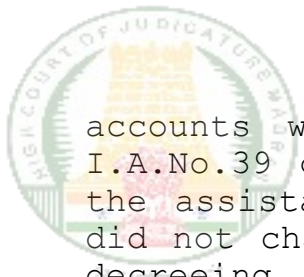
PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 01.07.2010 in A.S.No.22 of 2007 on the file of the learned Subordinate Judge, Devakottai, confirming the judgment and decree dated 26.10.2006 in O.S.No.20 of 1997 on the file of the District Munsif Court, Devakottai.

For Appellant	: Mr.AL.Ganthimathi
For R1	: Mr.V.R.Shanmuganathan
For R10 & R11	: Mr.J.Anandakumar
For R5, R6, R7 & R9	: no appearance

JUDGMENT

The third defendant in the suit is the appellant in this second appeal.

2.The first respondent herein namely A.R.Ramasamy Chettiar filed O.S.No.9 of 1977 before the Sub Court, Devakkottai for directing the defendants 2 to 7 to render accounts. On the occasion of his mother's marriage, her father gave two hundis as per the customs in the community. One hundi was for Rs.8,250/-, while the other was for Rs.7,000/-. The plaintiff claimed that apart from two hundis, four other hundis were also given. All the hundis were entrusted to her father by the plaintiff's mother for the specific purpose of augmenting the same with interest. Annamalai Chettiar father of Meenakshi Achi accepted the entrustment and undertook to improve the proceeds by investing the same in the family business at Rangoon. It was averred in the plaint that the specific accounts were created in this regard. The plaintiff's parents passed away. The first defendant in the suit who was the elder brother of Meenakshi Achi was sending accounts till March 1964 and thereafter, he failed to do so. Seeking rendition of accounts, the said suit came to be filed. During the pendency of the suit, the first defendant passed away and his sons D2 to D7 were directed to render proper accounts to the plaintiff. Preliminary decree was passed by the Sub Court on 12.11.1979. Aggrieved by the same, the defendants filed A.S.No.116 of 1980 before the High Court. It was dismissed on 30.04.1987. Challenging the same, L.P.A.No.120 of 1987 was filed and it was also dismissed on 09.11.1999. In the meanwhile, the plaintiff filed O.S.No.20 of 1997 for passing final decree as no



accounts were rendered by the defendants. The plaintiff filed I.A.No.39 of 2001 for appointing an Advocate-commissioner who with the assistance of an auditor filed a report. The judgment debtor did not challenge the said report. Final decree was passed partly decreeing the claim. Though the plaintiff claimed a sum of Rs.1,61,58,894/- under 12 heads, the Trial Court allowed the claims under the heads 4, 5 and 9. It awarded compound interest with annual rests at 12% per annum till the date of decree which worked out to Rs.48,83,389/-. Simple Interest was awarded at 6% per annum on the decreetal amount from the date of decree ie., 26.10.2006. The plaintiff did not challenge the disallowing of his other claims. The 3rd defendant alone filed A.S.No.22 of 2007 before the Sub Court, Devakottai. It was dismissed on 01.07.2010. Challenging the same, the 3rd defendant filed this second appeal. The second appeal was admitted on 22.08.2012 on the following substantial questions of law :

"1.Whether the courts below are correct in granting a decree for the liability which has already been discharged, that too, at the compounding interest of 12% p.a from the date of the alleged respective deposits under Charge Nos.4, 5 and 9?

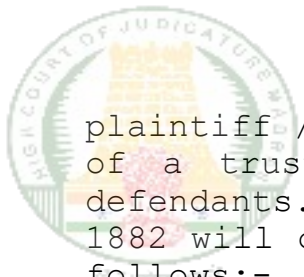
2.Whether the defendants 2 to 7 are liable to pay the amounts under the final decree as legal representatives of the first defendant when the first defendant is only a Trustee of the amounts ?"

3.The learned counsel appearing for the appellant reiterated all the contentions set out in the memorandum of grounds and called upon this Court to answer the substantial questions of law in favour of the appellant and set aside the impugned judgment and decrees and dismiss the suit.

4.Per contra, the learned counsel appearing for the respondents submitted that the impugned judgment and decrees do not call for any interference and called for dismissal of the second appeal.

5.I carefully considered the rival contentions and went through the evidence on record. The preliminary decree for rendition of accounts became final. The report of the Advocate-commissioner had also not been challenged. After a careful scrutiny and examination of evidence, the Courts below allowed claims under three heads and quantified the amounts payable to the plaintiff. These are purely factual aspects. The findings of the Courts below have not been shown to be erroneous. The legal question that arises for consideration is whether the Courts below were justified in awarding compound interest and that too at the rate of 12% per annum till the date of decree. Of-course, simple interest alone was awarded for the decreetal amount from the date of decree.

6.As rightly contended by the learned counsel appearing for the



plaintiff / contesting respondent, the plaintiff is the beneficiary of a trust and that there has been a breach of trust by the defendants. In such a case, Section 23 of the Indian Trusts Act, 1882 will come into play. Section 23 of the Indian Trust Act is as follows:-

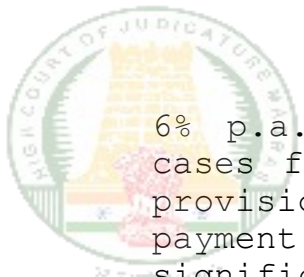
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"23.Liability for breach of trust.—Where the trustee commits a breach of trust, he is liable to make good the loss which the trust property or the beneficiary has thereby sustained, unless the beneficiary has by fraud induced the trustee to commit the breach, or the beneficiary, being competent to contract, has himself, without coercion or undue influence having been brought to bear on him, concurred in the breach, or subsequently acquiesced therein with full knowledge of the facts of the case and of his rights as against the trustee. A trustee committing a breach of trust is not liable to pay interest except in the following cases:—

(a) where he has actually received interest; (b) where the breach consists in unreasonable delay in paying trust-money to the beneficiary; (c) where the trustee ought to have received interest, but has not done so; (d) where he may be fairly presumed to have received interest. He is liable, in case (a), to account for the interest actually received, and, in case (b), (c) and (d), to account for simple interest at the rate of six per cent. per annum, unless the Court otherwise directs; (e) where the breach consists in failure to invest trust-money and to accumulate the interest or dividends thereon, he is liable to account for compound interest (with half-yearly rests) at the same rate; (f) where the breach consists in the employment of trust property or the proceeds thereof in trade or business, he is liable to account, at the option of the beneficiary, either for compound interest (with half-yearly rests) at the same rate, or for the nett profits made by such employment."

7.The said provision came up for consideration in quite a few rulings. In the decision reported in **1990 1 LW 4 (M. Selvam and Ors. vs. T.P. Kuppanna Mudaliar)**, it was held that the Court has the jurisdiction to fix compound interest in excess of 6% per annum. Para No.5 of the said decision reads as follows:-

"5. It is thus seen that though generally a trustee committing breach of trust is not liable to pay interest excepting in the cases provided for under Section 23(a) to (f) of the Act, even amongst those cases where he is liable to pay interest, a distinction is made as provided in Section 23(a) of the Act to account for the interest actually received and in cases falling under Section 23(b), (c) and (d) of the Act to account for simple interest at the rate of



6% p.a. unless the court otherwise directs. Regarding the cases falling under Section 23(e) and (f) of the Act, where provision is made for the liability of the trustee for payment of compound interest for breach of trust, it is significant that the rate of interest is not specified, but the expression used is "at the same rate". In order to ascertain the meaning of the expression 'at the same rate' occurring in Section 23(e) and (f) of the Act, necessarily the rate specified earlier has to be taken into account. With reference to the cases falling under Section 23(b), (c) and (d) of the Act, the rate of interest provided is simple interest at 6% p.a., unless the court otherwise directs. The expression "at the same rate" occurring in Section 23(e) and (f) of the Act has, therefore to be read, in order to ascertain the rate of compound interest provided for therein, in the light of the rate of interest, though simple, provided for under cases falling under Section 23(b) to (d) of the Act. The words "unless the court otherwise directs" applicable to cases falling under Section 23(b) to (d) of the Act allow a discretion in the court to grant a higher rate of interest, if it considers proper to do so. In other words, even in a case falling under Section 23(b) to (d) of the Act, it would be open to the Court to award interest, though simple, in excess of 6% p.a. and the award of interest in that manner would be in accordance with the direction of the court otherwise. When there is discretion in the court to award interest in excess of 6% p.a. even in a case where simple interest is payable under Section 23(b) to (d) of the Act, the compound interest payable under Section 23(e) and (f) of the Act at the same rate would enable the court to fix compound interest also in excess of 6% p.a. Thus, the "compound interest" at the same rate contemplated in Section 23(e) and (f) of the Act, may be 6% p.a. compound interest or even such rate, as may be fixed by the court, in the exercise of its discretion. We had earlier pointed out that there is no specification of any particular rate of compound interest, in cases where such compound interest is allowable and the enumeration of cases where a trustee is liable to pay interest at 6% p.a., unless the court otherwise directs and providing for payment of compound interest under Section 23 (e) and (f) of the Act at the same rate, would enable the court to award even compound interest in cases falling under Section 23(e) and (f) of the Act at rates higher than 6% p.a. The absence of the expression "unless the court otherwise directs" in Section 23(e) and (f) of the Act cannot be understood as precluding the court from awarding compound interest in excess of 6% p.a., especially when under Section 23(e) and (f) of the Act, there is no specification of the rate of compound interest payable, but such rate is described to be the same rate, which in turn would mean 6% p.a., unless



otherwise directed by the court, we may now refer to the decisions in Syed Abdul Wajid Sahib v. Oosman Abdul Rubb 56 L.W. 42 and Jagannath Sowcar v. Sripathibabu Naidu MANU/TN/0102/1945 : AIR 1945 Mad 297 relied on by learned Counsel for the appellants. In the first of these cases in setting out Section 23(e), the court has proceeded on the assumption that there is a provision for payment of compound interest at 6% p.a., unless the court otherwise directs. As we have pointed out earlier, with reference to Clauses (e) and (f) falling under Section 23 of the Act, there is no specification of the rate of compound interest, but it is stated that such interest would be at the same rate and that would enable the court to award compound interest in excess of 6% p.a. Therefore, the decision in Syed Abdul Waji Sahib v. Oosman Abdul Rubb 56 L.W. 42 is not of much assistance to the construction of Section 23(e) and (f) of the Act, except to the limited extent that there is a discretion left in the court to grant higher rate of interest, if it considers proper to do so. Therefore, none of the decisions relied on by learned Counsel for the appellants is of any assistance in the interpretation of the words "at the same rate" occurring in Section 23(e) and (f) of the Act. Even so, as a matter of construction of the provisions, as they stand, it has earlier been held that the court has a discretion in fixing the rate of compound interest at a figure higher than 6% p.a. In this case, the Trial court awarded 12% p.a. compound interest with half-yearly rests, which was modified by the lower appellate court to 6% p.a. with half-yearly rests. Ordinarily, the appellate court ought to be slow to interfere with the exercise of discretion by the Trial court in the award of interest under Section 23(e) and (f) of the Act. The unchallenged findings of the courts below have already been referred to. The respondent has been found to be guilty of a direct breach of trust by employing the trust funds in his own business and also dividing the trust funds amongst his partners. Several years have also rolled by since the respondent had committed the breach and there has been a total absence of an attempt of the part of the respondent to repair the breach or perform the trust till actually the suit was instituted. Twenty seven long years have rolled by since the suit itself was instituted and during the time consumed by the pendency of the litigation the respondent had the benefit of employing the trust funds in his own business and he had derived benefit. If the amounts payable to the beneficiaries had been paid by the respondent in time, they might have invested those amounts in some business or other productive enterprise and reaped benefits therefrom. Even that had been lost to them so that the award of compound interest, in the aforesaid circumstances, at 12% p.a. with half-yearly rests appears to be just and reasonable,



especially when, on the facts, Section 23(f) of the Act stood attracted and the appellants have not exercised an option for payment of the net profits made by the respondent by the employment of the trust funds. Considering the facts and circumstances of the case in the light of Section 23(f) of the Act, we hold that the award of compound interest at 12% p.a. with half-yearly rests by the Trial Court was just, fair and proper and that the lower appellate court was in error in modifying the rate of compound interest to 6% p.a. with half-yearly rests."

8. In the case on hand, the Courts below have given a finding that there has been a failure to render accounts from the year 1964. In the year 1964, one sovereign of gold was priced at less than Rs.100/-. The plaintiff has been engaged in litigation since 1977. The defendants were not at all justified in dragging on the matter. Obviously, these circumstances were borne in mind by the Courts below for awarding interest at the rate of 12% per annum to be calculated on compounded basis. In fact, the Courts below ought to have awarded half-yearly rests, but they have not done so. They have awarded only annual rests. The decision of the Courts below is well within the legal parameters and has the backing of the aforesaid decision reported in **1990 1 LW 4 (M.Selvam and Ors. vs. T.P. Kuppanna Mudaliar)**. I answer the substantial questions of law against the appellant. The second appeal stands dismissed. No cost.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

skm

To

1.The Subordinate Judge, Devakottai.

2.The District Munsif Court, Devakottai.

Copy to : The Section Officer,
Vernacular Records, Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.AL.GANTHIMATHI, Advocate (SR-9468[F] dated
02/03/2022)



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+1 CC to M/s.VR.SHANMUGANATHAN, Advocate (SR-9529[F] dated
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SS (CO)
KB (21.04.2022) 8P 7C