

The Firm of T. AR. CT. (Plaintiffs) – – – – – *Appellants*

v.

The Firm of SV. KR. *alias* Seena Vana
Kana Runa (Defendants) – – – – – *Respondents*

FROM

THE COURT OF APPEAL, SUPREME COURT OF
THE FEDERATION OF MALAYA

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL, DELIVERED THE 11TH NOVEMBER, 1954

Present at the Hearing :

LORD MORTON OF HENRYTON
LORD SOMERVELL OF HARROW
MR. L. M. D. DE SILVA

[*Delivered by* LORD SOMERVELL OF HARROW]

This is an appeal by the plaintiffs from a decision of the Court of Appeal at Penang. The plaintiffs claim repayment with interest of a loan for \$3,000 dated 16th September, 1941. The defendants allege that the loan with interest was repaid to one Annamalai Chettiar on the 25th June, 1943. The plaintiffs in a reply allege that Annamalai was not authorised to receive money or give valid receipts on their behalf. The learned Judge and, by a majority, the Court of Appeal, decided that Annamalai had ostensible authority and the claim therefore failed. The issue in the appeal is whether he had either actual or ostensible authority.

The plaintiffs are an Indian chettiar firm who carry on business in Penang. There is another and larger Indian chettiar firm referred to as O.R.M. and these two firms were associates in business in Penang. Some of the business was carried on by and solely in the name of O.R.M., the plaintiffs having a share in the profits. This case is concerned with another part of the business, namely loans on Thavannai letters. Such loans are made out of moneys of relatives and are made only to other chettiars. The Thavannai letter is in form a receipt with an undertaking to pay addressed to the lending firm and sometimes giving the name of the relative whose money is being lent. When the loan is repaid the borrower is entitled to receive the letter back. The fund of relative's money, though there was in this case no separate bank account, is referred to as the charity fund.

Prior to and at the time of the loan now under consideration the plaintiffs' agent in Penang under a power of attorney was one Arunasalam. Annamalai held a power of attorney from O.R.M. In 1933, at a time when the plaintiffs had their own agent in Penang, they wrote to the then agent of O.R.M. asking him to invest on Thavannai letters their charity fund. The original of that letter was destroyed in the war and secondary evidence to the above effect was given by Annamalai. That authority was continued and was operative at the time of the loan, Annamalai having become agent for O.R.M. at a date subsequent to the original letter.

The plaintiffs called no evidence as to the position at the relevant dates. If a copy of the letter to which we have referred existed it was not produced. One has to proceed on the contents of that letter as deposed to by Annamalai. Annamalai signed the endorsement on the Thavannai letter when the loan was repaid, "Agent of O.R.M. for T.A.R.C.T." This wording was relied on by the appellants in the argument as to ostensible authority. On the view their Lordships take of his actual authority it follows precisely the authority given by the letter. It was as agent of O.R.M. that he was authorised to make loans out of the charity fund and it would therefore be as such agent that he would be authorised to receive their repayment "for" the plaintiffs.

It is unnecessary in these circumstances to consider whether if there had not been actual authority the defendants could establish ostensible authority. There was no dispute between the parties as to the applicable law and no useful purpose would be served by considering how that law would have been applied if the facts had been other than their Lordships find them to be.

Their Lordships are of opinion that the conclusion of the Court of Appeal is right and they will humbly advise Her Majesty that this appeal ought to be dismissed. The appellants will pay the costs of the respondents.

In the Privy Council

THE FIRM OF T. AR. CT. (Plaintiffs)

v.

THE FIRM OF SV. KR. alias SEENA
VANA KANA RUNA (Defendants)

DELIVERED BY
LORD SOMERVELL OF HARROW