

(1924) 01 MAD CK 0014
In the Madras High Court

Cheemalapatti Venkata Reddi		APPELLANT
	Vs	
Nataraja Setti and Another		RESPONDENT

Date of Decision : 16-01-1924

Acts Referred:

Citation : 84 Ind. Cas. 691

Hon'ble Judges : Ramesam, J

Bench : Single Bench

Judgement

Ramesam, J.—The plaintiff is the petitioner before me. The suit was brought in the District Munsifs Court of Madanapalle to recover Rs.

316-5-2 in respect of 9 bags of jaggery delivered to defendant as commission agent on behalf of plaintiff. The District Munsif and the District

Judge held that-the Madanapalle. Court had no jurisdiction. Hence this petition.

2. Six or seven years prior to the, plaint, the plaintiff went to Madras where he and the defendant ""talked and settled about, the commission to be

paid to him."" He told 1st defendant in Madras that he would consign goods directly to him or to, others who would be directed to deliver goods to

him. The defendant was afterwards Writing letters to plaintiff informing the latter of the current prices prevailing in Madras and suggesting the

despatch of goods. In October 1915 plaintiff; sent 18 bags of jaggery to P.S. Abdul Khater Saheb and Brothers at Madras; with instructions to

deliver 9 of them to the, defendant. He also wrote to the defendant asking him to sell them and send the amount. Abdul Khader delivered the hags

on 25th October 1915 to defendant. On 5th December 1915 (Ex. A-17) defendant wrote stating that he would send the amount after selling the

jaggery. On these facts the Courts below held that the Court of Madanapalle had

no jurisdiction.

3. Of the cases relied on by the respondent Khimji Jivaraju Shathi v. Sa Purushotam Jutani 7 M.P 171 : 2 Ind. Dec. (N. S.) 704 was not decided

with reference to Section 17 of the Code of 1882 as amended in 1888. In Kamisetti Subbiah v. Katha Venkatasawmy 27 M.P 355 citing New

comb v. De Ross (1859) 2 E. & E. 271 : 29 L.J.Q.B. 4 : 6 Jur. (N.S.) 68 : 8 W.R. 5 : 119 R.R. 717 : 121 E.R. 103 where the facts are

somewhat similar, it was held that the cause of action did not arise in, Kurnool but in Madras, the. ratio decidendi being that the contract was made

at the place where the letter of acceptance was posted. Taylor v. Jones (1876) 1 C.P.D 87 : 45 L.J.C.P. 110 : 34 L.T. 131 also cited in it was a

case in which the facts were peculiar. There, though a letter of offer was posted in London, no reply accepting it was posted but the goods were

delivered in London and obviously the contract came, into existence wholly in London. It is true that the making of an offer may be part of the

cause of action see Borthwick v. Walton (1855) 15 C.B. 501 : 3 C.L.R. 364 : 24 L.J.C.P. 83 : 1 Jur. (N.s.) 142 : 3 W.R. 203 : 139 E.R. 519 :

24 L.T. (o.s.) 271 : 100 R.R. 463 and Green v. Beach (1873) 8 Ex. 208 : 42 L.J. Ex. 151 : 21 W.R. 850 cited in Kuthiravattam Appu Thamban

v. Foulkes 54 Ind. Cas. 26 : 10 L.W. 445 but this means not the posting of the offer but the receipt of the offer [see Mylappa Chettiar v. Aga

Mirza Muhammad Shirazee 54 Ind. Cas. 550 : 37 M.L.J. 712 : 26 M.L.T 504 citing Clarke v. Knowles (1918) 1 K.B. 128 : 87 H.J.K.B. 189 :

118 L.T. 253. In this case, the plaintiff's offer does not help him. But the receipt of the acceptance when the contract is complete is a part of the

contract there being no reason why--acceptance should be in a worse position than offer. The English cases in Newcomb v. De Ross (1859) 2 E.

& E. 271 : 29 L.J.Q.B. 4 : 6 Jur. (N.S.) 68 : 8 W.R. 5 : 119 R.R. 717 : 121 E.R. 103 and Borthwick v. Walton (1855) 15 C.B. 501 : 3 C.L.R.

364 : 24 L.J.C.P. 83 : 1 Jur. (N.s.) 142 : 3 W.R. 203 : 139 E.R. 519 : 24 L.T. (o.s.) 271 : 100 R.R. 463 are cases under the then County Courts

Act, 9 & 10 Vic. c. 60 according to which the whole cause of action must arise within the jurisdiction of the County Courts. No doubt the later

case Clarke v. Knowles (1918) 1 K.B. 128 : 87 L.J.K.B. 189 : 118 L.T. 253 arose on the later County Courts Act, 51 & 52 Vic. c. 43 under

which it is enough if part of the cause of action arose within the jurisdiction of the County Court. But it does not appear from the affidavit upon

which the application was based that any letter of acceptance was received at West Hartlepool. If it, can be said on the facts of Mylappa Chettiar

v. Aga Mirza Muhammed Shirazee 54 Ind. Cas. 550 : 37 M.L.J. 712 : 26 M.L.T. 504 that the defendants acceptance of plaintiff's. offer was

ultimately communicated to plaintiff at Negapatam, then the correctness of the decision is doubtful. Nor was any attempt made in the case of

Kamisetti Sabbiah v. Katha Venkatasawmy 27 M.P 355 to support the judgment under appeal on the ground that a letter of acceptance was

received in Kumool. But, apart from this ground, it is clear that in this case the money was intended to be paid to the plaintiff at his native place see

Naina Marakayer v. Somasundaram. 56 IND. Cas. 604 : 11 L.W. 593, Robey v. Snacfell Mining Co. (1888) 20 Q.B.D. 152 : 57 L.J.Q.B. 134 :

36 W.R. 224 and Bangali Mai v. Firm. Ganga Ram-Asharfi Lal 71 Ind. Cas. 431: AIR (1923) (A.) 465 and if so, part of the cause of action

arose within the jurisdiction of Madanapalle, Court. The contract in Comber v. Leyland (1898) A.C. 524 : 67 L.J.Q.B. 884 : 79 L.T. 180 is

special and peculiar as pointed out at in Naina Marakayer v. Somasundaram 56 Ind. Cas. 604 : 11 L.W. 593. On both the grounds above

indicated, I reverse the order of the Courts below and direct that the suit be taken on file and disposed of according to law. The respondents must

bear the costs of this petition in this Court and in the lower Appellate Court. The costs in the First Court will abide the result.