

(1924) 01 MAD CK 0022
In the Madras High Court

Chemalapati Venkata Reddy

APPELLANT

Vs

Nataraja Setti and Another

RESPONDENT

Date of Decision : 16-01-1924

Acts Referred:

Citation : (1924) 19 LW 499 : (1924) 46 MLJ 371

Hon'ble Judges : Ramesam, J

Bench : Division Bench

Judgement

Ramesam, J.—The plaintiff is the petitioner before me. The suit was brought in the District Munsif's 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 Khader 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 bags

on 25-10-15 to defendant. On 5-12-15 (Ex. 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 *Jivaraju v. Purushotam* ILR (1883) M 171 was not decided with reference to Section 17 of the Code

of 1882 as amended in 1888. In *Kamisetti Subbiah v. Katha Venkatasamy* ILR (1903) M 355 [citing *Newcomb v. De Ross* (1859) 2 E & E 271

] 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* (1875) 1 CPD 87 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* 15 CB 501 and *Geeen v. Beach* LR 8 Exch 208 cited in *Appu Thamban v. Foulkes* (1919) 10 LW 445] but this means

not the posting of the offer but the receipt of the offer [see *The Firm of A.M. Mylappa Chettiar by Partners of the Firm of that Name Vs. Aga*

Mirza Mohamed Shirazee, Managing Proprietor of the Firm, citing Clark Brothers v. Knowles, (1918) 1 KB 128. 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 and *Borthwick v. Walton* 15 CB 501

are cases under the then County Courts Act, 9 and 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 *Clark Brothers v. Knowles* (1918) 1 KB 128 arose on the later County Courts Act 51 and 52 Vic.

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 Mohammad Shirazee 37 MLJ 712 that the defendant's 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 in *Kamisetti Subbiah v. Katha*

Venkatasamy ILR (1903) M 355 to support the Judgment under appeal on the ground that a letter of acceptance was received in Kurnool. 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 Maracayar v.*

Somasundaram Chettiar (1920) 11 LW 593, *Robey v. Snacfell Mining Company* (1878) 20 QB 152 and *Bangali Mal v. Ganga Ram* 71 IndCas

431] and if so, part of the cause of action arose within the jurisdiction of Madanapalle Court. The contract in *Comber v. Layland* (1898) AC 52 is

special and peculiar as pointed out in *Naina Maracayar v. Somasundaram Chettiar* (1920) 11 LW 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 petitioner in this Court and in the lower appellate Court. The costs in the first Court will abide the result.