

(1954) 09 OHC CK 0020

In the Orissa High Court

Case No : First Appeal No's. 35 and 40 of 1949

Gopasundar Sabatho and Another

APPELLANT

Vs

Chunilal and Another

RESPONDENT

Date of Decision : 10-09-1954

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2, Order 8 Rule 6

Evidence Act, 1872 — Section 34

Hoarding and Profiteering Prevention Ordinance, 1943 — Section 5

Citation : AIR 1955 Ori 6 : (1955) CriLJ 162

Hon'ble Judges : Narasimham, J; Mohapatra, J

Bench : Division Bench

Advocate : B. Mohapatra, in F.A. No. 40 of 1949 and L.K. Dasgupta and P.C. Chatterji, in F.A. No. 40 of 1949, for the Appellant; B. Mohapatra in F.A. No. 40 of 1949 and L.K. Dasgupta and P.C. Chatterji, in F.A. No. 40 of 1949, for the Respondent

Judgement

Mohapatra, J.—These two first appeals arise out of two suits Nos. M. S. 4 and 7 of 1948 instituted on 18-11-46 and 9-8-47 respectively. The suits were heard together and were covered by the same Judgment of the trial Court, Sri S.B. Satapathy, Additional Subordinate Judge of Berhampur, delivered on 15-12-48. First Appeal No. 35/49 arises out of M. S. No. 4/48 in which the plaintiffs Chunilal and Parameswarlal claim a total sum of Rs. 11,000/- constituted by the principal sum of Rs. 679/- plus interest of Rs. 2,342/- and house rent of Rs. 57/-, against defendant Gopasundar Sabatho on the allegations that plaintiffs 1 and 2, who are uterine brothers, and the defendant had dealings in salt on considerable scale and had mutual good-will.

The plaintiffs have their shop at Berhampur while the defendant belonged to Nuapada where he had salt business on a very large scale. Defendant Sabatho wanted to carry on Jaggery business in Berhampur and he having no shop at Berhampur requested the plaintiffs Chunilal-Parameswarlal to help in jaggery business, On 16-11-43 defendant Sabatho consigned 1936 blocks of gur from

Anakapalli and by a letter requested the plaintiffs to finance him to release the railway pass from the Imperial Bank of India. On 19-11-43, the defendant himself came to Berhampur, borrowed a sum of Rs. 8,304 and odd from the first plaintiff's son Iswardas. Iswardas made an entry to that effect in the account book of the plaintiffs Chunilal-Parmeswarlal. Defendant Sabatho further wrote a letter on 20-11-43 stating that he had borrowed Rs. 8,304 and odd from the plaintiffs and gave the R/R requesting the plaintiffs to take delivery of the said 1936 blocks of Jaggery by paying the railway freight of Rs. 309-5-0.

The plaintiffs' version is that these blocks of Jaggery were taken delivery of from the railway station by Iswardas (son of plaintiff No. 1) and kept in the godown of the plaintiffs for which the defendant was to pay house rent. Defendant Sabatho used to come and sell the Jaggery for himself and the plaintiffs had nothing to do with the sale of the jaggery. On 3-9-44 the Civil Supply Department seized 500 blocks of defendant's jaggery under the Hoarding and Profiteering Prevention Ordinance (35 of 1943). A prosecution was started which culminated in the conviction of the accused and the 500 blocks were forfeited to the Government. The defendant not having paid the said amount which he took merely as a loan, the plaintiffs brought the suit for recovery of the amount of Rs. 8,679/- with interest at 9 per cent. per annum the total claim being Rs. 11,000/-.

2. The defence taken by Sabatho is that the parties had mutual good-will and were carrying on salt business in extensive scale. The defendant having wanted to deal in jaggery at Berhampur obtained the consent of the plaintiffs and on 16-11-43 sent 1936 blocks of Anakapalli gur to Berhampur; the cost price of the gur was Rs. 9,690-12-0; the defendant having paid Rs. 1,390-12-0, the vendor was directed to draw a Hundi on the Imperial Bank of India for the balance amount of Rs. 8,300/-. On 19-11-43 defendant Sabatho came to Berhampur, took the sum of Rs. 8,300/- from the first plaintiff's son Iswardas, released the Hundi and directed the plaintiffs to take delivery of the gur on payment of railway freight of Rs. 309-5-0. The plaintiffs having paid the said freight took delivery of gur on 20-11-43, on which date the defendant had written a further letter to the plaintiffs to keep the gur in their godown and dispose of the same according to the market rate. Indeed the defendant was to remain liable for the profit and loss. The plaintiffs were trustees and agents of the said gur kept in their custody and, in fact they were selling the gur from time to time. The plaintiffs Chunilal-Parmeswarlal have not explained the accounts for the said gur.

3. On 3-9-54, the Enforcement Supervisor of Supplies seized blocks of Anakapalli gur and some 1500 blocks of Parlakimedi gur from the plaintiffs' shop. Criminal Case No. 196 of 1944 was lodged in the Court of the S. D. M., Berhampur u/s 13(1) of the H. P. P. Ordinance against Iswardas and defendant Sabatho. The defendant was discharged and Iswardas was convicted and the 500 blocks of gur were forfeited to the Government:

The important part of the defence version is that in fact as the parties had dealings in salt of considerable quantities the defendant used to keep regular

accounts of the said business in the ordinary course of business, the accounts were current, mutual and open. In that account the said sum of Rs. 8,679/- that is, the sum advanced by the plaintiffs and the freight charges were accounted for towards the credit of the said plaintiffs, and the defendant had never taken the sum of Rs. 8,300/- and odd by way of a loan. There was no stipulation for payment of interest whatsoever. The amount was advanced towards mutual dealings of the parties and was so accounted for in the mutual accounts. The suit therefore is bound to fail, according to defendant Sabatho.

4. Gopasundar Sabatho further instituted a suit on 9-8-47 which was numbered subsequently as M. S. 7/48 claiming a sum of Rs. 498/- on the basis of the said mutual accounts maintained during the course of the sale business between the parties. He further claims a sum of Rs. 10,019 and odd as the value of the gur entrusted to Chunilal-Parmeswarlal who, according to the plaintiff Sabatho, had kept them in their custody and were selling them from time to time as trustees and agents of Sabatho. He has claimed damages at 12 per cent, per annum. The total claim levied in the suit (M. S. 7/48) was Rs. 14,000/-.

5. The written statement filed by the defendant Chunilal-Parmeswarlal in the suit (M. S. 7/48) is in substance the same allegations as made in their plaint in M. S. 4/48. They state that in fact they are not responsible as custodians and agents and trustees of the said gur as they had simply let out a portion of their shop house to plaintiff Sabatho for carrying on the gur business and Sabatho was in fact selling the gur from time to time. They further state that 500 blocks of gur was forfeited to Government on account of the fault of Sabatho and in any event he (Sabatho) is not entitled to recover the price of the said amount of gur.

6. The learned trial Court found that the amount of Rs. 8,300/- advanced by the plaintiffs Chunilal-Parmeswarlal was never by way of a loan but was advanced by way of accommodation in the gur business. He found that in fact the gur was kept in the custody of Chunilal-Parmeswarlal as agents and trustees of Sabatho and in fact Chunilal-Parmeswarlal were selling the gur from time to time. It was further found that the accounts of salt business kept by Sabatho are regularly kept in the ordinary course of business and are genuine. The said amount of Rs. 8,300 and odd was in fact adjusted in the mutual accounts of the salt business. But according to him Sabatho had no authority to appropriate the said sum of Rs. 8,300/- towards the salt business. Therefore, he decreed the suit brought by Chunilal-Parmeswarlal, that is, M. S. 4/48.

On the basis of the account papers filed by Sabatho, he decreed Sabatho's suit M. S. 7/48 regarding his claim in the salt business, that is, Rs. 498/-. He also decreed Sabatho's claim for the value of the gur kept in the custody of Chunilal-Parmeswarlal amounting to Rs. 10,000/- and odd. He has dismissed the claim for Interest of both parties as there was no stipulation for interest. He has further found that it was Chunilal-Parmeswarlal who were responsible for the order of confiscation of the aforesaid 500 blocks of gur and therefore he has not deducted the value of the said 500 chakis of gur from the claim of Sabatho.

Gopasundar Sabatho who was the defendant in M. S. 4/48 has brought the First Appeal No. 35/49 against the decision of the trial Court allowing a decree to Chunilal-Parmeswarlal for recovery of Rs. 8,736 and odd including the godown rent and other incidental expenses together with the money advanced. Chunilal-Parmeswarlal have brought First Appeal No. 40/49 against the decision of the trial Court passed in M. S. 7/48 brought by Gopasundar Sabatho decreeing Sabatho's claim for a sum of Rs. 9,690/- as the value of the gur and a sum of Rs. 498/- and odd towards the salt account.

7. The first point that we intend to consider is whether the sum of Rs. 8,300/- and odd advanced by Chunilal-Parmeswarlal and admitted to have been received by Gopasundar Sabatho was merely by way of loan. The other pertinent questions, in this connexion, are whether Chunilal-Parmeswarlal were trustees and agents in respect of 1936 blocks of gur belonging to Sabatho and whether as a matter of fact, as alleged by Chunilal-Parmeswarlal, they had nothing to do with the gur except that they had let out the shop house on hire to Sabatho who was carrying on his gur business at Berhampur and was selling the gur for himself.

The two important documents which have rightly weighed with the trial Court in this connexion are the two letters--Ext. A, dated 16-11-43 and Ext. 2, dated 20-11-43. Both these letters were sent by Sabatho to Chunilal-Parmeswarlal, The genuineness of the letters is accepted by both parties. In the earlier letter Sabatho writes directing Chunilal-Parmeswarlal to take delivery of the gur (1936 chakis) and to keep them in their godown. The writer further directs not to sell the gur immediately as the market rate is not convenient and therefore asks Chunilal-Parmeswarlal to wait for further direction. In the second letter dated 20-11-43 there is a distinct" direction by Sabatho to Chunilal-Parmeswarlal to sell the gur at market rate. Sabatho in that letter takes the entire responsibility of profit and loss and also owns the liability of paying the rental for the godown.

These two letters which are coming from the custody of Chunilal-Parmeswarlal and are accepted by them as genuine definitely indicate that the position of Chunilal-Parmeswarlal at Berhampur was that of agents or custodians of the gur on behalf of Sabatho and they were to sell the gur. It is important to note in this connexion from the statement of D. W. 1 (Parmeswarlal) that the key of the godown was all along with him since the time of storing till 3-9-44 when 500 chakis of gur were seized by the Supply Department. Similarly, it transpires from the evidence of the second witness examined on behalf of Chunilal-Parmeswarlal that Sabatho probably came once to sell gur but he does not remember whether gur was sold on that occasion.

The learned trial Court has, on a discussion of the evidence of the other three witnesses examined on behalf of Chunilal-Parmeswarlal, rightly disbelieved their story that Chunilal-Parmeswarlal were not selling gur. He has gathered strength from Exts. 14 and 14-a which prove that a considerable quantity of gur was purchased by the third witness examined on behalf of Sabatho from the shop of

Chunilal-Parmeswarlal at Berhampur. On the above considerations and particularly relying upon the two letters Exts. A and 2 and the statement of D. W. 1 Parmeswarlal we are definitely of the view that the learned Court below was correct in coming to the conclusion that there was in fact a contract between the parties whereby Chunilal-Parmeswarlal undertook to stock the gur in their own godown and dispose it of at the market rate at plaintiff Sabatho's risk and that Chunilal-Parmeswarlal were in fact selling the gur from time to time.

This being the understanding between the parties which was in fact acted upon, it is not possible to accept that advance of Rs. 8,300 and odd made by Chunilal-Parmeswarlal was merely by way of a loan; but it appears to be on the contrary an advance by way of an accommodation of the gur transaction. It further appears that there was no stipulation for interest, no time fixed for the payment of the said money, nor was it the understanding between the parties that it was to be paid back on demand. Indeed it was entered initially in the account of Sabatho, as by way of loan, but the learned Court below in the light of the above circumstances was correct in accepting the explanation given by Sabatho that it was through mistake that the amount was entered as a loan.

8. The Court below has decreed Chunilal-Parmeswarlal's claim on the basis of the advance on the ground that Sabatho had no authority to appropriate the said amount towards the salt account. The point does not arise for determination in view of the further steps taken by Sabatho during the continuance of the appeal in the High Court and the order passed by the Court. Sabatho has on 7-7-54 put in a petition for amendment of the written statement by adding paragraph 17-A to the written statement filed in M. S. 4/48:

"That in case it be held that the defendant is not entitled to credit the sum of Rs. 8,600/- advanced by the plaintiffs to the salt account of the plaintiffs on the ground that the plaintiffs had not given any authority for the same, the sum of Rs. 8,600/- which has been appropriated by the defendant towards the cost of salt supplied by him to the plaintiffs be allowed by way of set-off against the plaintiffs' claim.."

Sabatho has paid the requisite amount of court-fees on his prayer for set-off and the amendment has been allowed by this Court by order dated 12-7-54. The effect of the order in allowing the amendment is that the plea of set-off is to be taken as a part and parcel of the original written statement filed and to date back to the filing of the written statement

Now that the Question of appropriation is of no importance, in view of this plea of set-off, the main question of importance turns upon the question whether the account filed by Sabatho in connexion with the salt business are to be accepted as genuine and regularly kept in the ordinary course of business. They are the Cash Ledger Books for the years 1943-44 proved by Sabatho, the proprietor of his firm, speaking to the genuineness of the accounts from his own personal knowledge that they were entered by his own clerk. It is admitted by both

parties that they had salt dealings with each other. The only difference being that Chunilal-Parmeswarlal allege that they had salt dealings with Sabatho upto 25-4-44 and not afterwards while, according to Sabatho, the dealings were closed in the month of August 1944.

The learned subordinate Judge, who had the advantage of seeing and examining Sabatho in Court, believes this witness and particularly when the ledger book is supported by receipts, vouchers as per several exhibits on record, Ext. 8 series (Exts. 8 to 8h) are receipts passed by G.S. Narayana on behalf of Chunilal-Parmeswarlal for having received crushed salt in different quantities from Gopasundar Sabatho, Salt Merchant, Tekali. These receipts appertain to the month of March and April of the year 1944. The transactions evidenced by these receipts have been entered in the account books of Sabatho. It is to be mentioned that there is, absolutely no question about the genuineness of these receipts and as such, they do substantially corroborate the account papers.

Exhibit 11 is the receipt obtained by Sabatho from the Oriental Salt Company, Naupada, on 15-4-44, showing the receipt of a sum of Rs. 8593-12-0 by the Oriental Salt Company. Exhibit 9 is another receipt dated 31-3-44 on account of excise duty on the salt transported from the factory of Nuapada. These transactions have been faithfully and correctly entered in the account papers.

It is to be mentioned here that Chunilal-Parmeswarlal had filed in Court their account papers. The account books or the entries have not been proved by Chunilal-Parmeswarlal. Some of the entries have been proved on behalf of Sabatho to add sufficient corroboration to the account papers filed by Sabatho. These are the entries Ext. L series (Ext. L to L-8). They are entries in the months of October, 1943. January, February and April 1944. They are entries in the stock register showing purchase of different quantities of salt by Chunilal-Parmeswarlal from Sabatho. It is significant to notice that these entries are faithfully entered in the account papers of Sabatho. On a consideration of these important circumstances along with the others, the learned Subordinate Judge has rightly characterised the account papers of Sabatho to be genuine and regularly kept in the ordinary course of business.

9. Mr. L.K. Dasgupta, appearing on behalf of Chunilal-Parmeswarlal, has argued on the basis of a decision of their Lordships of the Privy Council reported in -- "Bhoy Hong Kong v. Ramanathan Chetty" 29 IA 43 (A) that Sabatho not having produced the day-book of his business which is admittedly preserved in the firm, the evidentiary value to be attached to the ledger book is negligible. Indeed their Lordships of the Privy Council, while discussing that case, have opined:

"Indeed It would be impossible to give the same credit to books, rather sheets of books, of that kind, referring only to this particular transaction, as to books recording this transaction in common with transactions in the ordinary course of business, and at the appropriate dates, such as those put in on behalf of the respondents."

Mr. Dasgupta further relies upon a decision of Sri Ashutosh Mukherji J. reported in -- "Hingu Miah v. Heramba Chandra" 13 Cri LJ 139 (B). Their Lordships have given various reasons why Importance is to be attached to account paper kept in the ordinary course of business.

"First, that the habit and system of making any such book with regularity ensures their accuracy; secondly, that the influence of habit prevents casual inaccuracies and counteracts the casual temptation to misstatements; thirdly, that as such books record a regular process of business transaction, an error is almost certain to be detected and rectified; fourthly that in such books misstatements cannot be made except by a systematic and comprehensive plan of falsification; and fifthly, in some case the writer may make the record under a duty to his employer, in which case there is the additional risk of censure from the master if a mistake is committed. (Wigmore on Evidence, Section 1522). As Tindal C. J. observes in -- "Poole v. Dicus" (1835) 1 Bin 649 (C) it is easier to state what is true than what is false; the process of invention implies trouble; the clerk has no interest to make a false entry; if he has any interest it is rather to make a true entry, a false entry would be likely to bring him into disgrace with his employer."

The present case is entirely different from the case before their Lordships of the Privy Council. Here as we see, there are quite a number of entries in the ledger which stand corroborated by some other admitted transactions evidenced by documents of unquestioned genuineness and some other transactions which have been fully proved before the Court, as we have indicated above, with reference to Ext. 8 series, L series and others. Coming to Calcutta decision we find that most of the reasons given by Sir Ashutosh are also present in the account papers filed by Sabatho.

10. Mr. Dasgupta further contends that mere proof of the entries in the account papers are not sufficient to fasten the liability and they do require substantial corroboration as provided u/s 34, Evidence Act. The learned Subordinate Judge has considered this aspect of the case and has rightly come to the conclusion that the entries are corroborated by the documents discussed above. Further, as we have found, the evidence of Sabatho himself is a substantial compliance with the provisions of Section 34 corroborating the entries to fasten the liability.

11. It has been argued on behalf of Chunilal-Parameswarlal that as a number of entries in their accounts have been utilised for the purpose of adding corroboration to the account of Sabatho, there is no reason why Sabatho's account should be preferred to those of Chunilal-Parameswarlal. Mr. Dasgupta particularly relies upon entry Ext. K dated 6-8-44 to contend that the outstanding dues of Chunilal-Parameswarlal as against Sabatho transpiring from their accounts as Rs. 6000/- and odd ought to be accepted as correct. The great difficulty in this argument of Mr. Dasgupta is that even though the account papers of Chunilal-Parameswarlal were produced in Court at a very late stage, they have not been able to prove the accounts and the entries therein and to

place the Court in a position to come to a finding that they are regularly kept in the ordinary course of business.

We are not going to attach any importance to the last entry in Ext. K dated 6-8-44 to assess the liability of either party in the absence of the entire account to be examined by Court. It is significant to note that this entry indicates that the claim of Chunilal-Parameswarlal on the basis of the salt account is not genuine as it is curious that even though Chunilal-Parameswarlal have such heavy dues to be realised from Sabatho on the basis of the salt account as they allege they have not taken any step whatsoever up to date for realisation of the amount. In conclusion, therefore, in agreement with the Court below, we find that the account papers of Sabatho are regularly kept in the ordinary course of business and Sabatho has been able to prove his outstanding dues of Rs. 498/- on the basis of the salt account after deducting the amount of Rs. 8,600/-.

12. Mr. Dasgupta has further argued that the set-off claimed on the basis of the amendment of the written statement in this Court in respect of Rs. 8,600/- in M. S. 4/48 on the basis of Sabatho's dues in the salt business and Sabatho's claim of Rs. 498/- on the selfsame basis in M. S. 7/48 are hit by the provisions of Order 2, Rule 2, Civil P. C. Indeed a party cannot be allowed in law to split up the same cause of action and bring two separate actions in respect of the different parts of the same cause of action. There cannot be any dispute over the position that the claim of set-off in the written statement filed will have the effect of a plaint in cross-suit as provided for under Order 8, Rule 6, Civil P. C. The relevant portion of Order 2, Rule 2, relied upon by Mr. Dasgupta is contained in Clause (2) of the said Rule running as follows:

"Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim he shall not afterwards sue in respect of the portion so omitted or relinquished."

Indeed in the present suit, it is not a case of intentional relinquishment. Therefore, Mr. Dasgupta relies upon the clause that in the present set up of circumstances when the plaintiff after bringing his suit (M. S. 7/48) for a sum of Rs. 498 on the basis of salt account omits to sue for the sum of Rs. 8600/-, he will not be entitled to pursue his remedies either in a separate suit or by way of a set-off in respect of the said amount of Rs. 8,600/-.

This argument involves a fallacy which is detected on an examination of two dates only. The effect of the amendment of the written statement allowed by this Court is undoubtedly to place the amended paragraph as a part of the original written statement. It must have the effect of having been filed on the date when the original written statement was filed, i.e., 30-6-47. M. S. 7/48 was filed on 9-8-47. An examination of these two dates makes it clear that Sabatho's first claim in Court was in respect of Rs. 8600/- by way of set-off on the basis of the salt account. We agree with Mr. Dasgupta that both these actions, that is, the claim of set-off pleaded in the written statement of M. S. 4/48 and the claim for

Rs. 498/- in M. S. 7/48 are based on the same cause of action arising from the salt accounts and Sabatho is not entitled to split them; but the claim that is hit by the mischief of Order 2, Rule 2 is the subsequent claim of Rs. 498/- and accordingly we disallow Sabatho's claim in respect of that amount in M. S. 7/48.

13. The argument of Mr. Dasgupta is in respect of 500 blocks of gur that was seized from custody of Chunilal-Parameswarlal on 3-9-44 and was confiscated. It transpires that 500 blocks of Anakapali gur along with other gur were seized on 3-9-44 by the Civil Supply Department and a criminal case was started against Iswardas son of Chunilal and Sabatho for having contravened the provisions of Hoarding and Profiteering Prevention Ordinance No. 35 of 1943. Sabatho was discharged. The prosecution ended in the conviction of Iswardas who was sentenced to pay fine of Rs. 500/- in default to undergo R. I. for 6 months. The gur seized also was forfeited.

It is argued by Mr. Dasgupta that the forfeiture was for the fault of both parties and therefore Sabatho is not entitled to get back the price of this 500 blocks of gur. He further argues that admittedly Sabatho had no license to possess this quantity of gur at Berhampur. Possession of Chunilal-Parameswarlal was indeed the possession of Sabatho and was against the provisions of law, as such, Sabatho was also guilty for violating the provisions of law and he could not be entitled to get the price of the gur of 500 blocks.

14. Section 5(a) of the said Ordinance runs as follows:

"No dealer shall have in his possession at any time a quantity of any article exceeding one quarter of the total quantity of that article held by him in the course of the year 1939, or as the case may be, exceeding the quantity which the Controller General or other officer empowered in this behalf by the Central or the Provincial Government may intimate to him as the maximum quantity of that article which he may have in his possession at any time."

The most important feature that will meet the argument of Mr. Dasgupta is that Sabatho was never aware of the total quantity of gur in possession of Chunilal-Parameswarlal in the year 1939. Section 5(a) of the Ordinance under which Iswardas was convicted and the gur was confiscated makes it clear that it is not the possession of any quantity of gur that contravenes this provision. It is only if the dealer possesses more than one-quarter of the total quantity of the article which he was in possession of in the year 1939. It is certainly within the special knowledge of Chunilal-Parameswarlal or for the matter of that, Iswardas as to what quantity of gur was possessed by them in the year 1939. When Sabatho was not aware of the total quantity possessed by them in 1939, in my opinion, the entire responsibility was with Chunilal-Parameswarlal if they possessed any gur in excess of the quantity permissible by law.

The fact remains that the confiscation in question was the result of the conviction of Iswardas u/s 5(a) of the Ordinance and that Sabatho was discharged. It is no part of our function here to adjudge if Sabatho was guilty under any other

provisions of the Ordinance. He was put on trial for having committed an offence u/s 5 (a) and was discharged. Moreover as we find there is no acceptable evidence to prove that it was Sabatho's gur which was seized on 3-9-44. Under these circumstances therefore we are of opinion that Chunilal-Parameswarlal are liable to pay the value of the entire quantity of gur of Sabatho, that is 1036 blocks, kept in their custody Including the quantity which was confiscated as a result) of the conviction of Iswardas. It is to be noted that trial Court has not allowed interest on the claim of either party and the question of interest was not pressed before us by either party.

15. In conclusion therefore F. A. 35/49 brought by Sabatho (defendant-appellant) is allowed and the suit of Chunilal-Parameswarlal (M. S. 4/48) is dismissed with costs throughout. F. A. 40/49 brought by Chunilal-Parameswarlal (defendant-appellants) in M. S. 7/48 is partly allowed, that is to say, the claim of Sabatho is reduced by a sum of Rs. 498/- which was due on account of salt business and hit by the provisions of Order 2, Rule 2, Clause (2), Civil P. C., as discussed above. The plaintiff Sabatho will be entitled to proportionate costs throughout. The claim for interest of either party is disallowed. The cross-objection filed by Sabatho in F. A. 40/49 is dismissed.

Narasimham, J.

16. I agree.