
(1910) 03 MAD CK 0060
In the Madras High Court

Kandaswamy Pillai

APPELLANT

Vs

Avayambal alias Thangaohi Ammal

RESPONDENT

Date of Decision : 17-03-1910

Acts Referred:

Contract Act, 1872 — Section 222

Citation : (1911) ILR (Mad) 167

Hon'ble Judges : Krishnaswami Ayyar, J;Benson, J

Bench : Division Bench

Judgement

1. The plaintiff was the defendant's agent under a power of attorney, the original of exhibit G, He sues for the recovery of payments made by him

for the expenses of certain litigations conducted by him on behalf of the defendant. The last of such payments was on the 6th of March 1901. The

suit was instituted on the 4th April 1906. The Courts below have held the suit barred under Article 61 of the Limitation Act. The appellant

contends in the first place that Article 116 applies. That relates to suit for a compensation for breach of a contract in writing registered. There is no

promise in the power of attorney to pay the plaintiff for advances made by him on account of his principal. Section 222 of the Contract Act

provides that the employer of an agent is bound to indemnify him against the consequences of all lawful acts done by such agent in exercise of the

authority conferred upon him. Illustrations (a) and (6) to that section show the expenses incurred by the agent on behalf of the principal are

consequences of the lawful acts of the agent in exercise of his authority. But the principal's duty to indemnify is no part of the contract. It is an

obligation imposed by the law and is attached to the relation of principal and agent constituted by act of parties, Such an obligation therefore

cannot be treated as part of the contract in writing registered. The decisions in *Krishnan Nambiar v. Kannan* ILR (1898) Mad. 8 and in

Seshachala Naickar v. Varada Chariar ILR (1902) mad. 5 were referred to, to show that obligations not expressed in writing but imported by the

law in the case of sale have been treated as in writing when the sale is made by a written instrument. We do not think that these cases compel us to

hold that an indemnity which is not a term of the contract, nor to be deemed a part of the contract, but a mere obligation cast on the principal by

the operation of law, is in writing registered within the meaning of Article 116.

2. It is next argued that Article 120 alone applies, and not Article 61. But before we go to this residuary article, we have got to see whether there

is no other article which can be made applicable to the case. Articles 83 and 61 have been suggested. We think we must reject; the former article

for practically the same reason for which we rejected 116. Article 83 relates to a suit "upon any other contract to indemnify." If we are right in

thinking that the obligation of the principal to indemnify u/s 222 of the Contract Act is not a contract to do so, Article 83 ceases to be applicable.

But even if it did apply, there would remain the question as to the starting point which is, when the plaintiff was actually damnified. Now, when is

the agent damnified as regards the advances made by him on account of the principal in the course of his agency? In the absence of a contract to

the contrary, we think it must be taken that the agent is damnified when he makes the payment. The expenses referred to in illustrations (a) and (6)

to Section 222 of the Contract Act are recoverable as soon as they are incurred. And if they are recoverable there is nothing unreasonable in

holding that the agent is damnified when they are recoverable, and that time begins to run at once. It was contended that the agent had a right of

retainer u/s 217 out of all sums received on account of the principal in the business of the agency of all moneys due to himself in respect of

expenses properly incurred. It was also pointed out that the agent u/s 222 of the Contract Act had a lien. It is true that, the right of retainer and the

lien may be enforced long after the expenses have been incurred so long as moneys or the goods of the principal in connection with the agency are

held by the agent, irrespective of the period that has elapsed since the expenses themselves were incurred, But is that a reason for holding that if

the agent is obliged to sue for moneys spent by him in the business of the agency, his right of action is postponed until the termination of the agency? Story says in Section 350 of his book on agency: "It may be generally stated that an agent may insist upon deducting all his advances, expenses, disbursements, and losses, arising in the course of his agency, whenever they are definite and certain and do not merely Bound in damages, from the pecuniary funds in his hands belonging to his principal, by way of recouper, discount or set-off. Or where no such funds exist, he may maintain an action at law, or a bill in equity, as the case may require, for the recovery thereof." The agent is not entitled to wait for the termination of the agency before he makes his claim. And the fact that he has a lien or a right of retainer in the case of claims for recoupment, irrespective of the statute of limitations, is no reason for holding that the statute itself does not run. In *Spears v. Hartly* (1800) 6 R.R. 814, it was held by Lord Eldon that if by custom and usage of trade, a party was entitled to a lien on goods for a general balance, and he got possession of the goods of his debtor, he might hold them till he be satisfied the whole demand, even though a part of it was barred by the statute of limitations. In *Curwen v. Milburn* (1889) 42 Ch D. 424, in which a question arose as to the lien of a solicitor on deeds and documents belonging to the clients, for amounts that had become barred, Lord Justice Cotton said: "Statute-barred debts are duo though payment of them cannot be enforced by action." The Court of Appeal held that the solicitor had lien on the documents, and that it was the duty of the taxing master to tax all the items of the bill without regard to the statute of limitations. The existence therefore of a right of retainer and of a lien would in no way prevent the operations of the statute. Is there any rule of law that postpones the agent's claims to the termination of the agency or the general settlement of accounts? The agent has no duty apart from any special contract to spend his own moneys in the business of his agency. His expenditure therefore of moneys belonging to himself in the business of the agency would be recoverable u/s 70 of the Contract Act. There is nothing to prevent his making his claim for recoupment immediately after he expended his own moneys. It seems to us clear that assuming that Article 83 applied, the plaintiff was damnified when the expenses were incurred and the suits instituted more than three years from that date would be out of time.

3. We think however that the Courts below were right in applying Article 61 to this case. That relates to a suit for money payable to the plaintiff for money paid to the defendant. It was argued that this article was confined to cases where the defendant was under a legal liability to make a payment. We see no reason for limiting the scope of the article. Oases falling u/s 70 of the Contract Act are certainly covered by the language of this article.

4. In *Sentence v. Hawley* 13 C.B. (N.S.) 445, where an agent had paid out of his own money for sugar bought by the principal, it was held that the agent might sue the principal for the price as money paid to his use at his request. Applying Article 61, we are of opinion that the suit is barred. The second appeal is dismissed with costs.