

(1919) 12 MAD CK 0028
In the Madras High Court

Kandregula Anantha Rao Pantulu	Vs	APPELLANT
Kandikonda Surayya and Another		RESPONDENT

Date of Decision : 09-12-1919

Acts Referred:

Citation : 55 Ind. Cas. 697

Hon'ble Judges : Spencer, J; Krishnan, J

Bench : Division Bench

Judgement

Spencer, J.—I cannot agree with the learned Subordinate Judge in his view that the plaintiff is debarred from recovering the advance made

by him for the mere reason that Exhibit A (the contract deed) and Exhibit A(1), in which the receipt of the advance was acknowledged, were

written on the same piece of paper and that a material alteration of one would affect the other with the taint of fraud.

2. In my opinion the defendant is bound to refund any advance taken by him, whether the contract is void or voidable and rescinded. In one case

Section 65 of the Contract Act applies, in the other Section 64.

3. There is no question now of performing the contract. First defendant does not want to perform it and he may be treated as having rescinded it,

as he set up in his written statement another arrangement by which the original contract had been superseded. In fact the 1st defendant in his

written statement, paragraph 10, did not deny his liability to refund the advance of Rs. 1,200, but he alleged that satisfaction had been given as

regards Rs. 500 and that only Rs. 700 remained to be paid.

4. As for the claim for damages for nonperformance of the contract on the point of law, which is whether a plaintiff who has made a material

alteration in an instrument containing a contract can recover any amount under it, I think we should follow Chitturi Surayya v. Boddu Ramayya 28

Ind. Cas. 57 : (1915) M.W.N. 150 : 17 M.L.T. 160; Gour Chandra Das v. Prasanna Kumar Chandra 33 C.P 812 : 3 C.L.J. 363 10 C.W.N.

783 and the case of Powell v. Dicett (1812) 104 E.R. 755 : 15 East 29 : 13 R.R. 358.

5. In fact Mr. Narayanamurthi conceded after some argument that as the terms of the contract were embodied in Exhibit A, he was not entitled to

recover damages independently of this document.

6. The only question then left was as to the appellant's (plaintiff's) right to recover the advance of Rs. 1,200, and this must be found for the

appellant on the strength of 1st defendant's admission and the reasons given above.

7. The result will be that the appeal will be allowed with proportionate costs in this and the lower Appellate Court on this part of the plaintiff's

claim and the decree of the District Munsif will be restored against 1st respondent and the second appeal dismissed with costs against 2nd

respondent, who, it is conceded, has been unnecessarily made a party to this appeal.

Krishnan, J.

8. I accept the finding of the lower Court that the written contract Exhibit A has been materially altered by the plaintiff without the knowledge and

consent of the 1st defendant, the other party to it. On that finding we must hold that plaintiff is not entitled to enforce that contract: see Powell v.

Divett (1812) 104 E.R. 755 : 15 East 29 : 13 R.R. 358 and that his suit, so far as it is for damages, was rightly dismissed as it would be enforcing

the contract to give him such damages.

9. It is, however, argued that plaintiff is nevertheless entitled to repayment of the Rs. 1,210 paid by him as an advance to the 1st defendant and the

claim is made u/s 64 or 65 of the Contract Act. The view of the lower Appellate Court that Exhibit A(1), the receipt given for the money, is also

rendered invalid by the alteration in Exhibit A does not seem to me to be supportable. It is only a receipt for the money paid. If the repayment of

that money is claimed by way of enforcement of the contract, no doubt plaintiff will be met by the objection based on its material alteration. But it is

not so claimed. The lower Courts have found that the 1st defendant did not perform the contract but on the other hand be committed breach of it.

Though plaintiff cannot take advantage of the breach to claim damages, he is not pre eluded from relying upon it and treating the contract as having

become void u/s 65 and requiring the defendant to repay the money advanced to him. Illustration (c) of Section 65 seems to indicate that the

Section is meant to apply also to cases where one party breaks a contract and the other party, in consequence of it, rescinds it. The material

alteration, though it prevents plaintiff from enforcing the contract, does not seem to prevent him from rescinding it. No authority has been cited to

show that it does. On the other hand the ruling in Chitturi Surayya v. Boddu Ramayya 28 Ind. Cas. 57 : (1915) M.W.N. 150 : 17 M.L.T. 160

would seem to support the view that the money advanced could be claimed back. Plaintiff would, therefore, be entitled to be paid back the Rs.

1,200 that be paid.

10. The second appeal, so far as it stands against the 2nd respondent, is not pressed. I would, therefore, allow the second appeal against the 1st

respondent and reversing the decree of the Subordinate Judge restore that of the District Munsif. Plaintiff will pay and receive proportionate costs

so far as the 1st respondent is concerned in this and the lower Appellate Court.

11. The second appeal is dismissed with costs against the 2nd respondent.