

(1904) 01 MAD CK 0003
In the Madras High Court
Case No : Second Appeal No. 2 of 1902

Kuttayan Chetty

APPELLANT

Vs

Palaniappa Chetty and Another

RESPONDENT

Date of Decision : 08-01-1904

Acts Referred:

Contract Act, 1872 — Section 78, 95

Citation : (1904) 01 MAD CK 0003

Hon'ble Judges : Boddam, J;Bhashyam Ayyangar, J

Bench : Division Bench

Advocate : V. Krishnaswami Ayyar and K. Srinivasa Ayyangar, for the Appellant;
C.V. Ananthakrishna Ayyar, for P.R. Sundara Ayyar, for the Respondent

Judgement

1. This is an action for damages for breach of contract. The terms of the contract are reduced to writing in the hundi, Exhibit A, which was given

by the Plaintiff to the Defendants' agent. It sets forth the price agreed upon, the quantity of paddy sold and that the balance of the price after giving

credit for the advance together with the freight should be paid by the Plaintiff on delivery at Jaffna. The amount advanced as per Exhibit A is Rs.

1,000 and the Exhibit A recites that, after deducting Rs. 100 which was agreed to be paid to the Defendants by a broker named therein who was

indebted to the Plaintiff, the balance of the advance is Rs. 900 and for this Rs. 900 Exhibit A, the hundi, was accepted (the hundi carrying interest

upon the Rs. 900, from its date).

2. The Rs. 100 assigned and the hundi for Rs. 900 were agreed to be the payment of the advance of Rs. 1,000, and in law the acceptance of the

hundi operates as payment though it may be only conditional, reviving the right to receive the Rs. 900 as part of the price if the hundi were

dishonored, and notice of dishonor were given either as required by Section 93 of the Negotiable Instruments Act or under one or the other of the

clauses of Section 98.

3. No notice of dishonor was necessary in law (Dargacarapu Sarrapu v. Rampratapu ILR Mad. 580

4. Upon the facts set forth in Exhibit A the property in the goods passed to the buyer under the penultimate paragraph of Section 78 of the Indian

Contract Act and u/s 95 of the same Act the vendors, the Defendants, would have a lien on the goods and would not be bound to deliver until the

price was paid, including the Rs. 900, if the hundi were dishonored. The Defendants' agent at Jaffna, instead of delivering the goods to the Plaintiff

or re-selling the same under the provisions of Section 107 (Indian Contract Act) if the price were not paid, rescinded the contract and sold the

goods to third parties for prices higher than the contract price, retaining the purchase money.

5. The Courts below were under a misapprehension as to the passing of the property to the buyer and the Defendants' lien thereon for unpaid

purchase money and their decision proceeds upon the footing that inasmuch as the hundi was not honored by payment the Defendants were at

liberty to rescind the contract. The Defendants' written statements and the judgment of the District Munsiff proceed on the footing that the giving

and accepting of the hundi is not payment of that portion of the purchase money in advance. We are clearly of opinion that upon the terms of the

contract as set forth in Exhibit A and the admitted facts, the Defendants were guilty of a breach of contract and the Plaintiff is entitled to damages.

6. As the lower Appellate Court has given no finding upon this issue we must call for a finding upon the second issue to be returned in seven weeks

upon the evidence already on record. [The second issue related to damages.]

7. A finding was duly returned and Plaintiff was awarded damages.