

(1918) 01 MAD CK 0034
In the Madras High Court

Manjappa and Another

APPELLANT

Vs

Rajagopalachariar and Another

RESPONDENT

Date of Decision : 11-01-1918

Acts Referred:

Citation : 45 Ind. Cas. 779

Hon'ble Judges : Sadasiva Aiyar, J;Oldfield, J

Bench : Division Bench

Judgement

1. The plaintiffs' claim is first to be paid for six articles ordered by defendants, which the latter were, there had no right to return. Part of the cause of action as regards these articles arose at Kumbakonam, where plaintiffs complied with defendants' order by despatching the articles to them, thus impliedly accepting their proposal. The lower Court, therefore, had jurisdiction as regards this part of the case. There is no answer to it on the merits.

2. Next, however, plaintiffs claim the value of 17 other articles, which, it is not disputed, they sent in excess of defendants' order, on the ground that they failed to-use the proper amount of care in the method by which they returned them to them at their request and that they consequently did not reach them.

3. It is argued, first, that the cause of action for this amount arose in part at Kumbakonam, where plaintiffs were, because it is based on a contract entered into between defendants and plaintiffs to return the articles and plaintiffs entered into that contract there. It is clear, however, that there was no contract, defendants simply undertaking to return the articles at plaintiffs' request made without reference to the passing of any consideration. The liability, if any, is in fact for damages for their alleged negligence; and that negligence took place, it is not denied, at Sagaram in Mysore State. They must, therefore, be sued there.

4. Next Section 21 of the CPC is relied on. But we have been shown no authority for holding, and we do not think, that this provision is applicable to usurpation of the jurisdiction of a foreign Court.

5. It is then suggested that, as the part of plaintiffs' claim relating to the 6 articles was properly made at Knmbabonam, the whole could be made there. But when the causes of action in respect of the 6 and the 17 articles were distinct, there is no reason why the jurisdiction competent in the case of one should be competent in the case of the other also.

6. The claim as regards the 17 articles was, therefore, not made in a competent Court and it should have been disallowed. The claim as regards the 6 articles should have been decreed.

7. The lower Court's decision and that of the learned Judge are set aside and the small cause suit is remanded in order that a fresh decree may be passed in the light of the foregoing. Costs in this Court will be tests in the case and will be provided for in the decree to be passed.