

(1916) 09 MAD CK 0010
In the Madras High Court

Ramanathan Chatty through his next friend Valliammaiachi	APPELLANT
Vs	
Kasi alias Kathiresan Chetty and Others	RESPONDENT

Date of Decision : 12-09-1916

Acts Referred:

Citation : 36 Ind. Cas. 804 : (1916) 4 LW 452 : (1916) 31 MLJ 685

Judgement

1. The agency in the case did not terminate at the expiry of the 3 years specified in the salary chit. All that the salary chit means is--it must be remembered it is a business document--that the agency shall not terminate before 3 years or rather the agency shall last for 3 years certain after which date it may or may not be continued. It does not mean that after the expiry of 3 years there is a fresh agency but only that the same agency continues. It is common knowledge that Chetty's agents in foreign parts do usually stop for sometime after the period of 3 years and they get their salary as agents till they return to the principal's place of residence. The extra period in this case was unusually long but from Exhibit C it is quite clear that both the agent and the principal recognised that the agency did not stop with the 3 years period, but continued till long after. The agent who was in Salone for much longer than the 3 years period request-ed permission of the principal to go to India on leave, the prin-cipal permitted him to do so and the agent on the expiry of the leave went back to his duties as agent. We therefore come to the conclusion that there was only one agency which did not terminate on the expiry of the 3 years but continued till the agent's death. In this view it is unnecessary to express any opinion on the question raised by the vakil for the appellant that if the agency had terminated at the end of 3 years and if the parties had entered

into a special agreement either at the time when the contract of agency was entered into or at any time, thereafter as to the time when the agent was to account whether Article 89 would apply to such a case or Article 115 or any other article.

2. We think therefore that the action viewed as an action of account against the agent is not barred by limitation. The vakil for the respondent contended that the present action is not one against an agent or his representatives, if such an action would lie, for an account, but is really an action to recover money misappropriated by an agent and which is now in the hands of his brother and in that view the action is barred in respect of the whole or at least a very large portion of the claim. The question whether the action would lie against the undivided brother and if it lies what exactly is the nature of the claim which the plain-tiff has put forward or is entitled to put forward and viewing the action as one not for accounts against an agent or his representative, whether such action is barred, are questions which we are not dealing with here more especially as the case had not been tried except on the above question of law. These questions can be raised and argued in the Lower Court. We allow the appeal and remand the suit for disposal. Costs will aside.