

(1923) 10 MAD CK 0028
In the Madras High Court

Sukdevadoss Ramprasad

APPELLANT

Vs

Dewan Bahadur Govindoss Chathurbujadoss and Company

RESPONDENT

Date of Decision : 04-10-1923

Acts Referred:

Citation : 76 Ind. Cas. 893 : (1923) 45 MLJ 716

Hon'ble Judges : Coutts Trotter, J

Bench : Division Bench

Judgement

Coutts Trotter, J.—The Plaintiffs case on the face of their plaint is simply a claim for the price of goods sold and delivered. It is not

contended that the actual goods were delivered. It is admitted that documents purporting to be delivery orders on which delivery of the goods

could be demanded passed between the parties. The defence is a somewhat unusual one namely that the transactions were not really sales of

goods at all but were in the nature of gaming and wagering. The only thing that I find in the evidence in support of that contention is the fact that the

goods after passing from the plaintiffs to the defendants and going through other hands ultimately reverted by purchase to the plaintiff. That is

obviously not conclusive. A buyer may sell with the knowledge that the person to whom he sells will pass on the goods and if the market is rapid

and transfers take place quickly he may very well contemplate that the person who ultimately claims the goods may be the last of a long chain of

buyers and if the market were against him when he is called upon to deliver he might well think it to be the wisest course to buy back the goods at

the end of the circle and wait for an advance in the market price. Thus it may happen that a perfectly legitimate series of transactions take place

without the goods having physically left his possession and it may well be that the state of the market was such that the documents of title to the goods in this case called patta patties changed hands so rapidly that the seller in each particular case may have thought it extremely improbable that he would ever be called upon to give delivery to his immediate buyer. As I understand the law as laid down in the leading English cases and it is obvious that the defence in this case is based upon those cases that is not enough; you must not only have a state of things in which both parties contemplate that delivery would not in fact be likely to be demanded, but you must have a definite agreement that delivery could not in any event be demanded without a breach of the understanding between the parties. The defendants' own witnesses negatived the supposition that such an understanding existed here. They all agree that they would have been compelled to take or entitled to ask for delivery as the case may be unless and until they had passed a patta patti, which is in fact a document of title to the goods, to their sub-purchaser. That being the defendants' evidence I think their case fails on their own showing and that however much one may suspect that the speculative element entered into these transactions as no doubt it did, that suspicion cannot translate itself into a determination that these were gaming transactions. If the merchants of Madras desire to enter upon the dangerous and slippery path of gambling in differences and at the same time reserve to themselves the right of setting up that not overhonest defence they must learn its technique a little better than they have done in this case.

2. My judgment is that the goods were sold, that the transfer of patta patties was in fact a delivery and that the plaintiffs must have a decree for the amount claimed with costs and interest at 6 per cent till payment. The defendants of course will have their remedy over against the persons who bought on the same terms from them.