

(1915) 09 MAD CK 0056
In the Madras High Court

S.V.A.R. Vellayam Chetty and Others

APPELLANT

Vs

K.L.S.T. Kulandaveluappa Chetty

RESPONDENT

Date of Decision : 21-09-1915

Acts Referred:

Citation : 31 Ind. Cas. 783

Hon'ble Judges : Srinivasa Aiyangar, J; Coutts-Trotter, J

Bench : Division Bench

Judgement

Coutts-Trotter, J.—This was an action brought by a Chetty agent carrying on business on behalf of his principal in Lower "Burma for something which may be described as commission. The circumstance" in which this agent was appointed is in a document, dated 20th January 1907, which is what I understand to be an ordinary form of agreement between a Chetty agent and principal. He was to go to a place called Letpatam and transact business as the agent of his firm in that place for a period of three years for a fixed salary of Rs. 8,000. He was to remain there and transact business for a period of three years and hand over the balance of capital and profits left in his hands to his successor. These were the terms of the document. It would appear that in fact the principal's business in that place had been faring very ill for a few years previously, apparently because of the incapacity of the preceding agent, and it may very well be that the principal's mind was (as he swore) that he doubted his ability to enable the new agent to embark, at any rate with rapidity, on new transactions and always had in his mind that his duty would be to collect the out standings left uncollected by his predecessor, if he could be got to do so--1 say advisedly if he could be got to do so," because there is evidence in this case of the principal's agent at Rangoon who says: "It is the custom among Nattukottai Chettiars to transfer to the name of the successor such out standings as he is agreeable to". The agent has said in the box and on paper contemporaneously over and over again that he went out with the expectation of doing ordinary money-lending, business as a Chetty agent, which is quite evident from a letter dated 6th June 1907, which is the first letter that was written to the defendant by the agent in which he says: "You said

you would keep Rs. 26,000 as capital for the place, but you have not as yet written about it even though I wrote a letter from this place. Therefore, you must write to this place, to enter that sum in the accounts and send Rs. 75,000 over that amount so as to make the capital one lakh of rupees." What was that capital wanted for? Not to collect old debts, but for the purpose of doing business with new clients. In that letter, he also says: We must have dealings with good persons who may be coming voluntarily at a cheap rate of interest and in small sums. We must also be carefully collecting the old dues." The next document is dated 3rd August 1907. It is from the principal to the agent in which he presses him to collect the old dues to the prejudice of other business. It is in effect an exhortation to the agent to get on as fast as he could with the collection of the sums due under old accounts.

2. The next letter is Exhibit IX, which is a very important letter, dated 17th June 1908, written by Udayappa to the plaintiff in which there is an allusion to the question of commission claimed by the agent. I think it is quite clear that at this time there was no binding agreement at all as between the principal and the agent as to whether there should be any or what rate of commission. He writes to the plaintiff alluding to his claims: As you have now written severely I would send your letter home to the principal and make the necessary arrangements therefor. Our principal is not one who cannot relise the situation," and then he says: "You have now very severely written in your letter that you are very anxious about it and that you came here only for profits and good name and not in consideration of the pay; therefore, I shall write to the principal as per your desire and have the thing settled as per your desire. Do not be anxious about it and" make arrangements necessary for the collections." Does not that amount to an intention on the part of Udayappa to write to the principal for payment of the commission due to him? I certainly draw the conclusion that he did write such a letter. It is an undisputed fact that the principal has not chosen to produce it". Inasmuch as he has not produced any of the correspondence between himself and his agent at Rangoon, we are bound to draw adverse inference against him wherever it is clear that the production of that correspondence would throw light on the case. At that time, it is clear that no binding agreement had been come to and it was not come to until a considerable time later, because, as late as 3rd September 1903, plaintiff writes to the defendant and says: We write to you with the intention that we may ask what we want. We are persons who have come depending on you. In many places in these days they are settling commission beforehand for making collections. Vai V. B. has arranged for commission for the partner of Pakke. As some provision has been made for all persons in this manner, we write to you often and often and request you will similarly make some provision for us who have been depending on you." In these circumstances, we may rightly draw the inference that as late as that date, there was no binding agreement between these parties, although pressure to induce the principal to agree to something had been going on for a certain period.

3. The next document is also an important one and is dated 12th November

1908. It is another letter from the plaintiff to the defendant. There are two requests in that letter. One was a request for extra help from the defendant on the ground that the work of collecting the out standings had become so arduous that it was impossible for one man to cover the ground. The other, request was to have his commission settled. He says: "You must consider well about the fact that I collected money after much difficulty, and write to me as to what I am to take for my commission. I write to you very much and request you to realise the fact that money has to be collected only after much hard work. If you have no mind to give commission, it will be a good thing for you to send a man for my place at the end of the second year. You must send a man like that." That is a statement on the part of the plaintiff that he was doing work which he had not contracted to do and that unless settlement was come to with regard to the rate of remuneration he would give up the business. The next communication we have, is Exhibit X, dated 1st December 1908, written by the principal in answer to this letter and also another which we have not got. He says he will send a person to help him. That is in answer to the first request. He says this: You have been writing to me that I should write about your matters. You may discuss about this also with Udayappa of Rangoon. You may tell Udayappa about K.P.'s house matter." Beyond that, there is not a word said about his commission and not a word said about the plaintiff's threat that if he was not properly treated with regard to his commission, he would demand to be relieved at the end of the second year. After the date of that letter, the correspondence ceases right up to a period when the plaintiff was due to come home in the natural course of effluxion of the period of his contract. We may assume that the letters covering the intermediate period, have no bearing on the issue of this case. In the first letter, dated 14th July 1910, Exhibit E, written by the plaintiff to the defendant, he says this: "Much trouble has been taken from Peri accounts and things have been very satisfactorily brought to such an extent, as this. It is you who should give, considering the pains taken, in accordance with what you wrote formerly that you would give liberally." In Exhibit D, on the 6th August 1910, he again writes: You had written formerly that you would also (reward) me liberally for collecting amounts taking pains. You are the person who should reward well according to the pains taken; and I am a man who would receive the same. With that object, I have done all the work taking great pains." I infer from these two letters. that the principal must have assented to reward the agent in general terms. At the trial, the case set up by plaintiff was thus: That he had gone to Rangoon, that he had met Udayappa who had authority from the principal in the matter and that Udayappa settled with him that he should get 5 per cent, commission. The learned Subordinate Judge disbelieved this story and found that it was not proved that Udayappa and plaintiff ever entered into any such binding agreement: but he finds that there was some understanding between plaintiff and Udayappa that some commission would be paid. Udayappa in his deposition says that he wrote to his principal about the samans due and he replied that he would not give samans having regard to what people were talking about. What the principal meant, in my opinion, was that he would not give him a fixed rate

of percentage, but would give him something as remuneration in respect of the sums collected from the old debtors.

4. That being so, the question arises whether this would constitute in law an enforceable contract. Reliance was placed for the appellants on two cases, *Taylor v. Brewer* (1813) 1 M. & S. 290 : 21 R.R. 831 and *Roberts v. Smith* (1859) 4 H. & N. 315 : 28 L.J. Ex. 164 : 118 R.R. 462. In these cases, it was held that a promise to pay reward to deserving persons, may be construed in certain circumstances with certain form of words to mean: "I may or may not give anything. If I do give something, I will give exactly what I deem right." On the other hand, the other side relied on the case of *Bryant v. Flight* (1839) 5 M. & W. 114 : 2 H. & N. 84 : 8 L.J. Ex. 189 : 36 Jur. 681 : 151 E.R. 49, where slightly different words were held to mean: "I will give you something, though that something must be determined later." The dividing line may be different in particular cases. The principle is quite clear. Is there an unqualified contract to give something or is the option of giving anything at all, left to the discretion of the proposed donor? I do not think there is much to be gained by a lengthy discussion of the cases. It is a matter of construction on which different Judges will take different views. The view I take of the contract in this case is that it can only be construed, having regard to the circumstances, as an undertaking to give something. I find no express contract in this case. Mr. Krishna-swami Iyer, Vakil for the appellants, contended that there cannot be a contract and that we cannot find it in the pleadings, issues, letters or depositions. I have already said that I think it can be found by diligent and patient study in the pleadings, it is rather disguised. It can be dug out. What I do find, is this. It is in terms of the judgment of the learned Subordinate Judge in paragraph 11 of the judgment, where he specifically finds an implied contract to pay something to the plaintiff. He is inclined to find it in the deposition of Udayappa which I read. He assumes that having heard from the 1st defendant that he was going to pay plaintiff a percentage in the profits, Udayappa must have told the plaintiff about it at his request and that that knowledge or conversation implies a contract. But I would base my inference as to the contract on a slightly different ground. The silence on the part of the defendant after he received the letter of the 12th November 1908, would itself constitute an implied agreement to pay some rate of commission to the plaintiff if he consented to go on with the work of collecting old debts. My inference as to the contract is also based on another ground, namely, from the uncontradicted letters, Exhibits D and E, in which the agent expressly states that the principal had given an undertaking to pay him handsomely, coupled with the fact that no letter is produced by the defendant of protest that this was not a true account of what he wrote. Mr. Krishnaswami Iyer argued that it is void for want of consideration, because by the terms of the original salary chit, the plaintiff was bound to know that there was no consideration for extra remuneration. I think his argument is fallacious, because though it may very well be that the expression "transacting business" would cover certain items of collections, they would only cover such items of collections

as the agent agreed to take over. Transacting business in law, cannot be held to cover cases of collections only and no other business at all, especially having regard to the known facts of the business of Nattukottai Chetties. In view of the very nature of the duties imposed upon the plaintiff, there was ample consideration for extra remuneration.

5. This disposes of the case and there is no need to go into the question of custom, as the only point urged is as to the contract. As to the quantum of remuneration, the Subordinate Judge has very rightly come to the conclusion that 5 per cent, is a reasonable amount and I think his decision should not be interfered with. The appeal fails and is dismissed. Each party shall pay his own costs.

Srinivasa Aiyangar, J.

6. I entirely agree.