
(1905) 09 MAD CK 0015
In the Madras High Court

Tadepalli Subba Rao

APPELLANT

Vs

Nawab Sayed Mir Gulam Allikhan of Banganapalli

RESPONDENT

Date of Decision : 08-09-1905

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 17

Citation : (1906) ILR (Mad) 69

Hon'ble Judges : S. Subrahmania Ayyar, O.C.J.; Sankaran Nair, J

Bench : Division Bench

Judgement

S. Subrahmania Ayyar, Offg. C.J.

1. The plaintiff, the endorsee of a promissory note executed by the defendant, sues for the money due thereon. The defendant is a foreigner whose

place of domicile is Banganapalli, one of the protected native territories in this Presidency, and at the time of the suit the defendant resided there.

The execution of the note was also in the same place. But the note in terms provides that the amount thereof was to be paid at Masulipatam. The

Subordinate Judge of Masulipatam dismissed the suit on the ground that he had no jurisdiction to entertain it.

2. The decree, it seems to me, cannot be sustained. In Annamalai Chetty v. Murugesu Chetty ILR Mad. 544 it is laid down that the case of

Girdhar Damodhar v. Kassiar Hiragar ILR 17 Bom. 662 was correctly decided. The ground for that case being upheld by the Judicial Committee,

was that the cause of action had arisen in Bombay, as will be seen from the following passage in the judgment of Lord Lindley:

Their Lordships see no reason for doubting the correctness of the decision of the case of Girdhar Damodhar v. Kassigar Hiragar ILR 17 Bom.

662 where the defendant was a native of Cutch and the cause of action arose within the local limits of the jurisdiction of the British Indian Court in

which the action was brought." See Annamalai Chetty v. Murugesu Chetty ILR 26 Mad. 544. Now the very same ground of jurisdiction existed in

the present case with reference to the Court at Masulipatam, the place expressly agreed upon for the performance of the contract of the defendant.

There never was any doubt as to the place of fulfillment being the place where the cause of action arises, apart from any legislative enactment; and

the provisions of Section 17, Explanation III (ii) and (iii) of the CPC are but statutory affirmations of recognised principles of jurisprudence about

which much will be found stated in the judgment of Holloway, J., in DeSouza v. Coles 3 M.H.C.R. 384, Mathappa Chetti v. Cheilappa Chetti ILR

Mad. 196 shows no doubt that Holloway, J., was not, in 1876, disposed to follow Savigny to the extent to which the learned Judge had done in

DeSouza v. Cole 3 M.H.C.R. 384, but the modification of opinion on the part of the learned Judge was not with reference to what constituted a

cause of action but, as to the proper forum in personal actions according to the true principles of the private International Law, a point on which

there has long existed considerable divergence of opinion among the writers on the subject. His conclusions on the point were similar to those since

adopted in the Farridkote case which the Subordinate Judge has followed. The statement of the law by the Earl of Selbourne in that case that the

accrual of the cause of action in a particular place does not confer on the Courts of that place jurisdiction over a non-resident foreigner is not

referred to by Lord, Lindley, but that does not relieve us from the necessity of being ruled by the latest pronouncement of the Judicial Committee

on the point. Whether what weighed with their Lordships in the last-mentioned case in upholding the decision of the Bombay Court in Girdhar

Damodhar v. Kassigar Hiragar ILR 17 Bom. 622 was the dependent character of the foreign territory or the argument of convenience with

reference to commercial relations between the residents of the paramount and the protected states urged by Bittleston, J., in Bavah Meah Saib v.

Khajee Meah Saib 4 M.H.C.R. 218 by Sargent, C.J., in Girdhar Damodhar v. Kassigar Hiragar ILR 17 Bom. 511 by Farran, C.J., in Ram Ravji

Jambhekar v. Pralhaddas Subkarn ILR Bom. 133 and by Candy, J., in Rambhat v. Shankar Baswant ILR 25 Bom. 528 is a matter which it is not

for us to enter. Assuming that the rule laid down in Annamalai Chetty V. Murugesu Chetty ILR Mad. 544 was not intended to extend to subjects of a foreign independent state, but was confined to subjects of protected Indian territories, the present is such a case, and there is no alternative but to reverse the decree of the Subordinate Judge and remanded the suit for disposal according to law. I would make the order accordingly leaving the costs to abide and follow the result.

Sankaran Nair, J.

3. I agree. We are bound by the decision of the Privy Council, in the case cited, to hold that a British Indian Court has jurisdiction to entertain a suit, if the cause of action has arisen within the local limits though the defendant does not reside within such limits, but is a foreigner, domiciled and residing in a protected Indian State.