

(1924) 09 MAD CK 0013
In the Madras High Court

Vairavan Chettiar and Others

APPELLANT

Vs

Kannappa Mudaliar

RESPONDENT

Date of Decision : 04-09-1924

Acts Referred:

Evidence Act, 1872 — Section 92

Citation : AIR 1925 Mad 1029

Hon'ble Judges : Madhavan Nair, J

Bench : Division Bench

Judgement

Madhavan Nair, J.—Plaintiff is the appellant. The plaintiff's suit was to recover Rs. 3,307 and odd made up of the amount advanced by the

plaintiff to the defendant and also damages on account of breach of contract committed by the defendant in the following circumstances. The

defendant's kariasthan contracted with the agent of the plaintiff on the 5 to of August 1917 to supply 500 bags of rice at Rs. 11-11-0 per bag

within three weeks and he got an advance of Rs. 1,500 as per varthamanam executed on that date. On the 26th of August 1917 he received a

further sum of Rs. 2,500 from the plaintiff's agent towards the value of the rice bags to be supplied. The defendant supplied only 130 bags of rice

as par contract. He did not supply the balance. The defendant pleaded amongst other things, that there was an understanding between the parties

that rice was to be supplied only after the price of the whole rice was paid to the defendant and since this was not done he did not commit a

breach of contract in not supplying the full number of the stipulated bags of rice. The Subordinate Judge did not, allow the defendant to adduce

evidence with regard to the condition alleged by him as, in his opinion the defendant was precluded from doing so by Section 92 of the Indian

Evidence Act. He held that there was a breach of contract and gave a decree for the plaintiff. On appeal the District Judge overruled the objection

u/s 92 of the Indian Evidence Act and called for a fresh finding on the question, namely, "Whether it was the understanding between the parties that

rice was to be supplied only after the whole price of the rice was paid to the defendant." The fresh finding sent by the Subordinate Judge was in

favour of the defendant and upholding this finding, the learned District Judge held that there was no breach of contract.

2. The main question argued in this second appeal is whether the learned Judge was right in allowing the defendant to adduce evidence as regards

the understanding alleged by him; for it is admitted that, if this evidence is inadmissible, the plaintiff, is entitled to a decree as in that case there will

be a clear breach of contract. This would depend upon the question whether Ex. A constituted an unconditional undertaking by the defendant to

deliver 500 bags of rice within three weeks as contended for by the plaintiff. Exhibit A is in following terms: the Varthamanam in respect of bags of

rice 5th August 1917 executed to...by...Agreeing to deliver into your Negapatam depot 500 bags of white Sirumaniyam and red Sirumaniyam at,

Rs. 11-11-0 per bag. I have received from you an advance of Rs. 1,500. I shall deliver the said bags within three weeks" time." It is called a

varthamanam. It expresses only the obligation of one of the parties, viz., of the defendant. It does not refer to the corresponding obligation on the

part of the plaintiff. Further it expresses only what may be called the varying terms of the contract such as the number of bags, the amount of

money and the time within, which the bags are to be delivered. It is signed only by one of the parties. It seems to me that the document is only a

voucher or acknowledgment of the money rather than a detailed record of the contract. In my opinion Ex. A is a very informal document and

evidence as regards the special agreement alleged by the defendant was rightly allowed by the learned Judge u/s 92, proviso (2) of the Indian

Evidence Act. In this connection, various decisions were brought to my notice by the learned vakil for the appellant, but a detailed examination of

these cases is uncalled for as, in my opinion, the decision of each case would depend upon the construction of the terms of the particular contract

in question. The strongest case that was relied upon on behalf of the appellant is the one that is reported as *Spartah v. Benecke* (1850) 10 C.B.

212. In that case the contract was for the sale of 30 bales of goat's wool at a certain price per pound and it contained the following stipulation :

Customary allowance for tare and draft and to be paid for by cash in one month less five per cent, discount." It was held that "there being no

ambiguity in the language of the contract, evidence was not admissible to show, that by the usage of the particular trade, vendors selling under such

contracts, were not bound to deliver the goods without payment." In the course of the judgment it was pointed out by Wilde, C.J., that "The

objection to the admissibility of the evidence is that the incident sought to be annexed by such evidence, is inconsistent with and contradictory to

the express terms of the contract and is by those terms, if not expressly, certainly by implication, excluded. The contract states in term 8 the precise

time when the price is to be paid - "In a month" - and to require payment before that time is obviously inconsistent with that stipulation." In effect, it

was held that evidence should not be allowed to be adduced to convert what was really a credit transaction into a cash transaction. It cannot be

said in the present case that the incident sought to be annexed by the evidence regarding payment before delivery is inconsistent with the terms of

the varthamanam. In Subbayar v. Subbarayalu Iyer AIR 1921 Mad. 474, Ex. A contained an unconditional undertaking to pay Rs. 5,000 on

demand and it was held that evidence of agreement which would have the effect of converting the absolute unconditional promise into a conditional

defeasible one was inadmissible. As already mentioned, Ex. A in the present case does not contain an unconditional undertaking on the part of the

defendant to deliver the bags of paddy; the evidence therefore, relating to payment as a condition before delivery was rightly admitted by the lower

Court u/s 92, proviso (2).

3. It was next argued that there is no evidence to support the finding as regards the condition alleged by the defendant. But the judgment of the

learned District Judge clearly shows that he has examined the oral as well as the documentary evidence bearing on the question. (See paras. 4 to

8).

4. It was also argued that since the defendant supplied a certain number of bags he could not afterwards refuse to supply the balance on the

ground that money was not paid to him according to the stipulated condition.

This argument was not put forward in the lower Courts. The decision in *Jugtanaund Misser v. Narghan Singh* (1881) 6 Cal. 433 cited in support of this contention does not help the appellant. In that decision, it was held that evidence that the written agreement shall not be of any force until some condition precedent had been performed was inadmissible in the case where the written agreement had not only become binding but had actually been performed as to a large portion of its obligations. The part performance of the agreement was referred to only to emphasise further the fact that the written agreement in question was considered binding by the parties, and that evidence to vary the nature of such a binding agreement was inadmissible. In the present case the contract consists of reciprocal promises to which Section 54 of the Indian Contract Act will apply. The option to perform his part of the contract is always available to the defendant, but this does not mean that the plaintiff can insist on the defendant performing his promise without himself performing what he has undertaken to do.

5. No other point of law was urged by the appellant's learned Vakil.

6. I dismiss this second appeal with costs.