

(1913) 04 MAD CK 0010
In the Madras High Court

Vardarajulu Chettiar

APPELLANT

Vs

Pattra Narayanasami Chetty and Others

RESPONDENT

Date of Decision : 16-04-1913

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 46 Rule 7

Citation : (1913) 24 MLJ 693

Judgement

1. This is a reference made by the District Judge of Tanjore under Order 46 Rule 7 of the Civil Procedure Code. The question referred is whether

a certain suit for the recovery of a sum of Rs. 143-11-09 is of a small cause nature entertainable by the Subordinate Judge's Court of

Kumbakonam in the exercise of its small cause jurisdiction, or one which should be dealt with as a regular suit by the District Munsif's Court of

Tiruvalur. The plaint was first presented in the Subordinate Judge's Court of Kumbakonam, but was returned by it on the ground that it was

substantially a suit for an account and therefore not cognizable by a Small Cause Court. It was then presented to the District Munsif of Tiruvalur,

who again returned it on the ground that the claim was cognizable by a Small Cause Court.

2. The plaintiff is a trader. The substantial allegations in the plaint are that the defendants bought cloths from the plaintiff and made payments for

them which exceeded the value of the cloths by a sum of Rs. 33-600 and that the defendants had also other dealings with the plaintiff and owed

him Rs. 143-11-9 after deducting the excess payment made by them for the cloths purchased from him. The defendants contended that they were

only agents for the sale of the cloths and not purchasers and that no money was due to the plaintiff.

3. On the plaintiffs allegations the suit is clearly not one for an account falling within Article 31 of the Schedule to Act IX of 1887. The plaintiff does not state that the defendants were agents bound to render an account to the plaintiff. On the other hand the allegation is that the defendants were purchasers of the cloths from the plaintiff: and had other dealings with him. There was, according to him, no relationship between himself and the defendants which made the latter liable to render an account to him. According to his averments the relationship between the parties was not one which made his primary right against the defendants one to have an account rendered by them. The Court which has jurisdiction to try the suit must be determined by the allegations contained in the plaint. If these allegations are not well-founded, the suit would no doubt be liable to be dismissed. If the defendants prove that the plaintiff's substantial and primary right is to an account, it may be that the plaintiff would not be entitled to maintain a suit for a definite sum of money without asking for an account. It is therefore clear that the suit is one cognizable by a Small Cause Court.

The Subordinate Judge in his order returning the plaint observes:

Both sides concede that a question of agency arises"". It is not quite clear what exactly he means by this. On the pleadings the question no doubt would arise whether the defendants were the plaintiff's agent or not. But this is obviously insufficient to make the suit one not cognizable by a Small Cause Court. Assuming that the defendants were the plaintiff's agents, it would not follow that the suit would not be sustainable by a Small Cause Court. It is not every suit by a principal against an agent that is shut out from the cognizance of a Small Cause Court. A suit to recover a specific sum of money against an agent would often be entertainable by a Small Cause Court; as, for instance one for a sum of money collected by him but not paid over to the principal, or for any specific amount misappropriated by him. See *Hans Raj v. Bubni* ILR (1904) A. 200, *Sankara Beddi v. Erranu Reddi* () 19 M.L.J. 113.

4. It is not necessary in this case to define the scope of Art* 31 of the Small Cause Courts Act. The decided cases on that question are perhaps not altogether reconcilable. Some of them seem to treat the article as confined to a case where the plaint contains a specific prayer for an account and as excluding cases where there is no such prayer although the plaintiff's

primary right is to an account and no relief could be given to him without directing an account to be taken. On the other hand in *Kunjo Behari Singh v. Madhub Chandra Ghose* ILR (1896) C. 884 Ghose J. seems to have been of opinion that wherever accounts have to be examined for the purpose of deciding a case the suit must be treated as one for an account. In *Kailas Chandra Mandal v. Kiranenda Ghosh* (1911) 10 I.C. 883, Mookerjee and Casperz JJ. observed : "" Ifc must be remembered that the true nature of a suit cannot be altered by the form laid in the plaint : the matter is essentially one of substance. If, in order to grant relief to the plaintiff, it is necessary to take accounts, the suit is one for an account within the meaning of Article 33 although the plaintiff may have chosen to put a definite money value upon his claim. But whether the suit is one for account within the meaning of Article 31 must depend upon the relation in which the parties stand to each other and the nature of the investigation required to afford relief to the ""plaintiff."" In *Chidrie Kristappa v. Siddamsetti Yamanappa* (1911) 13 I.C. 159 this Court observed, "" Article 31 of the Second Schedule of the Provincial Small Cause Courts Act applies to cases where the relationship of the parties is such that one of them is bound to render accounts to the other"". We agree with the view taken in these cases. As the allegations in plaint do not show that there is any such relation of accountability between the plaintiff and the defendants, our answer to the reference must be that the suit is of a small cause nature and therefore cognizable by the Subordinate Judge's Court of Kumbakonam.