

PRIVY COUNCIL

Muhammad Khaleef Shirazi and Sons

Vs.

Les Tanneries Lyonnaises

P.C.A No.30 of 1924

(Lords Finlay Blanesburgh, J. Sir John Edge and Mr. Ameer Ali JJ.)

04.02.1926

JUDGMENT

SIR JOHN EDGE J.

1. This is an appeal by the plaintiffs from a decree, dated the 14th March 1922, of the High Court at Madras, which was made in its appel late civil jurisdiction and varied a decree, dated the 20th October 1920, of a Judge of the same Court, which was made in the ordinary original civil jurisdiction of the High Court.

2. The appeal arises in a suit which was instituted with the leave of the High Court on the 3rd February 1919, in the ordinary original civil jurisdiction of the High Court by the plaintiffs, who live in the city of Madras, to obtain a decree against Les Tanneries Lyonnaises and their agent Monsieur J. Marret for money alleged to be due to the plaintiff's under a contract for the sale and delivery of goatskins under ' a contract of the 25th May 1917, and under a contract of the 26th January 1918, for the sale and delivery of sheepskins. There was another defendant to the suit named, C. Sowrimuthoorya Oodayar, against whom no relief was claimed. The suit was tried and the decree of the trial Judge was made in the ordinary original civil jurisdiction of the High Court. The French company carries on business at Oullins, near Lyons, in France. Marret and Oodayar live at Pondicherry. The contract of the 25th May 1917 was made by Marret as the agent of the French company with the plaintiffs in the city of Madras, and the money which might become due under it was payable at a Bank in the city of Madras. The contract of the 26th January 1918 was made by Marret at Pondicherry, and the money which might become due under it was payable to the plaintiffs at; the Bank in the city of Madras. The trial Judge made on the 20th October 1920 a decree for Rs. 1,76,242-0-5, with inter est thereon and for costs against the

French company, and by his decree dismissed the suit against Marret and Oodayar, but decreed that Marret should pay to the plaintiffs taxed costs and interest thereon. The plaintiffs did not appeal to the High Court against the decree of the trial Judge dismissing the suit against Marret. They had obtained a decree against the French company for their entire claim, and with that they were then content. As appears by the record, the French company and Marret jointly appealed to the High Court against the decrees which had been made against them. On that appeal the High Court found that the French company was not liable to pay anything in respect of the claim under the contract of the 26th January 1918, and by its decree modified the decree against them made in respect of their liability under the contract of the 25th May 1917, with certain costs, and dismissed the suit against Marret and Oodayar. Against that decree of the High Court this appeal by the plaintiffs has been brought.

3. In the High Court Marret on behalf of the French company and himself had filed a joint written statement. In this appeal for the first time the French company and Marret are represented by different counsel instructed by separate firms of solicitors. Those learned counsel raised preliminary objections to the appeal the consideration of which their Lordships decided should stand over until the arguments on the appeal had been heard. Their Lordships will now state what those preliminary objections were and what is their decision on them. Each of the learned counsel contended that the suit was not within the cognizance of the High Court in its original civil jurisdiction. The learned counsel for Marret further contended that this appeal to His Majesty in Council is, in effect, an appeal against the decree of the trial Judge dismissing the suit as against Marret, from which decree the plaintiffs had not appealed, and that such an appeal was not allowed by the Code of Civil Procedure, 1908, or by the Letters Patent of the High Court. As to the objection that the suit was not within the cognizance of the High Court in its original civil jurisdiction, their Lordships find that the contract of the 25th May 1917 was made in the city of Madras, and it was agreed that the money payable under that contract should be paid in the city of Madras, and that it was agreed that the money payable under the contract of the 26th January 1918 should be paid in the city of Madras, and further find that the High Court, under its Letters Patent, gave leave to the plaintiffs to bring the suit in the ordinary original civil jurisdiction of the High Court, and consequently hold that the suit was within the cognizance of the High Court in its ordinary original civil jurisdiction, and disallow that objection. As to the objection especially raised by the learned counsel for Marret, that as the plaintiffs had not appealed against the decree of the trial Judge dismissing the suit, excepting as to costs against Marret. no appeal lay against him, their

Lordships have been referred to the Code of Civil Procedure, Order 41, Rule 33 : *Gangadhar v. Banabashi* Their Lordships think that this appeal to His Majesty in Council in so far as Marret is concerned, is in effect, an appeal direct to His Majesty in Council from the decree of the trial Judge, which is not allowable under the Code of Civil Procedure 1908, or under the Letters Patent of the High Court, and they hold that the Code of Civil Procedure 1908, Order 41, Rule 33 was not intended to apply to such an appeal, and they accordingly decide that the appeal, so far as Marret is concerned, should be dismissed, but without costs.

4. Their Lordships will now consider the appeal so far as it relates to the French company alone. The contract for goat skins of the 25th May 1917, was made with the plaintiffs by Marret as the agent of the French company, and it is now admitted in this appeal by the learned counsel for the French company that Marret, in making with the plaintiffs the contract of the 26th January 1918, for sheepskins, was the agent of the French company if he represented that he was making it as their agent. (Their Lordships then discussed the pleadings in the suit and the material evidence and proceeded.) Before considering separately the contracts of the 25th May 1917, and the 26th January 1918, their Lordships will state, so far as it is necessary to do so in this suit, what is the law in India as well as in England with regard to payments of debts to a person who, as in this suit, is alleged by a debtor to have had the creditor's authority to receive them on his behalf. It is elementary law that when a creditor sues the debtor for the payment of a debt and the defence is that the debtor paid the debt to another person, it is for the debtor to prove that the other person had, or had been held out to the debtor by the creditor as having had the authority of the creditor to receive payment of the debt on behalf of the creditor.

5. In the joint written statement which, according to the record, the French company and Marret filed, it was alleged that payments had been made to Oodayar as a partner of the plaintiffs. It was proved at the trial that Oodayar was not a partner of the plaintiffs in either of the contracts with which this suit is concerned. That defence was abandoned and it was alleged by Marret in his evidence, as their Lordships understood his evidence, that Oodayar had been authorised by the plaintiffs to receive the payments on their behalf, and later that Oodayar had been held out by plaintiffs to him as having their authority to receive them. That authority and the alleged holding out of it, is not admitted and is denied by the plaintiffs, and in their Lordships' opinion there is no reliable evidence that Oodayar ever had or had been held out as having any such authority. (Then their Lordships considered the contract of 25th May 1917, for goat

skin and the contract of 26th January 1918 for sheepskins and procee ded). Their Lordships think that in fairness to the French company they should state what the French company allege was the position in which that company found itself after this appeal to His Majesty in Council had been presented. The French company say that they were first informed by the solicitors in London appearing for Marret that this appeal had been presented, and as their Lordships under stand the French company's statement that company had previously no know ledge that a suit against them and Marret had been brought. The French company say that the proceedings in the suit in Madras were defended by Marret without the knowledge or consent of the French company, and that on receiving that information from Marret's London solicitors that this appeal had been presented, the French company was advised that they should be separately represented in this appeal, and instructed their London agents that their case in the appeal should be settled and lodged with all due expedition. If facts could have been proved which would have justified application to amend the decree no such application was made.

6. There is one other question raised by the appellants in this appeal. It relates to the admission in evidence by the Court of appeal of documents which were not in evidence before the trial Judge, The High Court as a Court of appeal in this suit had under Section 107 of the Code of Civil Procedure, 1908, power to take additional evidence. In their Lordships' opinion it is a power which should be exercised by a Court of appeal with much caution and only in suits where it is satisfied that in the interests of justice it should be exercised, and that such additional evidence when admitted will be evidence which, if produced at the trial, would have been admissible. The additional evidence admission of which is complained of on behalf of the appellants, however much it may have affected the judgments in the Court of appeal has not affected the judgment of their Lordships in the slightest degree.

7. Their Lordships will humbly advise His Majesty that the appeal, so far as it relates to Les Tanneries Lyonnaises, should be allowed, and the decree of the High Court in appeal should be set aside against both respondents, with costs payable by Les Tanneries Lyonnaises, and the decree of Mr. Justice Phillips should be restored and affirmed and that the appeal, so far as it relates to Monsieur J. Marret, should, save as aforesaid, be dismissed without costs. The respon dents, Les Tanneries Lyonnaises should pay to the appellants their costs in the High Court and in this appeal.

Appeal allowed.

Cases Referred.

[1915] 22 C. L. J. 380 and, Bhaidas Shiodas v. Bai Gulab [1921] 45 Bom. 718 : 48 I. A. 181 (P. C.).