

JUDGMENT.—All we have to say is whether, on the face of the complaint, a good cause of action is disclosed. The allegation of partnership dealings and of the settlement of accounts between the partners followed by a promise on the part of one partner to pay a liquidated sum to the other amounts to a contract supported by good consideration, and the law does not require it to be in writing. The case of *Amuthu v. Muthayya*(1) does not appear to be a case of mutual dealings. The case in *Hirada Karibasappa v. Gadigi Muddappa*(2) is more in point.

MARIMUTHU
v.
SAMINATHA
PILLAI

We must reverse the decree and remand the suit for disposal on the merits. Costs will be provided for in the revised decree.

APPELLATE CIVIL.

Before Mr. Justice Shephard and Mr. Justice Subramania Ayyar.

FISCHER (DEFENDANT No. 2), PETITIONER,

v.

TWIGG AND OTHERS (PLAINTIFFS AND DEFENDANT No. 3),
RESPONDENTS.*

1897.
November
29.

District Municipalities Act (Madras)—Act IV of 1884, ss. 63, 262—House-tax assessed on school buildings—Suit to recover tax payable under protest.

House-tax and water-tax was levied under District Municipalities Act (Madras), 1884, section 63, on the school buildings of the Native College, Madura (which were exclusively used for charitable purposes), and was paid by the managers of the college, who sued in the Small Cause Court to recover the amount:

Held, that the tax was illegal and the plaintiffs were entitled to recover.

PETITION under Provincial Small Cause Courts Act IX of 1887, section 25, praying the High Court to revise the proceedings of T. Ramasami Ayyangar, Subordinate Judge of Madura (West), in Small Cause Suit No. 652 of 1896.

Suit for Rs. 124 paid under protest on account of house-tax and water-tax by the plaintiffs, who were the members of the Managing Committee of the Native College, Madura, to defendant No. 1 pleaded as the Municipal Council of Madura, of which defendant No. 2 was Chairman. The tax had been levied in respect of the college buildings.

(1) I.L.R., 16 Mad., 339.

(2) 6 M.H.C.R., 197.

* Civil Revision Petition No. 52 of 1897.

FISCHER
v.
TWIGG.

“Plaintiffs’ case,” said the Subordinate Judge, “is that the buildings are the property of Government, and have been lent to the plaintiffs free of rent for being used exclusively for educational purposes, that the Native College is not a proprietary institution managed by the plaintiffs for their own benefit, but it is purely a public one, the income derived from fees and other sources being wholly spent for the promotion and encouragement of education, that the college buildings are exclusively used for charitable purposes, and as such, are not liable to municipal taxation under section 63 (1) of the District Municipalities Act IV of 1884 (Madras).”

The Subordinate Judge passed a decree for the plaintiffs. He said, *inter alia*, “I have no doubt that the college buildings at Madura are used exclusively for charitable purposes. The payment of fees by the students and the grant given by the Government and the municipality would not destroy or take away the real purpose for which the buildings are used.”

Defendant No. 2 preferred this petition.

Rangachariar for petitioner.

V. Krishnasami Ayyar for respondents.

JUDGMENT.—It must be assumed that the school buildings are buildings exclusively used for charitable purposes. That being so the buildings are exempted from the operation of the notification that may be made under section 63 of the Act. A tax upon such buildings and other similar buildings mentioned in the exception is not one which can be in legal existence, and therefore it cannot be said that the tax was collected under the Act. The case is thus distinguishable from the case relied upon by the petitioner’s vakil (*Municipal Council, Nellore v. Rangayya* (1)). We prefer to base our judgment on the ground that an imposition, which is expressly prohibited by the Act, cannot be deemed to be made under the provisions of the Act, rather than on the ground that the case is one in which the party aggrieved is protected by the proviso to section 262.

We dismiss the petition with costs.