

## APPELLATE CIVIL.

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

1897.  
November  
29.

MARIMUTHU (PLAINTIFF), PETITIONER,

v.

SAMINATHA PILLAI (DEFENDANT), RESPONDENT.\*

*Partnership—Settlement of accounts—Promise to pay balance.*

The plaintiff and defendant having carried on business in partnership, settled their accounts and struck a balance of Rs. 196, which the defendant agreed orally to pay in a month. The plaintiff now sued in a Small Cause Court for the amount not asking for an account to be taken :

*Held*, that the suit was maintainable.

PETITION under Provincial Small Cause Courts Act IX of 1887, section 25, praying the High Court to revise the proceedings of P. Narayanasami Ayyar, Subordinate Judge of Negapatam, in Small Cause Suit No. 1263 of 1896.

Suit for Rs. 196. The Subordinate Judge said :—

“ It is seen from the plaint that the parties were trading in partnership in cocoa-nuts from March 1894 to February 1895, and that there were accounts of the partnership trade. It is alleged that, in the beginning of March 1895, they orally settled accounts and struck a balance of Rs. 196, which defendant agreed to pay in one month. This suit is based upon that oral promise to pay within one month, and the cause of action is given as the date on which he agreed to pay which he failed. The question is whether the oral promise will amount to a new contract on which the suit can be based. The Madras High Court have held in *Amuthu v. Muthayya*(1) that such a transaction cannot amount to a new contract extinguishing the old cause of action. This suit ought to have been based upon the partnership dealings and brought for dissolution and winding up of the partnership business. The oral settlement and promise cannot form a new contract to sue upon. I, therefore, find the issue in the negative and dismiss the suit with costs.”

The plaintiff preferred this petition.

*Tangavelu Chetti* for petitioner.

*Sundara Ayyar* for respondent.

\* Civil Revision Petition No. 46 of 1897.

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

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.

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## 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.

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*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.

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

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

\* Civil Revision Petition No. 52 of 1897.