

APPELLATE CIVIL.

Before Mr. Justice Boddam and Mr. Justice Bhashyam Ayyangar.

KUṬTAYAN CHETTY (PLAINTIFF), APPELLANT,

v.

PALANIAPPA CHETTY AND ANOTHER (FIRST DEFENDANT AND
THE LEGAL REPRESENTATIVE OF THE DECEASED SECOND
DEFENDANT), RESPONDENTS.*

*Negotiable Instruments—Payment—Contract of purchase—Hundi in part
payment.*

Defendants agreed to sell paddy to plaintiff on the terms that the balance of the price, after giving credit for an advance of Rs. 1,000, should be paid by plaintiff on delivery at a place mentioned. It was agreed that an assignment of a debt for Rs. 100 and a hundi for Rs. 900 should be accepted as payment of the advance. Defendants sold the paddy to a third party at a higher price, and plaintiff now sued for damages for breach of contract :

Held, that plaintiff was entitled to damages. As the Rs. 100 assigned and the hundi for Rs. 900 were agreed to be the payment of the advance of Rs. 1,000, the acceptance of the hundi operated as payment, though it might be only conditional, and the right to receive the Rs. 900 as part of the price might revive if the hundi should be dishonoured, and notice of dishonour duly given.

Held also, that the property in the paddy had passed to the buyer under section 78 of the Contract Act, and under section 95 of that Act, the defendants, as vendors, would have a lien on the goods and would not be bound to deliver until the price had been paid, including the Rs. 900 due under the hundi if the latter were dishonoured.

SUIT for damages for breach of contract. Plaintiff alleged in his plaint that he had purchased paddy from the defendants for Rs. 16,913-10-0, agreeing to take delivery of it on its arrival in port, and to pay all duties and landing charges. He alleged that he had paid an advance of Rs. 1,001 in the following manner :— Re. 1 in cash : Rs. 100 by assignment to defendants of a debt due to plaintiff from a third party, and Rs. 900 by a hundi. Plaintiff contended that the ownership of the paddy had thus become vested in him though it was still in defendants' possession and he alleged that, though the ship reached port, defendants had

* Second Appeal No. 2 of 1902, presented against the decree of G. F. T. Power, District Judge of Tanjore, in Appeal Suit No. 978 of 1900, presented against the decree of Syed Tajuddin Sahib, District Munsif of Negapatam, in Original Suit No. 166 of 1899.

broken their contract and had sold the paddy to some one else at a higher price in spite of the fact that plaintiff was demanding delivery and that the drawee of the hundi was ready to pay the amount due under it. Plaintiff claimed Rs. 1,188-6-9 as damages.

KUTTAYAN
CHETTY
v.
PALANIAPPA
CHETTY.

The defendants pleaded that neither the Rs. 100 nor the Rs. 900 had been paid, and that the agreement was that delivery should only be made after the amount of the advance had been paid. Defendants contended that they were, in the circumstances, not bound to deliver, and that they were not liable in damages. Exhibit A, in which the contract was reduced to writing, was in the following terms:—"13th April 1898 Price settled for delivery at Jaffna ship port of paddy which were consigned to you in the port of Arakan in the ship called which has now arrived at Pamban port is For the advance of Rs. 1,000, agreed to be paid for it, leaving Rs. 100 assigned to be paid by broker Kasturi Aiyangar of Negapatam, the balance is Rs. 900; this amount of rupees in words nine hundred should be paid in Madura by to the order of with interest from this day at the current rate there, and he should receive this payment being endorsed. We shall also pay the cost of freight for the paddy at Arakan port and the deposit amount with the price of the paddy."

The District Munsif held that defendants had not committed a breach of contract in not delivering to plaintiff and dismissed the suit. This order of dismissal was upheld by the District Judge, on appeal.

Plaintiff preferred this second appeal.

V. Krishnaswami Ayyar and *K. Srinivasa Ayyangar* for appellant.

C. V. Ananthakrishna Ayyar for *P. R. Sundara Ayyar* for respondents.

JUDGMENT.—This is an action for damages for breach of contract. The terms of the contract are reduced to writing in the hundi, Exhibit A, which was given by the plaintiff to the defendants' agent. It sets forth the price agreed upon, the quantity of paddy sold and that the balance of the price after giving credit for the advance together with the freight should be paid by the plaintiff on delivery at Jaffna. The amount advanced as per Exhibit A is Rs. 1,000 and the Exhibit A recites that, after deducting Rs. 100 which was agreed to be paid to the defendants

KUTTAYAN
CHETTY
v.
PALANIAPPA
CHETTY.

by a broker named therein who was indebted to the plaintiff, the balance of the advance is Rs. 900 and for this Rs. 900 Exhibit A, the hundi, was accepted (the hundi carrying interest upon the Rs. 900, from its date).

The Rs. 160 assigned and the hundi for Rs. 900 were agreed to be the payment of the advance of Rs. 1,000, and in law the acceptance of the hundi operates as payment though it may be only conditional, reviving the right to receive the Rs. 900 as part of the price if the hundi were dishonoured, and notice of dishonour were given either as required by section 93 of the Negotiable Instruments Act or under one or the other of the clauses of section 98.

No notice of dishonour was necessary in law (*Dargawarapu Sarrapu v. Rampratapu*(1)).

Upon the facts set forth in Exhibit A the property in the goods passed to the buyer under the penultimate paragraph of section 78 of the Indian Contract Act and under section 95 of the same Act the vendors, the defendants, would have a lien on the goods and would not be bound to deliver until the price was paid, including the Rs. 900, if the hundi were dishonoured. The defendants' agent at Jaffna, instead of delivering the goods to the plaintiff or re-selling the same under the provisions of section 107 (Indian Contract Act) if the price were not paid, rescinded the contract and sold the goods to third parties for prices higher than the contract price, retaining the purchase money.

The Courts below were under a misapprehension as to the passing of the property to the buyer and the defendants' lien thereon for unpaid purchase money and their decision proceeds upon the footing that inasmuch as the hundi was not honoured by payment the defendants were at liberty to rescind the contract. The defendants' written statements and the judgment of the District Munsif proceed on the footing that the giving and accepting of the hundi is not payment of that portion of the purchase money in advance. We are clearly of opinion that upon the terms of the contract as set forth in Exhibit A and the admitted facts, the defendants were guilty of a breach of contract and the plaintiff is entitled to damages.

As the lower Appellate Court has given no finding upon this issue we must call for a finding upon the second issue to be returned

(1) I.L.R., 25 Mad., 530 at p. 533.

in seven weeks upon the evidence already on record. [The second issue related to damages.]

KUTTAYAN
CHETTY
v.
PALANIAPPA
CHETTY.

A finding was duly returned and plaintiff was awarded damages.

APPELLATE CIVIL.

*Before Sir S. Subrahmania Ayyar, Offg. Chief Justice, and
Mr. Justice Boddam.*

RAJA PARTHASARATHI APPA ROW (PLAINTIFF), APPELLANT,

v.

CHEVENDRA CHINA SUNDARA RAMAYYA (DEFENDANT),
RESPONDENT.*

1904.
January 25.
February 4.

Rent Recovery Act—(Madras) Act VIII of 1865, ss. 2, 76.

The fact that the patta which has been tendered was a varam patta is no objection to a suit being sustained under the Rent Recovery Act by the landlord even if it be found that the proper rates were only money rates.

Nor is an agreement to pay a money rent to be implied from the mere circumstance that rent has been paid in money for a series of years but at varying rates.

Kavipurapu Rama Rao v. Dirisavalli Narasayya, (I.L.R., 27 Mad., 417), approved.

Having regard to section 76 of the Rent Recovery Act, no memorandum of objections lies against the finding of the Court of First Instance in cases under that Act.

A clause in a patta requiring the tenant to be responsible for theft of crops by him or his servants is not a proper term of a tenancy under the Act, especially having regard to section 83 of the Rent Recovery Act, which provides for clandestine removal of crops.

Surr to enforce acceptance of patta. The facts and points decided by the lower Court are sufficiently set out in the judgment. With regard to the memorandum of objections (referred to in the judgment of the High Court), the Acting District Judge said:—
“What purport to be objection memoranda under section 561, Civil Procedure Code, have been put in by the respondents who ask that

* Second Appeal No. 621 of 1902, presented against the decree of J. H. Munro, District Judge of Kistna, in Appeal Suit No. 238 of 1901, presented against the decision of K. V. Sreenivasa Ayyangar, Head-quarter Deputy Collector of Kistna, in Summary Suit No. 438 of 1900.