

APPELLATE JURISDICTION (a)

Regular Appeal No. 63 of 1866.

ATMAKURI BHÁVANNA SETTI, and another... *Appellants.*

M. SANIYÁSI SETTI, having died, his sons }
 and heirs M. SRI RÁMULU and 4 } *Respondents.*
 others..... }

In the Civil Court of Berhampore plaintiffs sued defendants for money due by one S. deceased. Defendants 1, 2, 3 and 4 were sued as heirs of the deceased, 5th defendant as having instigated the other defendants to withhold payment. 1st defendant resided at Vizagapatam, 2nd at Bimlipatam, 3rd and 4th at Madras. The 5th defendant resided at Berhampore. From the accounts produced it appeared that there were, between the plaintiffs (merchants at Berhampore), and deceased (a merchant at Madras), a series of transactions of different kinds, in which they acted, sometimes as principal, and sometimes as agent, the one for the other. *Held* that, although in the account sued upon there were some items which, if they could be separated from the rest, would give a cause of action within the jurisdiction of the Berhampore Court, they could not be so separated, and that the intention was that the dealing should be continuous. That upon that footing the plaintiffs had properly sued for the balance of the whole account, but that they had brought their suit in the wrong Court, because the whole cause of action did not arise within the jurisdiction of that Court, and none of the defendants, who were properly joined in the suit, dwelt or worked within that District.

Held also, that the wrongful addition of a resident defendant could not bring the case under the operation of Sec. 4, Act XXIII of 1861, and that the case of action against the 5th defendant was totally distinct from that alleged against the others and the two could not be joined in one suit.

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THIS was a regular appeal from the decree of E. B. Foord, the Civil Judge of Berhampore, in Original Suit No. 28 of 1865.

The plaint stated that the late father of the 1st, 2nd, 3rd and 4th defendants (the first of whom resided at Vizagapatam, the second at Bimlipatam, and the latter two at Madras) had dealings with the plaintiffs from February 1862 until June 1863, when he died. That at his death he owed plaintiffs Rupees 7,964-1-0 an account current. That plaintiffs therefore sued to recover from all the defendants the said amount with interest. That they included the 5th defendant in the suit, because he instigated the other defendants to withhold payment of the amount due by them. That as the 5th defendant resided at Berhampore, the Civil Court of Berhampore was competent to entertain the suit (Act XXIII of 1861, Sec. 4).

(a) Present : Bittleston, Ag. C. J., and Ellis, J.

The first and second defendants pleaded want of jurisdiction. The Civil Judge decided that he had no jurisdiction to try the action, and dismissed the suit with costs.

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The plaintiffs appealed.

Sloan, for the appellants, the plaintiffs.

Venkatapathy Rau, for the 2nd respondent, the 2nd defendant.

O'Sullivan for the 3rd and 4th respondents, the 3rd and 4th defendants.

The Court delivered the following

JUDGMENT :—This is a suit for Rupees 10,215-3-10, being the balance with interest alleged to have been due from one Saniyási Setti Gáru deceased to the plaintiffs upon a mercantile account. Upon the hearing before the Civil Judge he dismissed the suit, on the ground that none of the defendants were resident within the jurisdiction of the Berhampore Court, except the fifth, against whom there was no cause of action.

Before us it was not contended that there was any jurisdiction over the defendants on the ground arose within the district of the Berhampore Court, and that the Civil Judge had not considered that question.

The point certainly is not noticed in the judgment of the Civil Judge ; and we infer that it was not taken by the pleader who appeared in that Court for the plaintiff.

The documents, however, filed by the plaintiff in the suit were brought before us upon the hearing of the appeal ; and we have carefully considered them in order to see whether there is any ground for saying that the cause of action, that is the whole cause of action, arose within the district of the Berhampore Court.

The most important of these documents are the two accounts marked (E) and (No. 2), for these together evidently constitute the whole account upon which the plaintiffs are

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suing, as they show the precise balance of 7,964-1-0 which the plaintiffs claim, and both appear to have been filed with the plaint in the lower Court.

E is an account furnished by the deceased to the plaintiffs, enclosed in a letter which contains these words : " I have enclosed herein an account of the sale of your goods." And the account itself is headed—" Account of the sale of goods and of the sums received and disbursed in the trade of A. Bhávanna carried on at Madras through M. Saniyási Setti," between certain dates. The account is in accordance with the description of it, for it gives the amount of sale proceeds of various parcels of goods, deducting charges and commission ; also the amount of expenses incurred for a ship " Jaganaikulu," belonging to the plaintiff Bhávanna (in which ship a great part of the goods appear to have been brought to Madras), as well as of other sundry expenses for letters and telegrams.

The balance shown to be due to the plaintiffs on this account is Rupees 12,211-2-4 ; and that sum is carried into the account (No. 2) ; which is produced by the second defendant and appears to be signed by the second plaintiff. It is an account current of receipts and disbursements between the deceased and plaintiff Bhávanna, and it contains items of goods sent to Madras, some expressly stated to have been for sale on account of the plaintiff Bhávanna, and some apparently for and on account of the deceased. The letter (C) indeed shows that as to one item in account (No. 2), viz., Rupees 1,296-10-3, the goods were sent from Berhampore to Bimlipatam on account of the deceased.

On the other side of account (No. 2) there is a long list of hoonies drawn upon the deceased, as well as items of each and goods sent by him to the plaintiffs—and so the balance is reduced to Rupees 7,964-1-0 the amount which the plaintiffs claim.

Now from these documents it appears that there were between the plaintiffs and deceased a series of transactions of different kinds. The plaintiffs being merchants at Berhampore and the deceased a merchant at Madras, goods and

hoondies and money passed between the two, the transactions between them being sometimes as principals and sometimes as agents the one for the other. The plaintiffs claim certainly includes transactions in which goods to a considerable amount were sent to the deceased for sale by him as agent of the plaintiffs at Madras, as well as some in which the goods were sent for and on account of the deceased ; as to which they may have been at his risk during the voyage, or may have been delivered by his order within the limits of the jurisdiction of the Berhampore Court.

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We assume, therefore, for the purpose of this decision, that in the account for the balance of which the plaintiffs sue there are some items which, if they could be separated from the rest, would give a cause of action within the jurisdiction of the Berhampore Court ; but they cannot be so separated. It never was the intention of these parties that their transactions should be so disconnected that each item of account on one side or the other should be treated as giving a separate and distinct cause of action. The intention clearly was that the dealing between them should be continuous ; that the various transactions should be entered in one account, and that the items in that account should be joined together so as to form the subject of one demand. Upon that footing the plaintiffs have properly sued for the balance of the whole account, but they have brought their suit in the wrong Court, because the whole cause of action did not arise within the jurisdiction of that Court, and none of the defendants who were properly joined in the suit dwell or work within that district.

With regard to the introduction of the 5th defendant as a party to this suit, it was done no doubt in order to bring the case under the operation of Section 4 of Act XXIII of 1861—but it is clear that the wrongful addition of a resident defendant cannot have any such effect.

That the suit was properly dismissed as against the 5th defendant is also clear ; for, assuming that an action will lie for maliciously inducing another to break a contract whereby the plaintiffs have sustained damage (a question much discussed and not decided in *Lumley v. Gye* 22 L. J.

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Q. B. 463), that is a cause of action wholly distinct from the cause of action upon the contract against the contractors, and the two could not be joined in one suit. The damages recoverable in the one case against the wrong-doer would generally be very different from the amount to be recovered from the contractor.

We see no ground, therefore, for distributing the decision of the Civil Judge, which is accordingly confirmed with costs.

Appeal dismissed.

APPELLATE JURISDICTION (a)

Special Appeal No. 315 of 1866.

SRIKHAṆṬI NĀRĀYANAPPA and 2 others....*Appellants.*

INDUPURAM RĀMALINGAM and 55 others...*Respondents.*

Convenience requires that in suits where there is community of interest amongst a large number of persons, a few should be allowed to represent the whole; and if the whole body be represented in the suit, then it is proper that the whole body should be bound by the decree, though some members of the body are not parties named in the record.

S. A. No. 401 of 1863 (II M. H. C. Repts. 1) distinguished.

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of 1866.

THIS was a special appeal from the decision of C. R. Pelly, the Civil Judge of Nellore in Regular Appeal No. 106 of 1865, reversing the decree of the District Munsif of Nellore, in Original Suit No. 447 of 1864.

Subarayulu Setti, for Srinivasachariyar, for the special appellants, the 7th, 41st, and 54th plaintiffs.

Rangachariyar, for Rangaiya Nayudu, for the special respondents, the 1st to 16th, 18th to 29th, 31st to 43rd and 45th to 56th defendants.

The facts sufficiently appear from the following

JUDGMENT :—This is a suit by 54 inhabitants of a village called Srikolán, to obtain an alteration of the boundary between that village and an adjoining village

(a) Present : Bittleston, Ag C. J., and Ellis, J.