Appellate Jurisdiction (a)

Special Appeal No. 600 *of* 1868.

KONI CHETTY and two others.....*Special Appellants.*
(Plaintiffs.)

VERIAPPA CHETTY and 28 others.....*Special Respondents.*
(Defendants).

An agreement entered into between the plaintiffs and defendants, members of the same caste, contained a stipulation that in the event of the defendants objecting to the receiving of a girl from or the giving a girl to the plaintiffs in marriage, the defendants should be bound to return rupees 500 with interest which the plaintiffs had paid to the defendants under the agreement. It was found by the Civil Judge that the 15th defendant's son was engaged to be married to the 2nd plaintiff's daughter, and that the marriage was broken off on the part of the 15th defendant.

Held, on special appeal, that this was *prima facie* a breach of the agreement which entitled the plaintiffs to recover, and that it was for the defendants to show that it did not bring them within the terms of the agreement.

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THIS was a Special Appeal against the decree of C. F. Chamier, the Civil Judge of Salem, in Regular Appeal No. 127 of 1868, confirming the decree of the Court of the Principal Sadr Amin of Salem in Original Suit No. 9 of 1868.

The suit was brought to recover rupees 1,000 as principal and interest due under the terms of an agreement executed by the defendants 1 to 22, by the fathers of defendants 24 to 27, and by the husbands of the 23rd, 28th, and 29th defendants for rupees 500 on the 16th August 1857.

The plaint stated that the plaintiffs and defendants belonged to the same caste; that they and their adherents were divided into factions; that in consequence of some disagreement, the people belonging to each faction used to have the auspicious and inauspicious ceremonies performed separately and to mess separately on such occasions; that on the 16th August 1857 certain mediators adjusted the disputes between them, and, after making the 1st and 2nd plaintiffs and 3rd plaintiff's father pay a sum of

(a) Present: Innes, and Carmichael, J. J.

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rupees 500 to some of the defendants and their ancestors, had an agreement passed by the defendants in favor of the plaintiffs; that the terms of the agreement were that both parties should thenceforward meet together and mess together on the occasion of auspicious and inauspicious ceremonies, and that in the event of the defendants failing to act up to the terms of the agreement, or raising objection to the receiving or giving a girl in marriage, they should be liable to return the money with interest. The conditions of the agreement were fulfilled up to 1864 and then deviated from; and therefore the suit was brought to recover rupees 1,000 as principal and equal interest.

Some of the defendants admitted the claim. Others stated that the agreement was a forgery.

The following is taken from the judgment of the Principal Sadr Amin:—

The only issues for consideration in this case are, first, whether the agreement A sued on was true, and, secondly, whether its terms were deviated from by defendants.

The evidence adduced by plaintiffs fully establishes the genuineness of the agreement A; but to entitle the plaintiffs to receive back its amount it must be shewn that there was a breach on the part of defendants.

Now the plaintiff's witnesses themselves state that both parties had acted up to the terms of A for some time, and then ceased to do so from some unknown cause. They are unable to speak as to which of the parties the breach is to be attributed, and the second point cannot therefore be held to have been made out.

The plaintiffs, having thus failed to shew that they had a cause of action, cannot be allowed to maintain their claim.

Upon appeal to the Civil Court the Civil Judge affirmed the decision of the Principal Sadr Amin.

The Civil Judge's judgment contained the following observations:—

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As regards the contract, I think it was valid and binding, being founded upon a valuable consideration and that it was not illegal. In was not in restraint of marriage, but rather the reverse, as it provided for intermarriages between the parties. I see no reason to doubt that A is genuine. The only question for determination is whether there has been any breach on the part of the defendants. It is impossible that the plaintiffs can recover the liquidated damages set out in the agreement, unless they prove expressly that the terms of the contract, evidenced by A, have not been complied with. It appears that the plaintiffs were not strictly within the caste, and thought it worth their while to purchase equality in social and ceremonial observances at the price of five hundred rupees. This enabled them to meet the defendants on auspicious and inauspicious occasions, to eat and associate with them, and to intermarry with them. It is admitted that for seven years the defendants acted up to their agreement. It may reasonably be inferred, therefore, that their aversion to the society of the plaintiffs and their offspring had been quite overcome No reason is assigned for their afterwards avoiding the company of the plaintiffs, and the evidence adduced to support this allegation is of the most vague and meagre kind possible. Only one instance is spoken to of any objection to contract marriages. In the case it is said that the 15th defendant's son was engaged to the 2nd plaintiff's daughter but that the marriage was broken off. A reason, however, is given for this change of intentions which ought perhaps to weigh with these litigants, namely, that the 15th defendant had experienced a bad omen, which may mean that he had a bad dream, rendering the marriage undesirable. The circumstance of his having betrothed his son to the 2nd plaintiff's daughter seems to indicate that he had no intention of violating the contract; and I think there is nothing to justify the conclusion that in afterwards drawing back he acted in bad faith. I do not consider that there was a breach of the contract because in this single instance the marriage was not effected. It was necessary to show that the marriage was broken off on account of a reluctance on the part of the defendants, as a body, to form matrimonial alliances with the plaintiffs. The rest of the

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evidence merely shows that for the last four years the parties have not been associating with each other; but no witness is able to say that the fault lies with the defendants. Without specific proof on the above points the plaintiffs cannot recover damages, because if no breach has been committed no right of action has yet accrued. It is sufficiently clear from the circumstances of this suit that there is no general aversion to the plaintiffs on the part of the contractors, because a considerable number of them have sided with the plaintiffs and supported their case. They do not, however, admit that they have been personally guilty of any breach of the contract, and I think their answers are collusive. The common object of these persons and the plaintiffs seems to be to fix the liability exclusively upon the remaining defendants. If a breach had been established, however, all the defendants would have been jointly liable. I cannot adjudge the defendants to refund the money upon such evidence as has been adduced in this case. I therefore confirm the decree of the Lower Court and dismiss this appeal with costs.

The plaintiffs preferred a Special Appeal to the High Court on the following grounds :—

I. The breaking off of the marrige was a breach of agreement.

II. The cessation of intercourse between plaintiffs and defendants is admitted, and it lay upon defendants to show that this arose from the plaintiffs' fault.

Mayne, for the special appellants, the plaintiffs.

G. E. Branson, for the 3rd and 20th special respondents, the defendants.

The Court delivered the following

JUDGMENT :—The question in this case for the decision of the Courts below was whether an agreement had been entered into by the defendants with plaintiffs on the 16th August 1857, and whether there had been any such breach of it on the part of defendants as would entitle the plaintiffs to the damages claimed. Plaintiffs and defendants

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belong to separate factions of the same caste, and in consequence of some misunderstanding had for some time avoided social intercourse with each other on the occasion of the performance of ceremonies, each treating the other as a separate caste.

To adjust their differences the agreement was entered into for the breach of which damages are now sought by plaintiffs.

The Principal Sadr Amin and the Civil Judge found that the acts proved did not constitute a breach of the agreement by the defendants.

The agreement was proved to be genuine, and in this special appeal we have to determine whether the acts of defendants as found by the Courts below constitute a breach of this agreement.

One of the express stipulations in the agreement was that in the event of the defendants objecting to the receiving or giving a girl in marriage they should be liable to return with interest the 500 rupees which under the agreement the plaintiffs had paid to the defendants, and one of the facts found by the Civil Judge is that the 15th defendant's son was engaged to the 2nd plaintiff's daughter, and that the marrigae was broken off on the part of 15th defendant. This constituted *prima facie* a clear breach of the agreement, and it rested with the defendants to show that it did not bring them within its terms. The Civil Judge seems to have been influenced by the apparent unfairness of assessing damages on all the defendants for the act of the 15th defendant; but if the defendants in undertaking to exercise a control in matters of this kind over the individual members of their caste assumed to have a power which in reality they did not possess they are not the less liable for failing to do that which they undertook to do. We do not agree with the Civil Judge that it was necessary to show that there had been a general reluctance on the part of the caste to give their women in marriage. We think that any single instance of refusal by a member of defendants' body to receive in marriage a girl of plaintiff's caste, especially after betrothal of such girl, would

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be a breach of the agreement, unless it were shown that from other causes the responsibility of refusal had been shifted from defendants.

We therefore reverse the decrees of the Courts below, and award plaintiffs the amount claimed as provided for in the agreement with costs throughout.

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Referred Case No. 17 *of* 1869.

PALANY ANDY PILLAY.....*Plaintiff.*

The day mentioned in a bond for the repayment of money as that on which the money is to be repaid is to be excluded from the period of computation under the Limitation Act. The borrower in such case has until the last moment of the day mentioned for the payment, and the right to sue accrues not on but from that day.

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THIS was a case referred for the opinion of the High Court by Kristnasawmy Iyer, the Principal Sadr Amin of Tanjore, in three suits instituted by the plaintiff.

No Counsel were instructed.

Three plaints were presented on the part of the plaintiff on the 10th April 1869 for the recovery of money on three simple money-bonds, in all of which the 10th of April 1866 was fixed as the day for repayment of the sums mentioned in them. The period of limitation to suits founded on the bonds (which were not but might have been registered under Clause 7, Section XVI, Act XVI of 1864) was three years. If in calculating the period of limitation the day mentioned in the bonds for repayment were to be included in the computation the suits would be barred, since a period of three years from that date expired on the 9th April 1869.

The following questions were put for the opinion of the High Court;—

I. When does the cause of action accrue in a suit founded on a money-bond, whether on the day mentioned therein as the day on which the money is to be repaid or on the following day?

(a) Present: Scotland, C. J. and Innes, J.