
(1957) 12 MP CK 0005
Madhya Pradesh High Court
Case No: Civil Revision No. 34 of 1957

Shah Ganpat Pasu and Co.

APPELLANT

Vs

Gulzarilal Bhaiyalal and Another

RESPONDENT

Date of Decision: Dec. 24, 1957

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 20

Citation: AIR 1958 MP 409 : (1957) ILR (MP) 654 : (1958) 3 MPLJ 708

Hon'ble Judges: T.C. Shrivastava, J

Bench: Single Bench

Advocate: R.S. Dabir, for the Appellant; B.L. Seth, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

T.C. Shrivastava, J.

The only point which arises in this- petition for revision filed by the defendant is whether any part of the cause of action arose at Kareli District Narsinghpur, and the court there had juris diction to entertain the suit.

The plaintiffs reside in Kareli and defenr dant firm carries on business as commission agent at Bombay. It is not disputed that on 13-7-54, the plaintiff had sent 50 bags of Masur dal to be sold by the defendant as commission agent. The plaintiffs allege that the defendant firm has not properly accounted for the sales and is therefore liable to render accounts.

The facts alleged in the plaint to bring. the suit within the jurisdiction of the Kareli Court as stated in paragraphs 3 and 4 of the plaint are these. One Raojibhai residing at Kareli gave himself out as a partner and also as a representative of the firm of defendants and canvassed business for them. In July, 1954, Raoji proposed to the plaintiffs to appoint his firm as adhatias (commission agents) assuring that the firm would work profitably to their satisfaction and would charge usual commission and

expenses.

The defendants denied that Raoji was either a partner or a representative of the firm. The receipt of dal was admitted but it was pleaded that the whole cause of action accrued at Bombay and therefore the Court at Kareli had no jurisdiction.

The court has found that the contract took place at Kareli with Raoji. Though Raoji was not a partner of the firm, he was a representative of the firm. Thus the cause of action accrued at Kareli.

The finding that Raoji was not a partner of the firm is not disputed. Shri Dabir contends that after this finding, the trial Court should not have considered the alternative defence as there are no pleadings on the point. This is incorrect as para 3 of the plaint as amended clearly shows that Raoji's capacity as a representative of the firm was pleaded in the alternative. The court was, therefore, right in considering this point.

However, it was necessary for the plaintiffs to prove acts on the part of the defendants to show that they had appointed Raoji as their agent. If the fact of Raoji being a partner had been established this would follow by implication; but as this was not done, the fact cannot be presumed by any unilateral acts of Raoji.

The plaintiff Gulzarilal as P. W. 1 states that no outsider was present at the time of the talk between him and Raoji. He says, "Raoji came to my shop on 13-7-54 and said that the goods should be sent to his shop Shall Ganpat Basu and Sons at Bombay. He had also advised similarly before." He does not refer to any settlement of terms on which business was to be done. This talk would hardly amount to a contract and would be nothing more than canvassing business for defendants.

At the stage of evidence, it is alleged that money was to be paid at Kareli and also that the Railway receipt of the wagon was delivered to Raoji. These facts were not alleged in the plaint. If they were vital facts forming cause of action, they should have been mentioned. They cannot be considered in deciding whether any part of the cause of action accrued at Kareli.

The general rule is that a suit for accounts against a commission agent must be filed at the place where the commission agent works; *Firm Ramditmal Sant Lal v. Firm Seth Jothram Kidar Nath* AIR 1940 Lah 171 (A). Unless the contract clearly indicates the contrary, the accounting and the payment by the agent of this kind must necessarily be done at the place where all the business is transacted : *Tikaram v. Daulatram* ILR 46 All 465: (AIR 1924 All 530) (B). In this case, the business was wholly done at Bombay and in the absence of an allegation in the plaint, it must also be assumed that the accounts were to be rendered and money was to be paid at Bombay. Therefore, unless the talk at Kareli forms part of the cause of action, there would be no jurisdiction to try the suit at Kareli.

"Cause of action" is not defined in Civil Procedure Code, but its meaning has been settled by various rulings. It means everything which if not proved, gives the defendant a right to judgment every fact which is material to be proved to entitle the plaintiff to succeed; [Arthur Butler and Co., Ltd. Vs. District Board of Gaya](#) . It has to be remembered that it is only material facts that constitute the cause of action which must be proved by the plaintiff before he can obtain a decree. Facts which plaintiff may allege incidentally and facts which may be brought in evidence *res gestae* would not necessarily constitute a part of the cause of action; [Baroda Oil Cakes Traders Vs. Parshottam Narayandas Bagulia and Another](#),

Accordingly, in Ramditmal's case (A) (supra) a letter sent by a commission agent showing the terms on which he would do business was held to be merely an intimation which could not form part of the cause of action. Similarly in [Devidatt Ramniranjandas Vs. Shriram Narayandas](#), it was held that when a commission agent sends his quotations or terms of business to other people it is merely an intimation on his part to do business and by mere passing of such letters a contract does not come into existence.

Coming to the instant case, the talk with Raoji would appear to be merely an intimation that the defendant should do business with the plaintiffs. Applying the test to determine what constitutes a cause of action referred to above, it is obvious that the suit cannot fail if the plaintiffs do not prove any part of the talk which took place with Raoji. The defendant will still have to render accounts of the business done. I do not therefore agree that it forms a part of the cause of action.

Reliance is placed on behalf of the respondents on Joharimal v. Sunderlal, AIR 1924 Nag 308 (F), where the suit was held tenable at Khamgaon although the commission agency business was done at Bombay. However, this was on the special facts of the case as it was held that under the contract the defendants were bound to render accounts and pay the dues at Khamgaon. This is not so in the present case.

There is another reason why plaintiffs' contention must fail. Assuming that the talk amounts to a contract, they had further to prove that Raoji had authority from the defendant. The only circumstance that has been brought out against the defendant is the letter Ex. P. 3 which was written in reply to the plaintiffs' notice Ex. P. 4. In Ex. P. 4 the plaintiffs' pleader had said "My client, on instructions from your man Raoji sent to you..."

In the reply Ex. P. 3, the defendant's pleader stated, "when your client wanted to know the name of a commission agent in Bombay, my client's man told him that he could send the goods to my client." The admission that Raojibhai was defendant's man does not necessarily imply that he had any authority as an agent to enter into a contract. All that is stated in the letter is that Raojibhai supplied the defendant's address. The plaintiffs' evidence does not show anything by which the defendant can be deemed to have authorized Raojibhai to bind them.

It is not enough to show that the plaintiffs were under that impression but they must also show some acts of the defendants justifying that impression. Merely because the goods sent to Bombay were accepted by defendant, no such inference can be drawn. The plaintiffs had consigned the goods to self and had endorsed the railway receipt to defendant.

The plaintiffs admit that in their letter intimating about the despatch of goods they had not mentioned Raoji's name. As commission agents, the defendant company would have accepted the goods for sale in any case and this conduct on their part cannot amount to a ratification of the talk with Raoji. Having failed to prove that defendant had expressly or impliedly appointed Raoji as their agent the plaintiffs cannot claim to bind them by any talk with him.

In view of the findings above, I hold that no part of the cause of action arose within the jurisdiction of the court below, The order of the court dated 13-11-56 is set aside. Instead it is directed that the trial Court shall return the plaint for presentation to proper court. Costs in this court shall be paid by the non-applicants.