

N. S. P. K. L. Palaniappa Chettiar, since deceased (now represented
by N. S. P. K. L. Kolandaivelu Chettiar) - - - - *Appellant*

v.

K. V. Kathiresan Chettiar and others - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL DELIVERED THE 3RD MARCH, 1925.

Present at the Hearing :

LORD WRENBURY.

LORD PHILLIMORE.

LORD CARSON.

[*Delivered by* LORD CARSON.]

The plaintiff (respondent) was a merchant in Madras, who in 1918 was carrying on business in piece goods. He brought the present suit against the defendant, since deceased, and now represented by the appellant, to recover Rs. 13,384 damages resulting from the resale of goods alleged to have been sold by him to the defendant, and the delivery of which had been, as was alleged, improperly refused by the defendant.

The plaintiff's case was that, on the 27th August, 1918, the defendant, through a broker named Ramakrishna, agreed to purchase from him 20 cases of saris for Rs. 29,910, and subsequently refused to accept delivery of, or pay for, such goods and entirely repudiated the alleged contract. There is no dispute that, on the date in question, the said broker did purport to purchase these goods from the plaintiff on behalf of the defendant and with his authority. The contract was signed by the said broker as being on behalf of the defendant in the plaintiff's contract book. The defendant, however, denied that the broker had any authority

from him to enter into such a contract, and the question to be determined is purely one of fact, viz., "had he or had he not such authority?"

The case was tried before Mr. Justice Phillips in the High Court of Judicature at Madras (Original Side), and he came to the conclusion, on the evidence in the case, that the defendant had not entered into the contract and had not authorised the broker to enter into such contract on his behalf. The only evidence produced by the plaintiff was his own allegation that the broker had entered into such contract on behalf of the defendant and signed his brokers' book on behalf of the defendant, and he proved that the transaction had been entered in the day book and ledger to the defendant's debit. The broker was not called as witness upon behalf of the plaintiff, although a *subpœna* had been taken out for his examination, but he was subsequently examined as a witness for the defence. He stated that he had no authority from the defendant and that the defendant did not ratify the purchase afterwards.

The defendant, in his evidence, also denied that he had ever given authority for entering into the contract, and the learned Trial Judge, while raising some criticism upon a portion of his evidence, says that, on the whole, he impressed him favourably when in the box, and that he was inclined to attach a certain amount of weight to his oral denial of the contract. He also stated that, whilst he was not prepared to accept the broker's (Ramakrishna's) evidence *in toto*, he was prepared to accept it in so far as he says that he had not the defendant's authority to purchase, and he, therefore, held that the plaintiff had failed to prove his case.

The plaintiff appealed to the High Court of Judicature at Madras (Appellate Side). That Court reversed the decision of Mr. Justice Phillips, and hence the present appeal. The Appellate Court refused to give any credence to the evidence of the broker, saying that his evidence showed that he was a person of no character at all, and that not the slightest reliance could be placed upon his evidence. They made no reference to the denials of the defendant. It had been, however, alleged by the plaintiff that immediately after the signing of the book by the broker he had sent an invoice or patti to the defendant, and both Courts appear to have decided that the defendant had refused to accept such patti. There was a subsequent meeting to discuss the situation that had arisen by reason of the defendant's refusal to accept the goods, at which the plaintiff, the defendant, the broker, one Veerappa Chettiar and one Visvanatha Aiwar were proved to have been present, and it is not disputed that the patti was produced upon that occasion and comment was made as to the fact of its having had no date, and it was alleged that, after this meeting, the patti remained in the possession of the defendant. Upon these facts the Court of Appeal decided that "the only conclusion which we can

draw from the evidence is that, as a result of this interview, the defendant retained the patti, and we would go further and say that the proper inference is that he accepted the patti." It would appear as if the Appellate Court were of opinion that the fact of the patti remaining in the possession of the defendant proved, in some way or other, the existence of the contract, which had always been hitherto repudiated. Assuming that the defendant did on the occasion mentioned retain the patti, their Lordships can find no evidence to support the decision that such retention was either an admission of the contract or the creation of a new contract so as to justify the inference drawn by the Appellate Court, and they are unable to concur in the reasoning or the decision come to by the Court of Appeal. It appears to their Lordships that the Court of Appeal has not sufficiently considered—that it was the duty of the plaintiff to prove the contract, which in the present case necessitated proof of authority given to the broker, and that, even if the evidence upon this point of the defendant and the broker were eliminated, there would be still an utter absence of evidence of any authority on the part of the broker to enter into the contract.

Their Lordships are also of opinion that the Court of Appeal, in disregarding the evidence of the defendant and the broker on the question of authority, did not sufficiently bear in mind the fact that the learned Trial Judge, who believed both the said witnesses, had the advantage of seeing them examined and cross-examined. In the circumstances, therefore, their Lordships are of opinion that this appeal should be allowed with costs and that the judgment of Mr. Justice Phillips of the 26th day of March, 1920, should be restored, and they will humbly advise His Majesty accordingly.

In the Privy Council.

N. S. P. K. L. PALANIAPPA CHETTIAR, SINCE DE-
CEASED (NOW REPRESENTED BY N. S. P. K. L.
KOLANDAIVELU CHETTIAR),

vs.

K. V. KATHIRESAN CHETTIAR AND OTHERS.

DELIVERED BY LORD CARSON.

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