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Court : Karnataka

Decided On : Jan-16-1996

Reported in : ILR1996KAR969

Judge : Kumar Rajarathnam, J.

Acts : [Evidence Act, 1872](#) - Sections 91; [Stamp Act, 1899](#) - Sections 35

Appeal No. : C.R.P. No. 1372 of 1992

Appellant : Krishnappa

Respondent : Kanikaraj

Advocate for Pet/Ap. : S.A. Srivatsa, Adv.

Disposition : Writ petition dismissed

Judgement :

ORDER

Kumar Rajaratnam, J.

1. This is plaintiff's Revision Petition. The plaintiff filed a suit for recovery of a certain amount with costs and interest. An on demand promissory note and consideration receipt dated 8.12.1987 agreeing to repay the sum with interest was also executed by the defendants. Learned Counsel for the plaintiff fairly conceded

that the on demand promissory note was not sufficiently stamped. The Trial Court held that the present suit was not based on the original cause of action but on the promissory note and since the promissory note was not sufficiently stamped dismissed the suit. The plaintiff being aggrieved by the Judgment and Decree of the Trial Court has preferred this Civil Revision Petition.

2. Learned Counsel for the petitioner Mr. Srivatsa submitted that while it is not possible to place any reliance on the promissory note since it is insufficiently stamped, reliance can be placed on the acknowledgment of debt with respect to the consideration receipt dated 8.12.1987. He submitted that the consideration receipt is an independent document and need not be read along with the promissory note. He also submitted that the consideration receipt is sufficiently stamped and therefore the receipt is undoubtedly an acknowledgment of debt. Learned Counsel for the plaintiff-petitioner further submitted that the defendants were placed ex parte and the evidence of the plaintiff that there was an acknowledgment of debt by the defendants would be sufficient to decree the suit as prayed for in the absence of any defence by the defendants. He further submitted that the consideration receipt was stamped separately and it should be considered independently and reliance ought to have been placed on the document notwithstanding the promissory note being inadequately stamped.

3. Learned Counsel for the petitioner relied on a Judgment reported in : AIR 1964 AP188 , Mohd. Jamal Saheb v. Munwar Begum. This was a case where the plaintiff instituted a suit on the basis of a promissory note as well as receipt. A defence was raised that the promissory note was not sufficiently stamped and therefore was not admissible in evidence. It was also stated that since the suit was based on the promissory note, it was liable to be dismissed. The Court held that though the loan and the execution of the promissory note may be contemporaneous, the document still can be given as a collateral security or as a conditional payment of the loan and in such a case it cannot be said that the promissory note itself is the contract of loan, If the allegation made by the plaintiff in the plaint that the promissory . note was executed as a collateral security is true then he can certainly sue on the debt apart from the promissory note as the two causes of action are distinct and separate. The Court further held that the

defendant cannot be allowed to walk away with the money simply because the promissory note is not sufficiently stamped and that it is inadmissible in evidence.

The Court further held that the defendant is liable to refund the amount which he took from the plaintiff on the theory of money had and received. The learned Counsel also relied upon a Judgment reported in : AIR1980 Ori10 , *Khitish Chandra v. Rajkishore Sahu*, where the Court has held as follows:

'It would, thus, appear that in a catena of authorities the principle has been well recognised that every loan carries with it a contract to repay, and if a promissory note executed by way of collateral security cannot be accepted in evidence for some reason or other, there is nothing in law to prevent the plaintiff from giving other evidence as regards the loan and that if he can satisfy the Court as regards the truth of his version, there is no reason why he should not be able to obtain a decree in his favour.'

Reliance was also placed in a Case reported in : AIR1991 Ker16 , *P.C. Gopinathan Nair v. Paramu Pillai Appu Pillai*, where it is observed as follows:

'There are sufficient averments in the plaint that the suit is based on original cause of action. As the promissory note was executed by the defendant only in acknowledgment of the loan he had obtained from the plaintiff, the Court cannot reject the claim in the suit solely on the ground that the promissory note is inadmissible in evidence. In paragraph 1 of the plaint it is stated that the defendant received the amount as loan and the promissory note was executed only as a document in support of the loan. PW-1's evidence shows that the defendant obtained the amount from the plaintiff and only at the time when they parted the promissory note was executed. The note was executed after the defendant obtained the loan. As the note was executed by the defendant only in acknowledgment of the loan, it is apparent that the loan was anterior to and independent of the execution of the promissory note. In a case where a promissory note was executed by the defendant only in acknowledgment of the loan he had already obtained from the plaintiff, the suit for recovery of the debt based on the original cause of action cannot be dismissed on the ground that the promissory note is defective and inadmissible in evidence.'

The learned Counsel also relied on a Full Bench Decision of the Madras High Court reported in AIR 1938 MADRAS 785, *Perumal v. Kamakshi*, where the Court succinctly put the proposition in the following words:-

'A decision to the same effect was given by this Court in 40 Mad 585, an appeal heard by old field and Krishnan JJ.

old field J. said:

The second question referred to us is whether the lender can be given a decree apart from the note for the money lent upon the note. It is not possible to answer this question without further knowledge of the facts. Krishnan J. observed:

If there is an obligation apart from the one under the note itself, it may clearly be enforced. The fact that the 'loan and the note are contemporaneous' is not conclusive of the non-existence of such obligation.

In my opinion the law may be stated shortly in this way. If the promissory note embodies all the terms of the contract and the instrument is improperly stamped, no suit on the debt will lie. Section 91, Evidence Act, and Section 35, Stamp Act, bar the way. But if it does not embody all the terms of the contract, the true nature of the transaction can be proved and where an instrument has been given as collateral security or by way of conditional payment, a suit on the debt will lie. The fact that the execution of the promissory note is contemporaneous with the borrowing cannot exclude the possibility of the instrument having been given as collateral security or by way of conditional payment. Whether a suit lies on the debt apart from the instrument therefore depends on the circumstances under which the instrument was executed, it has been stressed in argument that the English Rules of evidence do not run counter to Section 91, Evidence Act, and therefore it is said that the Section cannot be regarded as a bar to the application of the principle accepted in England that a suit lies on the debt apart from the instrument. This argument ignores two important factors, In the first place, the English Rules of evidence are not statutory, but Judge made, and in the second place the tendency in England has always been to ignore as far as possible stamps objections, as is pointed out in *Taylor on Evidence*, Vol.1. Page 276,

(Edition 12). In India the law is statutory and the Courts are given no latitude in matters of this nature. Section 35, Stamp Act, absolutely prohibits a negotiable instrument improperly stamped being put in evidence, and Section 91, Evidence Act, insists that where a contract has been reduced to writing the document alone shall be looked at.'

In the light of the above Decisions, it is necessary to analyse whether on the facts and circumstances of this case the plaintiff has proved that there is acknowledgment of debt without reference to the promissory note which admittedly cannot be looked into as it is insufficiently stamped.

4. A perusal of the plaint makes it clear that there has been an acknowledgment of debt and apart from the promissory note the consideration receipt was executed and signed by the defendants. It would be too much to assume that the suit was based only on the promissory note in view of the fact that the defendants chose to remain ex parte. The acknowledgment of debt would go to show that the defendants have borrowed the said sum of Rs. 2000/- and therefore there is an obligation to repay the said sum. This Court in an unreported Judgment in the case of VEERAPURADA CHANNABASAPPA AND ANR. v. VEERAPURADA SIDDARAMAPPA, C.R.P. No. 1846 of 1967 DD 27.5.1969, has held at para-4 as follows:

'No such question arises in this case. The essence of the matter is that the receipt though endorsed on a promissory note is separately chargeable to stamp duty as an independent instrument altogether. The fact that it might relate to the promissory note does not make it any the less an independent document. Hence, the fact that the promissory note is inadmissible as having been insufficiently stamped is not in itself sufficient to reject the receipt also from being tendered in evidence. That question should be separately examined on the footing that the receipt is an instrument separately chargeable to stamp duty.'

It appears to me that the acknowledgment of debt would create a cause of action by itself and it is the duty of the Court to mould the relief sought for without reference to the pronote. There is undoubtedly in this case an acknowledgment of debt. It is not the case of the defendants that they did not borrow the money as the

defendants have chosen to remain ex parte. The Trial Court misdirected itself in dismissing the suit in the facts and circumstances of the case. Consequently, the Civil Revision Petition is allowed and the suit is decreed as prayed for by the plaintiff. The Trial Court is directed to draw up the decree accordingly. The able assistance of Sri Srivatsa, learned Counsel for the petitioner is placed on record. No costs.

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