

**Kuruvila Markose Vs. Varkey Varkey**

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**Court :** Kerala

**Decided On :** Mar-11-1966

**Reported in :** AIR1966Ker315

**Judge :** T.C. Raghavan, J.

**Acts :** [Stamp Act, 1899](#) - Sections 2(12) and 17; [Negotiable Instruments Act, 1881](#) - Sections 26 and 46

**Appeal No. :** Second Appeal No. 1172 of 1962

**Appellant :** Kuruvila Markose

**Respondent :** Varkey Varkey

**Advocate for Def. :** Mathew Kuricken and; P.V. Paul, Advs.

**Advocate for Pet/Ap. :** P.K. Krishnankutty Menon, Adv.

**Disposition :** Appeal dismissed

**Judgement :**

**T.C. Raghavan, J.**

1. The defendant in a suit on a promissory note is the appellant. His contention before the lower Courts was that the promissory note was not genuine; but the lower Courts have not accepted this. On the evidence on record and by comparing

the signatures and handwriting with the admitted signatures and handwriting of the appellant, the lower Courts have held that the promissory note was genuine. The admitted handwriting and signatures are available in Exts. D-1 and D-2; and it is not very easy to say that they are exactly similar to the handwriting and signature in the suit promissory note. Still, being a second appellate Court, I agree with the lower Courts. Mr. P. K. Krishnankutty Menon, on behalf of the appellant, then pleads that the appellant might be given an opportunity to produce expert evidence on the question. It does not appear that the appellant made any such prayer before the lower Courts. The suit was filed in 1954; and it may not be proper to accede to this request after twelve years and send back the case to the trial Court. Therefore, this prayer is also rejected.

2. The next argument of the appellant's counsel is that the promissory note was not duly executed, because, at the time it was signed by the executant, there was only one stamp of one anna and three one anna stamps were affixed only subsequently. In support of this contention the counsel relies on the Division Bench ruling of the Bombay High Court in *Mrs. Rohini Chandrakant Vijayakar v. A. 1. Fernandez*, AIR 1956 Bom 421. In that case there were two executants in the promissory note; and both of them signed before stamps were affixed. Then stamps were affixed; and one of the executants signed again over the stamps thus cancelling them. Chagla, C. J., who spoke for the Division Bench, has observed that the promissory-note was not 'properly executed'.

3. Sub-section 12 of S. 2 of the Indian Stamp Act defines the terms 'executed' and 'execution' as to mean 'signed' and 'signature'. Section 17 of the Act provides that all instruments chargeable with duty shall be stamped before or at the time of execution. From these provisions the counsel argues that the signing must be after the affixing of the stamp or at least simultaneously with the affixing of the stamp. In other words, if the signature is put first and then stamps are affixed, the execution is not proper. That is the reasoning of Chagla, C. J. also.

4. I may now refer to another Division Bench ruling of the Madras High Court in *Suri Mull v. Hudson*, (1901) ILK '21 Mad 259. In that case a promissory note was signed by the sole executant; and the requisite stamp was affixed and cancelled

after the signing. The Division Bench held that the signing and affixing of the stamp were practically simultaneous. In other words, they were treated as one transaction: the stamping was held to be at the time of execution.

5. The ruling of the Madras High Court has not been followed by the Bombay High Court. Chagla C. J. has said that it is difficult to understand the significance of the expression 'practically simultaneous'. In the opinion of the Bombay High Court the signing must be after the affixing of stamps. With due respect to the eminent Chief Justice and to the Division Bench, I venture to disagree with this view. In my opinion, the view of the Madras High Court is more reasonable in a case like Ibis; and the view of the Bombay High Court is narrow and hyper-technical. The relevant provision in the Stamp Act says that the stamping must be prior to or at the time of signing. It is easy to understand how signing can be effected after affixing the stamp. But, it is not easy to conceive how affixing the Stamp and affixing the signature can be done simultaneously, at the same time. Therefore, we have to interpret the expression 'at the time of execution' in a reasonable manner and the view expressed by the Madras High Court appears to be the more reasonable one.

6. What the evidence in the case before me discloses is that the executant signed on a one anna stamp and the first attesting witness signed thereafter. When the document was passed on to the second attesting witness, he pointed out that the stamp affixed was not sufficient. Then three more one anna stamps were affixed and defaced and thereafter the second attesting witness signed. In these circumstances, it is only reasonable to hold that the execution of the document was complete only when three-more one anna stamps were affixed and the second attesting witness also signed. The document was handed over only then.

7. I may in conclusion refer to Sections 26 and 46 of the Negotiable Instruments Act. Section 26 speaks about the making of a promissory note; and Section 46 speaks about the delivery of the instrument. Section 46 says that the making of a negotiable instrument is completed by delivery, actual or constructive, which may mean that the making will be complete only if delivery is effected. In the light of these sections also, it is apparent that the view of the Madras High Court is the

more reasonable one to take in a case like this.

8. The counsel of the appellant then urges that the appellant is entitled to benefits of Act XXXI of 1958. The question, though raised before the lower Courts, does not appear to have been decided. Therefore, I leave that question to be considered at the time of execution.

9. The second appeal is dismissed, but without costs. Leave granted.

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