

Janardhanan Vs. Aneefa Rawther

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Court : Kerala

Decided On : Jun-23-2004

Reported in : AIR2005Ker89; I(2005)BC524; 2004(2)KLT1067

Judge : R. Bhaskaran, J.

Acts : [Kerala Stamp Act, 1959](#) - Sections 35

Appeal No. : A.S. No. 107 of 1999

Appellant : Janardhanan

Respondent : Aneefa Rawther

Advocate for Def. : K.M. Joseph, Adv.

Advocate for Pet/Ap. : V. Chitambaresh and; T.C. Suresh Menon, Adv.

Disposition : Appeal dismissed

Judgement :

R. Bhaskaran, J.

1. The defendant in a suit for realisation of money is the appellant in this appeal. According to the plaintiff, the defendant borrowed a sum of Rs. 21,000/- from him on 30.1.1988 agreeing to pay interest at 2% per month. A document was executed in the name of the plaintiff on that day. The defendant had agreed to pay the

amount within three years. On 28.1.1991 the defendant paid Rs. 10/- to the plaintiff and got endorsement on the document. Since no other amount was paid, though demanded several times and notice through Advocate was issued, the suit was filed in 1994.

2. In the written statement, the defendant contended that the document relied on by the plaintiff is not admissible in evidence. He however admitted that he borrowed Rs. 21,000/- on 30.1.1998 and executed a document. Though the document showed 2% interest per month, the actual interest agreed was 7 1/2% per month. There was no payment of Rs. 10/- on 28.1.1991 and no endorsement was made as contended by the plaintiff. No amount was due to the plaintiff. The suit is barred by limitation.

3. Ext.A1 is the agreement mentioned in the plaint. The trial Court found that Ext.A1 can be considered as a pronote payable otherwise than on demand and stamp duty paid was insufficient. The trial court also found that the suit could be treated as one filed on the basis of the original consideration and since Ext.A1(a) endorsement on 28.1.1991 was found to be by the defendant, it was held that the suit was not barred by limitation. The trial Court further found that the plea of discharge made by the defendant is not established and the suit was decreed for an amount of Rs. 51,222/- with interest at 12% per annum on Rs. 21,000/- from the date of the suit till date of decree at 6% thereafter till date of realisation.

4. In this appeal, it is contended that the suit was based on the pronote only and the trial Court went wrong in treating the same as one based on the original consideration also. It is also contended that the endorsement made on Ext.A1 was not proved to be that of the defendant. At any rate, it was contended that such endorsement, even if true, would not save the suit from the bar of limitation as an endorsement on an insufficiently stamped pronote is inadmissible in evidence for any purpose since the pronote itself is inadmissible in evidence. It is therefore contended that the finding that the suit is not barred by limitation is not correct.

5. The points for consideration in this appeal are (1) whether the suit was based on the pronote only or was on the basis of the original consideration also, (2) whether the endorsement made and marked as Ext.A1(a) was proved to be

genuine, (3) whether the endorsement would in any way extend the period of limitation since the same was made on an insufficiently stamped document, and (4) whether the discharge pleaded is true.

Point No. 1

6. There is no dispute that the defendant received an amount of Rs. 21,000/- from the plaintiff on 30.1.1988. In paragraph 3 of the plaint, it is stated that the defendant obtained a loan of Rs. 21,000/- from the plaintiff on 30.1.1988 and stating all these the defendant had prepared a document in his own handwriting. It is also stated that on 28.1.1991 the defendant paid Rs. 10/- and made an endorsement on the back of the document. It is also stated in the plaint that cause of action stated in the suit is the receipt of Rs. 21,000/- by the defendant from the plaintiff and also payment of Rs. 10/- on 28.1.1991 and subsequently. The learned counsel for the appellant relied on the decision in *Sankara Pillai v. Usman Settu* (1963 KLT 241) to contend for the position that if the pronote was not properly stamped, no decree on the basis of the original cause of action can be given, if there was no pleading to that effect. As I find that there are sufficient pleadings with respect to the passing of original consideration, this decision will not help the appellant in any way. More over, in *Chathukutty v. Cheerukutty* (1963 KLT 281), another Judge of this Court noted that the preponderance of judicial opinion is that even if the promissory note is not contemporaneous with the transaction, there is a presumption that a cause of action exists independently. No doubt, if the suit was based only on the pronote, no decree can be granted as it was insufficiently stamped.

7. The learned counsel for the appellant contended that in the pronote, there is no stipulation to pay the amount on demand and therefore the stamp affixed on the pronote is insufficient and such an insufficiently stamped pronote is inadmissible in evidence. It is therefore contended that unless it can be clearly spelt out from the plaint that the suit was also on the basis of original consideration, the suit itself is not maintainable. After reading the plaint as a whole, it can be clearly seen that the plaintiff had stated in detail about the loan taken by the defendant and in evidence of which the document was also executed. In other words, the suit was not merely

based on the promissory note, but was on the basis of the original consideration also. Therefore, the first point is to be answered in favour of the plaintiff.

Point No. 2

8. With regard to the genuineness of the endorsement, there was dispute between the parties and the handwritings in Ext.A1 and Ext.A1(a) were sent to handwriting expert. The expert opined that Ext.A1 and Ext.A1 (a) were written by one and the same person. More over, a comparison of the two by the court also shows that both the writings are of the same person. Therefore, it is found that Ext.A1 (a) endorsement is made by the defendant himself and the point is found in favour of the plaintiff.

Point No. 3

9. This is the most important point argued by the learned counsel on both sides. The learned counsel for the appellant relied on the decision of the Madras High Court in Nageswara Rao v. Narayanamurthi (AIR 1938 Madras 75). In that decision, it is clearly stated that an improperly stamped promissory note cannot be admitted in evidence to prove acknowledgment of liability in order to save limitation in respect of promissory notes previously executed, The promissory note in that case recited about three prior promissory notes and the consideration for the promissory note in question was the amounts covered by those promissory notes. The contention of the plaintiff in that case was that when the document was sought to be admitted in evidence, it was refused on the ground that it was insufficiently stamped. The further contention of the plaintiff was that though the document was insufficiently stamped, the portion of the document which recited about the previous promissory notes was admissible in evidence and therefore the rejection of the promissory note as a whole without admitting in evidence was wrong. It is in that context, the Division Bench of the Madras High Court stated that the section itself provides a complete answer and if an unstamped document cannot be admitted for any purpose, it cannot be admitted under any circumstances in a civil suit. The learned counsel for the respondent argued that the Madras High Court was concerned with the recital in the promissory note itself about the previous liability. But in the present case, the endorsement is made on

the back of the promissory note which is not part of the pronote. It could have been made in a separate piece of paper also and there is no contention that such acknowledgment requires any stamp duty to be paid. According to the learned counsel, merely because an acknowledgment is made on the back of the pronote, it cannot be said that such endorsement is inadmissible in evidence. I find clear distinction between the two cases. In the Madras case, the promissory note itself contained the recitals about the two previous promissory notes. But in the present case, the pronote was complete when it was signed by the defendant. It is on the next cover page of the pronote that the endorsement is made. It cannot be treated on a par with the recital in the pronote about the previous liability. A Division Bench of this Court in *Saffia Khathoon v. Kunhambu*, (1977 KLT 448) had occasion to consider a similar question. It is stated by the Division Bench as follows:

'Although Ext.A1 is inadmissible as a promissory note the endorsements subsequently made in the document by the 1st defendant recording the factum of the payments made by him towards the suit debt are admissible in evidence since they do not form an integral part of the promissory note proper and such endorsement did not require to be stamped'.

In view of the authoritative pronouncement of law by the Division Bench, it is not necessary to discuss in detail about the other decisions referred to by the learned counsel on both sides. Suffice it to note that two learned Judges of the Madras High Court have taken a contrary view without noticing the Division Bench decision in *Nageswara Rao's* case as can be seen from the decisions reported in *Kondamma v. Venkatarayadu*, AIR 1939 Madras 34 and *Meenammal v. S.N.O. Reddiar*, AIR 1960 Madras 237.

10. In the light of the above discussion, the finding of the court below that the endorsement on Ext.A1(a) acknowledgment saves the period of limitation is correct.

Point No. 4

11. According to the defendant, he has paid back the entire amount. As rightly pointed out by the trial court, the burden is entirely on the defendant to plead and prove discharge. Though as DW1 he has deposed that he repaid the amount paying monthly instalments of Rs. 3,000/-, no document was produced to prove the same. Even in the oral evidence of DW1, there is no consistency in the matter of the alleged payments and in the absence of any evidence to show that the amounts were paid back, the plea of discharge was rightly found against by the trial court.

No other point is argued and in the light of the above discussion, I find that there is no merit in the appeal and it is dismissed with costs.

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