

**In Re: Ramaswami Chettiar**

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**SooperKanoon Citation :** [sooperkanoon.com/786347](http://sooperkanoon.com/786347)

**Court :** Chennai

**Decided On :** Sep-04-1939

**Reported in :** AIR1940Mad58; (1939)2MLJ609a

**Appellant :** In Re: Ramaswami Chettiar

**Judgement :**

**Somayya, J.**

1. There was a mortgage decree against a third party and before the sale of the hypotheca, the petitioner's father and some others purchased the property 'mortgaged. They then executed the suit promissory note in satisfaction of the mortgage decree.

2. The petitioner claimed relief under explanation to Section 8 of Madras Act IV of 1938. The lower Court rejected his petition and this C.R.P. is filed against the said order.

3. The question is whether the case comes within the Explanation to Section 8.

The explanation runs thus:

Where a debt is renewed or included in a fresh document in favour of the same creditor.

4. The explanation speaks first of a renewal which is obviously by the same debtor. Then come the words 'or included in a fresh document'. This is obviously to provide for a case where a debtor instead of merely executing a new document for the exact sum owing under the previous one, takes a fresh loan, and executes the document both for the sum due under the original document and for the sum taken at the time of the new document. The juxtaposition of the words 'renewed' - 'included in a fresh document' leaves no room for doubt. Inclusion in a fresh document must be obviously by the same debtor.

5. In a case where B takes over a debt due by A, the document executed by him is not a 'fresh document', so far as he is concerned. He is executing a document for the first time. The old debt is extinguished and a new debt and a new debtor come into existence. Advantage is sought to be taken of the absence of the words 'by the same debtor' but the obvious meaning of the explanation is that where the debtor merely renews the debt or includes in a fresh document the sum due under the old document, the scaling down provision applies.

This Revision Petition is dismissed.

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