

**thenappa Chettiar Vs. Andiyappa Chettiar**

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**SooperKanoon Citation :** [sooperkanoon.com/788397](http://sooperkanoon.com/788397)

**Court :** Chennai

**Decided On :** Nov-09-1970

**Reported in :** AIR1971Mad290

**Judge :** Venkataraman and ;Krishnaswamy Reddy, JJ.

**Acts :** Stamp Act - Sections 2(22) and 35 - Schedule - Article 49; [Negotiable Instruments Act, 1881](#) - Sections 4, 5 and 19; Evidence Act - Sections 91

**Appeal No. :** Appeal No. 371 of 1966

**Appellant :** thenappa Chettiar

**Respondent :** Andiyappa Chettiar

**Judgement :**

1. This is an appeal by the plaintiff whose suit has been dismissed by the learned Subordinate Judge, Pudukottai, on a preliminary point that the suit is not maintainable. The allegations in the plaint are, briefly, that the plaintiff's father was running a money-lending business at Colombo under the name and style of A. S. (Original in Tamil omitted-Ed.) Moneylending Firm, that the defendant was an agent in that firm and was also having dealings of his own and was carrying on his business. On 16-6-1961, when the accounts of the defendant were taken, the sum owed by the defendant to the plaintiff's father's firm was settled at Rs. 15,000. The defendant agreed to pay the said debt after the expiry of two years, and, in view of the close relationship between the parties, a low rate of interest was fixed, namely,

two annas per Rs. 100 per month. to evidence the agreement he executed what the plaintiff styles as a 'voucher'. After the death of the plaintiff's father, the plaintiff became entitled to collect the debt and he, therefore, filed the suit on the original cause of action and consideration.

2. The defendant admits that he supervised the money-lending firm at Colombo carried on under the name and style of A. S. Money-lending firm till 1957, but he states that he never had any dealings with the said firm. The plaintiff's father was the elder sister's husband of the defendant and the defendant was under the control of the plaintiff's father. The plaintiff's father was not able to send money from Colombo to India. He had given instructions to the defendant to sent money from Ceylon in black market stealthily. When the defendant returned to India, the plaintiff's father was under the impression that the defendant could have misappropriated a portion of the black money, and, therefore, made him execute the document mentioned in the plaint. He contended further that the document was a promissory note not sufficiently stamped and therefore, a suit could not lie on the basis of the promissory note.

3. One of the issues framed was Issue No. 3 of the following effect:

"Is the suit as framed on original cause of action and transaction not maintainable?"

It is stated in the judgment of the learned Subordinate Judge that by consent of parties that issue was taken up for preliminary discussion. On Issue No. 3 as a preliminary issue, the learned Judge held that the document embodied the terms of the contract between the parties, that it was a promissory note insufficiently stamped, that it could not be admitted at all and that it was not open to the plaintiff to fall back on the original cause of action. He purported to follow the decision of the Full Bench in *Perumal Chettiar v. Kamakshiammal*, ILR (1938) Mad 933 = (AIR 1938 Mad 785 (FB)). In the result, he dismissed the suit. The plaintiff has preferred this appeal.

4. The relevant portion of the document may now be quoted: (original in Tamil omitted-Ed.)

It may thus be translated:

"I have already received Rs. 15000 from your Colombo A. S. shop for doing business of my own. I shall pay it after two years on demand by you with interest at two annas per month per Rs. 100 to you or to your order and receive back this promissory note."

It is stamped with revenue stamp of 25 p. (15 plus 10 p.). The first question which has to be considered is whether the instrument is a promissory note at all. There can be no doubt that it is a promissory note for the purpose of the Stamp Act. The definition of promissory note in Section 2(22) of the Stamp Act is:

"Promissory note' means a promissory note as defined by the [Negotiable Instruments Act, 1881](#).

It also includes a note promising the payment of any sum of money out of any particular fund which may or may not be available or upon any condition or contingency which may or may not be performed or happen."

Section 4 of the [Negotiable Instruments Act, 1881](#), defines promissory note thus:

"A 'promissory note' is an instrument in writing (not being a bank note or a currency note) containing an unconditional undertaking signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.

With this we have to read paragraph 2 of Section 5 of the Negotiable Instruments Act:

"A promise or order to pay is not 'condition' within the meaning of this section and Section 4, by reason of the time for payment of the amount or any installment thereof being expressed to be on the lapse of a certain period after the occurrence of a specified event which, according to the ordinary expectation of mankind, is certain to happen, although the time of its happening may be uncertain."

It will be clear from the above provision that, though the amount is payable only after two years, it cannot be said that the payment is conditional within the

meaning of Section 4. The document contains an unconditional undertaking. Therefore, it is a promissory note within the definition of the Negotiable Instruments Act. Therefore, it is also a promissory note under Section 2(22) of the Stamp ACT. For the purpose of duty Art. 49 of Schedule I of the Stamp Act is relevant. It reads:--

Description of instrument Proper stamp duty

1 2

49. Promissory note(as defined by S. 2(22))--

(a) When payable on demand--

(i) when the amount or value does not exceed Rs. 250... .. Ten naya paise .

(ii) when the amount or value exceeds Rs. 250 but does not exceed Rs. 1000. ... ..  
... .. Fifteen naya paise

(iii) in any other case... .. Twentyfive naya paise.

(b) When payable otherwise than on demand The same duty as a Bill of Exchange ( No. 13) for the same amount payable otherwise than on demand

It will be seen that the Article divides promissory note into two categories: (i) when payable on demand; and (ii) when payable otherwise than on demand. Only if it is payable on demand w5 paise stamp would be the proper stamp. If it is payable otherwise than on demand, the duty leviable would be that of a Bill of Exchange for Rs. 15000 and the promissory note would be insufficiently stamped. Under Section 35 of the Stamp Act, it cannot be validated by payment of the deficit duty or penalty, in view of the proviso thereto. If, therefore, the document falls under Art. 49(b), it would be totally inadmissible in evidence.

5. Now, to determine the question we have to fall back upon the provisions of the Negotiable Instruments Act. Section 19 is relevant:

"Instrument payable on demand: A promissory note or bill of exchange, in which no time for payment is specified, and a cheque are payable on demand." it will follow by necessary implication that, if time for payment is specified, it cannot be said to be payable o demand. In this case, a period of two years for payment is specified and hence it cannot be said to be payable on demand. This is also the view taken by Horwill J. in Alamelu Ammal v. Rangai Gounder, AIR 1945 Mad 42 = 1944-2 Mad LJ 180. The wording of the promissory note in that case was " I shall pay to you or to your order within two years the said sum". The learned Judge held that within the time of two years the promise could not enforce the debt and that, therefore, the promissory note was not one payable on demand. The learned Judge held that consequently the promissory note would be liable to stamp duty under Art. 49(b) of Schedule I to the Stamp Act, that is, the duty would be the same as on a bond. Hence it was insufficiently stamped. In our opinion, the decision is correct.

6. The only other decision brought to our notice on this point is that of Ramachandra a Iyer, J. (as he then was) in Muthu Gounder v. Perumayammal, , where it was held that the documents in that case were not promissory notes. The wording in the document was:

"I promise to pay you or your order after a period of two years on demand by you the principal together with interest the sum of Rs.....".

They were stamped with four anna revenue stamps. The learned Judge held that there had to be a demand after the period of two years that it amounts to a condition and that, therefore, there was no unconditional under taking to pay the amount, which is the essence of the definition of a promissory note. The learned Judge distinguished the decision of Horwill J. the learned Judge, however, has not made any reference to the second paragraph of Section 5 of the Negotiable instruments Act, which says that a promise or order to pay is not conditional within the meaning of Section 4 by reason of the time for payment of the amount or any installment thereof being expressed to be on the lapse of a certain period....etc. In fact, the learned Judge's reasoning is:--

"Now in the present case, the unconditional promise to pay, which would otherwise exist if the promisor had merely agreed to pay on demand, is qualified and made into a conditional one by making it payable after a period of two years."

This is opposed to the second paragraph of Section 5 of the Negotiable Instruments Act. Hence it would seem that the documents in that case also would be promissory notes, but not payable on demand, because the learned Judge himself points technical meaning under the Negotiable Instruments act, which means it is payable immediately but, where a document prescribes a time for payment, it cannot be one on demand. It is of interest to note that the learned Judge states that, if the document was to be held to be a promissory note, the parties were agreed that for the purpose of Art. 49 of the Act it would not be one payable on demand and, therefore, stamp would have to be paid under Clause (b) of Art. 49.

7. Thiru Gopalaswami Aiyangar has urged that clause (a) of Art. 49 of the Stamp Act will apply to the first portion of the definition of promissory note under Section 2(22) of the Stamp Act, namely, 'promissory note means a promissory note as defined by the [Negotiable Instruments Act, 1881](#)', and that clause (b) of Art. 49 will refer to the second portion of the definition in Section 2(22), namely, that it will include a note promising the payment of any sum of money out of any particular fund, etc. But we wish to observe that the classification in Art. 49 is not of the same pattern as the classification in the definition. Art. 49 divides promissory notes into two classes: (1) when payable on demand; and (2) when payable otherwise than on demand. Clause (a) will comprise only some of those promissory notes as defined in the Negotiable Instruments Act namely, those which are payable on demand, and clause (b) will include the rest. Thus, as defined in the Negotiable Instruments Act, if it is not payable on demand, will fall under clause (b) of Art. 49 of the Stamp Act though under the definition in Section 2(22), it will fall under the first part thereof. The idea underlying the classification in Art. 49 seems to be that if the promissory note is payable on demand, it is believed that it will be negotiated more freely like money and that is why a small stamp duty is levied.

8. Hence, we confirm the conclusion of the learned Subordinate Judge that Ex. A-1, is a promissory note payable otherwise than on demand, and, therefore, falls under clause (b) of Art. 49, of Sch. I to the Stamp Act, and there is not sufficient stamp. In view of the proviso to Section 35 of the Stamp Act. the document cannot be validated by payment of penalty and the document will be inadmissible for any purpose. But this does not conclude the matter, because the plaintiff will still be entitled to fall back on the original cause of action, namely, the prior indebtedness of the defendant.

9. The very Full Bench decisions in ILR (1938) Mad 933 = (AIR1938 Mad 785) referred to by the learned Subordinate Judge, clearly shows that the decision will not apply, where a promissory note has been given in respect of an antecedent debt. Leach. C. J. says:--

Before turning to examine the decisions of this court and certain of the other authorities to which reference has been made. I should point out that the court is not considering the case where a promissory note has been given in respect of an antecedent debt. It is well settled, both in England and in this country, that where a negotiable instrument is given in respect of an antecedent debt the creditor may sue on the debt and ignore the note. We are merely concerned here with the case where the note has been given at the time of the loan or in pursuance of the arrangement then made and embodies in full the terms of the contract."

It was only in such a case which was before them, the majority of the Full Bench held that the particular document being the embodiment of the bargain and being inadmissible for want of sufficient stamp Section 91, of the Evidence Act would preclude any other evidence of the bargain and the suit would not be maintainable. Here, however, the very document contains the following crucial words: "I have already received Rs. 15000 from your shop for conducting my own business." In other words, the document itself shows the prior indebtedness of the defendant, and the plaintiff could fall back upon that original cause of action. Thiru M. S. Venkatarama Iyer, the learned counsel for the respondent-defendant, argued that the prior receipt of Rs. 15000 would not necessarily make it a debt and that it became a debt only on the execution of the document. We are unable to agree,

because the recitals in the document itself show that the debt had sprung up even at an anterior point of time.

10. The dismissal of the suit on the preliminary ground is wrong and it is set aside. Though it would appear from the judgment of the learned Subordinate Judge that the defendant took the stand, that, if he failed on the preliminary point, he had no objection to a decree being passed, we do not think that it correctly represents what he stated. In fairness to him, the matter will have to be tried on the merits, because his case is that he owed nothing to the plaintiff's father and that the promissory note was extracted from him more or less by coercion and on suspicion.

11. We accordingly set aside the judgment and decree of the learned Sub-ordinate Judge and remand the suit for trial on the remaining issues. The appellant will get refund of the court-fee paid on the memorandum of appeal. The parties will bear their own costs in this court.

12. Appeal allowed.

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