

Raman Vs. Vairavan

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Court : Chennai

Decided On : Oct-23-1883

Reported in : (1883)ILR7Mad392

Judge : Kernan and ;Hutchins, JJ.

Appellant : Raman

Respondent : Vairavan

Judgement :

Kernan and Hutchins, JJ.

1. This is a suit between two Nattukottai Chetti families. Both were trading in 1879 at Colombo through agents, and the plaintiff seeks to, recover the amount due by the defendants on the account of dealings between them at Colombo.

2. In May 1879, a balance was found due by the defendants, and in part payment thereof, their agent granted a hundi on Penang for 2,500 dollars. Only 500 dollars were paid, but on the 20th September 1879, the present appellant, second defendant, wrote (D) to his agent at Penang admitting his liability and directing payment to be made.

3. Early in 1880, the plaintiff's agent sued the defendants' agent at Colombo, but the suit was dismissed on the ground that the defendants, and not their agent,

were liable. The record of this suit has not been filed, but only the plaintiff's agent's replication (IV), in which he denied that the money was lent to defendants' firm V.E.M.V. and that the (then) defendant endorsed the same as agent of the said firm; and went on to contend that the defendants' agent was personally liable. When examined as a witness in this case, the plaintiff's agent explained that he had sued defendants' agent, because the agent had promised to pay the balance himself and because he was informed that, under the law in Ceylon, he could not sue both the agent and his principal.

4. From the evidence of the defendants' agent as plaintiff's first witness, it appears, that two suits were brought against him; that one was dismissed on the ground that he was not personally liable, but his principal; that the other was thereupon withdrawn. It does not appear in which of the two suits the promissory note A 3 for Rs. 2,000, or any other particular item of the present claim, was included.

5. The Subordinate Judge found on the second and third issues that the dealings were carried on with plaintiff on the defendants' behalf and that their agent had authority to bind them. The correctness of these findings has not been disputed before us, but only the following three questions are raised in this appeal:

1st. Whether the plaintiff's suit is barred by the proceedings of the plaintiff in the Court of Colombo, brought by the plaintiff's agent, Vellayan, against Subramanian, who was the defendants' agent, but who was sued in his individual capacity to establish against him a personal liability?

2nd. Whether the plaintiff's action as to the balance due under the hundi B is saved from the bar of limitation for three years from May 1879 by the acknowledgment of the defendants, contained in the letter D, dated 20th September 1879?

3rd. Whether there was evidence to justify the finding of the Judge that Rs. 2,000 were paid by the plaintiff for the use of the defendants at their request, within three years before the filing of this suit?

6. The first point was argued as a matter of law rather than fact. In the Colombo suits, or at all events in one of them, the plaintiff alleged that the contract was with Subramaniyani personally, and not as agent. The Court negatived this allegation, holding that plaintiff gave credit to the defendants in this case, who were the known principals, and the suit was dismissed. It was contended, however, that the Colombo suit was conclusive evidence of an election to give credit to the agent, and for this position *Priestly v. Fernie* 3 H. & C. 977 : 34 L.J. 172 was relied on as an authority. It was held in that case that when the creditor elects to sue the agent and obtains judgment against him, the principal cannot be sued for the same debt by the creditor. The principle transit in rem judicatam applies. The question here is, whether, when the plaintiff's suit against the agent is dismissed, a suit may be brought against the principal. The principle transit in rem judicatam does not apply, as there is no judgment against the agent on the debt.

7. The decision in *Priestly v. Fernie* 3 H. & C. 977 : 34 L.J. 172 also proceeded on the principle that, if at the time of the sale of goods or advance to an agent the seller or person advancing the money knows, not only that the person who is nominally dealing with him is not principal but agent, but also knows who the principal really is, and notwithstanding all that knowledge chooses to make the agent his debtor, dealing with him and him alone, then the seller or person making the advances cannot turn round and charge the principal, having once made his election at a time when he had the power of choosing between one and the other. *Thompson v. Davenport* 9 B. & C. 78. In *Priestly v. Fernie* 3 H. & C. 977 : 34 L.J. 172 it was held that the judgment against the agent, or rather the two successive judgments, for the agent was afterwards sued in England on the judgment obtained in Melbourne, constituted a conclusive election. This was pointed out in *Curtis v. Williamson* L.R. 10 Q.B. 57 where it was held that nothing short of a judgment against the agent would, in point of law, amount to a binding election to abandon all right to take proceedings against the principal.

8. The decision in the Colombo Court shows that the plaintiff did not give exclusive credit to Subramanian, the agent, and on that ground plaintiff's action was defeated. In fact the Court found that plaintiff had made his election, if at all, to give exclusive credit to the defendants in this case; and the Subordinate Judge's

finding on the third issue is to the same effect and has not been disputed. There appears no doubt that, at the time of the dealings, the plaintiff knew that Subramaniyan was only an agent, and that the defendants in this case were his principals. If the plaintiff had, with this knowledge, given exclusive credit to Subramaniyan, he could not after that sue the defendants. But this the plaintiff did not do. If the plaintiff in this case cannot succeed against the principals by reason of the Colombo suit, then plaintiff has no remedy to recover the debt due to him. Apart from the other questions in the case, it is found that the defendants are justly indebted to the plaintiff for the amount claimed. We hold that the Colombo suit against the agent is no bar to the present suit against the principals.

9. Next, with regard to the second question. In May 1879 there was a balance of more than Rs. 3,500 due by defendants to plaintiff. Subramaniyan then granted the hundi B for 2,000 dollars, of which 500 dollars only were paid. This hundi was drawn on defendants' agent at Penang. After the part-payment of 500 dollars, it seems to have been returned to Subramaniyan at Colombo. On the 20th September 1879 the appellant wrote the letter D to the agent at Penang, advising him that he had ordered it to be again transmitted to Penang and stating that, at plaintiff's request, he had written this letter, and that the balance due on the hundi should be paid on presentation. The Subordinate Judge held that this was a sufficient acknowledgment of liability in regard to Rs. 3,500, less the 500 dollars which had been paid.

10. It is admitted that the letter is an acknowledgment sufficient to give a new period of limitation of three years from the date thereof in respect of the demand on the hundi. But the hundi is not sued on, though the consideration for it is. The property for which the hundi was given was part of a debt due from the defendants to the plaintiff, which debt was not then barred by limitation. As the plaintiff was the holder of the hundi on which defendants were liable, and was the person to whom the consideration for the hundi was payable, we think that, on a reasonable construction of Section 19 of the Limitation Act, the letter is an acknowledgment of liability for the debt due as well on the account as on the hundi.

11. The third question raises no difficulty, as the payment by the plaintiff of Rs. 2,000 on the 28th of August in discharge of a promissory note endorsed by the plaintiff for the accommodation of the defendants, is clearly proved. The appellant (defendant) says that no particulars of this sum or of the other sums sued for were given. But the transaction is clearly described in the account filed by the plaintiff, and it was open to the appellant to require plaintiff to give particulars, if he was not satisfied with those already furnished, but he did not do so.

12. The result is that the appeal has failed on each of the points raised, and must be dismissed with costs.

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