Murugappa Chetti Vs. Ramanathan Chetti

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Court : Chennai

Decided On : Oct-18-1934

Reported in : AIR1935Mad734; 157Ind.Cas.274

Appellant : Murugappa Chetti

Respondent : Ramanathan Chetti

Judgement :

Stone, J.

1. This is a claim by the plaintiff, a Nattukottai Chetcy money lender, against nine defendants on a promissory note. Defendant 1 is the maker of the promissory note. Defendants 2, 3 and 4 are his sons. Defendant 5 is a brother and defendants 6 to 9 are defendant l's nephews. The issues as originally framed, despite the facts that in para 7 of the written statement of defendant 2 the plea of limitation is raised, do not raise the question of limitation at all. The learned Subordinate Judge as regards issue 2 and issue 4 amends them both. Issue 2 as it stood before his judgment was delivered is as follows:

Did defendant and 5 become divided from the other members of defendant's family as alleged by defendant 2 and defendants 5 to 9?

2. That is amended by adding, Are defendants 6 to 9 divided from the other defendants'? No question arises on this point before us. The fourth issue stood as

follows:

Did he (i.e. defendant 1) borrow the amount for which he executed it for any necessity or benefit of that family or that business?

3. That was amended in the course of the judgment as follows:

Did he execute the suit promissory note for an amount which he had borrowed for any necessity or benefit of that family or that business. Was the plaintiff's claim to recover it time barred when he gave or sent to plaintiff the letter of 10th November 1926, and was it not competent to him as manager of the defendant's family to give or send that letter to plaintiff for a barred debt

4. There is nothing to show from the B Diary or the records in this case that that amendment was ever asked for or hinted at in the course of the suit and we think that it is a matter for adverse comment that an issue should be vitally altered in the course of judgment. It is obvious that so to do may entirely alter the complexion of the case and prejudice the side who would presumably lead evidence on the point in issue had he known that the issue was in that form. However we are proceeding in the course of this appeal on the basis that the amendment is made and it becomes necessary therefore to consider whether on that basis the defence of limitation can be supported. Had we come to a conclusion on this question of limitation adverse to the plaintiff we should have considered it necessary to order a retrial at least of this issue. The learned trial Judge has found all the facts in favour of the plaintiff excepting this vital fact of limitation newly introduced as we have observed in the course of this judgment, and the argument runs as follows : The pronote was executed on 26th August 1924. The plaint was filed on 24th August 1927, and of course no question of limitation arises as regards that. But it is said that as regards, at any rate, defendants 6 to 9 and 5 they can be only made liable on this pronote if the pronote which was made by the manager of the joint Hindu family was in consideration of a non-barred debt. Therefore it is said if the debt in respect of which this promissory note was given was, at the date the note was made, a barred debt, then they are not liable.

5. As regards the sons it is also said they are not liable. But we think that as regards them in any event they are fixed with liability under the authority of Narayanaswami Chetty v. Samidas Mudali (1883) 6 Mad. 293. So far as the main point is concerned, it arises on the facts of this case as follows: Defendant 1 had with the plaintiff a transaction. If that transaction was one of loan it falls within Article 59, Limitation Act. If, on the other hand, the defendant was a banker and the plaintiff had deposited with him money payable on demand then it falls under Article 60. The words of the two relevant articles are as follows:

Article 59. For money lent under an agreement that it shall be payable on demand. Period three years, Date. When the Joan is made.

Article 60. For money deposited under an agreement that it shall be payable on demand, including money of a customer in the hands of his banker so payable. Period three years. Date. When the demand is made.

6. Now the parties came to an arrangement in 1910 whereby the plaintiff paid to the defendant Rs. 5000 on certain terms. That course of business continued uninterruptedly until at any rate September 1921. Thereafter there is some evidence that the money was demanded. It was not paid. Then a promissory note was given and that promissory note is now sued on. If the transaction is in its essence a loan by the plaintiff to the defendant payable on demand, then it is said that the claim was barred at the time the note was given. If on the other hand it is a deposit by a customer with a banker payable on demand it was not barred. Which it is depends almost entirely on the true construction of Ex. 15-1, which is in the following terms: Defendant 1 is speaking:

We have credited to your account Rs. 4,500 on 6th, Rs. 500 on 27th, amounting in all to Rupees 5,000. As agreed between us the said amount of Rs. 500 is credited for 12 months' thavanai, the rate of interest being one anna less the current new rate. So the said amount of Rs. 5,000 and interest will be paid to your order in twelve months' thavanai.

7. Thereafter numerous accounts were given by the defendant to the plaintiff from which it is apparent that within the year no repayments were made, but after the

year demands were made and money was paid. So that the original Rs. 5,000 by 1st of October 1911, after taking into account credits in respect of interest had been reduced to Rs. 3576. That sum we find becoming larger, how it is not apparent, because there is a gap in this statement between 1st October 1911 and 2nd April 1920. This was might well have been closed had the plaintiff been aware that the issues were going to be amended. But we find ill increasing to Rs. 3,664-5-3 by 1st September 1921. First of all it should be observed that in accordance with Annamalai Chetti v. Annamlai Chetti 1919 Mad. 146, if there is no evidence whatever as to the terms upon which a transaction of this nature is made with a Nattukottai Chetty there is a presumption that the Chetty is in the position of a banker and the person transacting business with him is in the position of a customer and that account is on the demand basis.

8. It is said however that in the circumstances of this case there is no room whatever for a presumption because the presumption can only be raised where there is no evidence as to the terms of the contract between the parties, and broadly speaking we agree with that contention though it is subject to an exception which will be mentioned. Here there is evidence as to the terms and Ex B-19 contains those terms. We think that on the true construction of that document in the most favourable sense to the defendant it has the following meaning : The plaintiff is depositing with defendant 1 as banker a sum of Rs. 5,000 for a fixed period of one year, thereafter that deposit to be repaid to the plaintiff. We are further of the opinion that on the true construction of that document and giving value to the words 'to your order' it was thereby agreed that after the year the deposit with interest was payable on demand. But if we are wrong as to this, then we have a document and a contract which leaves it entirely at large as to what is to happen after the year; and where matters are left entirely at large by the terms of the contract so that the vital term is left completely indefinite, then it does not become proper to consider the presumption mentioned in Annamalai Chetti v. Annamlai Chetti 1919 Mad. 146, and accordingly even on that construction of this document we should arrive at the conclusion that the agreement between the parties was that after the year this deposit was to be payable on demand. That being the position the question arises whether Article 60 applies only to deposits made by a customer with a banker where the money is payable on demand from

the beginning or whether Article 60 also applies where the money is payable on demand after the termination of a fixed period. The matter is directly covered by the Bench decision of this High Court reported in Chellappa Chetty v. Subramania Chetty 1919 Mad. 825 where the then Chief Justice Sir John Wallis at p. 223 says as follows:

Supposing that the agreement was that the money should be deposited for six thavanaia and not repayable until the end of six thavanais and thereafter it should remain on deposit payable on demand, I think that that would come within the terms of Article 60, Limitation Act, and I need only refer to what I had already said with regard to the history and meaning in Balakrishnadu v. Narayanaswami Chetty 1914 Mad. 51.

9. We observe in passing that in that case Sir John Wallis expressly declined to decide the case in relation to Article 59 or Article 60, see his remarks at p. 179. The other learned Judge that formed the Bench that determined Chellappa Chetty v. Subramania Chetty 1919 Mad. 825, was Seshagiri Iyer, J and at p. 224 he observes:

Even supposing that the only possible conclusion upon the evidence is as spoken to by defendant 2 himself that there was an agreement that the money should remain with the bank for a year certain, (that is, 6 thavanais of two months each) and that it should be drawn out thereafter on demand, I entirely agree with the learned Chief Justice that Article 60, Limitation Act, is not made inapplicable by that fact.

10. We respectfully agree with those observations and it follows that this is a case that is covered by Article 60 and not by Article 59. That being so, and no demand having been made earlier than 3 years from the date of the suit note the suit note was executed at a time within the period of limitation and therefore it was executed in payment of a non-barred pre-existing debt. Being so executed by a manager of a joint Hindu family it was binding on the joint Hindu family and judgment should have bean given against not only defendant 1 and under the ruling in Narayanaswami v. Swami Das (1883) 6 Mad. 293, defendants 2, 3 and 4, but also against defendants 6 to 9 and 5. It is most unfortunate fact that this simple case

within a narrow compass for a sum of money due under a promissory note has taken so long to get decided. The plaint was filed so long ago as 1927 and it has been pending for a trifle over 7 years. The appeal accordingly succeeds with costs throughout. Interest at 6 per cent from the date of suit.