

Khadar Basha Vs. K. Manickam

Khadar Basha Vs. K. Manickam

SooperKanoon Citation : sooperkanoon.com/817522

Court : Chennai

Decided On : Mar-31-1969

Reported in : (1970)2MLJ530

Appellant : Khadar Basha

Respondent : K. Manickam

Judgement :

ORDER

S. Ganesan, J.

1. This revision petition is directed against the decree and judgment of of the District Munsif, Erode in S.C.S. No. 532 of 1967. On 25th March, 1967, the petitioner herein filed the suit on the foot of a promissory note dated 30th March, 1964, and it was stated in the original plaint that the respondent-defendant took a loan of Rs. 300 from the petitioner and executed a promissory note on 30th March, 1964, promising to pay back the principal and interest on demand, and, in the cause of action column, it was merely stated that the cause of action arose on the date in question in a village within the jurisdiction of the Court. On 30th March, 1967, the office returned the plaint with a query how the suit was maintainable on an insufficiently stamped promissory note. On 13th April, 1967, the plaint was re-presented with the following endorsement: ' As the document is insufficiently stamped, this suit is filed on the original cause of action.'

2. No plea of limitation was taken in the written statement and it was merely alleged that no money was actually borrowed under the promissory note, that the respondent-defendant took on lease thatched shed of the petitioner on 30th March, 1964, at a monthly rent of Rs. 21 and paid an advance of Rs. 300 on that date and that the promissory note was executed in order that the petitioner might recoup any damages that he might incur in case of any dispute over the lease of the shed.

3. The Judgment shows that, in the course of the trial, a preliminary point was raised, evidently by the respondent that the date of the cause of action for the suit was 30th March, 1964, and that, as the cause of action for the suit was changed only on 13th April, 1967, the suit was barred; and the learned trial Judge had found that,, as the plaint which was originally based on the promissory note was subsequently corrected as one based on the original loan only on 13th April, 1967, and as the plaint was filed with the present cause of action on 13th April, 1967, the suit was barred by time.

4. It is contended, by the learned Counsel for the petitioner, on the authority of *Maung Po Chein v. C.R.V.V.V. Chettiar* A.I.R. 1935 Rang. 282, that all the terms of the loan are set out in the original plaint and that, as the only omission was in not praying for a decree based on the original contract of loan alternatively with a prayer for a decree based on the promissory note, no amendment was strictly necessary as the petitioner was entitled to succeed as on the original contract of loan itself. While accepting the principle enunciated in this decision, I am unable to say that the original plaint in this case contains all the terms of the loan. The only allegation in the original plaint regarding the loan is that the respondent took a loan of Rs. 300 from the petitioner on 30th March, 1964, and nothing more; and a reading of the said plaint shows that it was the insufficiently stamped promissory note which contained all the terms of the transaction, namely, the amount to be repaid, the rate of interest and the time of repayment, nor is there any allegation to the effect that the promissory note was taken only as a collateral security or as a conditional payment. I am therefore clear that this suit based on the original loan cannot succeed in view of the decision of a Full Bench of this Court in *Perumal Chettiar v. Kamaskhiammal* : AIR1938 Mad785 .

5. I am however clear that the order of dismissal cannot be supported. Admittedly the plaint had not been registered and numbered ; and normally corrections made in the plaint before that stage would date back to the original presentation of the plaint. In the second place, I am equally clear that, having permitted the petitioner to amend the plaint on 30th April, 1967, so as to rest the suit on the loan, it was not open to the trial Court to subsequently entertain the plea of limitation and dismiss the suit as time-barred.

6. It is true that, in cases where fresh properties or defendants are brought on record subsequent to the registration of the suit, the period of limitation in so far as those persons and properties are concerned, is reckoned only from the date and not from the date of original plaint. But then, the law is otherwise in the case of suits based originally on an insufficiently stamped promissory note and subsequently permitted to be amended to be one based on the original loan.

7. In *E.B. Commercial Bank Ltd. v. Surendra Narayan Sha* 39 C.W.N. 1235, the High Court in first appeal allowed an amendment of this kind and on such amendment decreed the claim, and this was in accordance with the rule that, in such circumstances, amendment may be allowed in special cases under Order 6, Rule 17, Civil Procedure Code where the defendant is not prejudiced ; and the Court acted on the following observations of Lord Buckmaster of the Privy Council in *Charandas v. Amirkhan* I.L.R.1921 Cal. 110 : L.R. 47 IndAp 255 : 39 M L J 195 :

Though the power of a Court to amend the plaint should not as a rule be exercised where its effect is to take away from a defendant a legal right which has accrued to him by lapse of time, yet there are cases, see for example, *Mohammed Zahoor Alt v. Rutta Koer* (1867) 11 M.I.A. 485, where such considerations are outweighed by special circumstances of the case.

8. *Derbyshire, C.J.*, who delivered the Judgment of the (Calcutta) Court was of opinion that the claim on the loan itself was not raised through some blundering on some lawyer's part and thereby the plaintiff's clear rights were jeopardised and that the defendants would not be prejudiced in the defence which was a total denial of the whole transaction.

9. In the Official A signee, Madras v. Kuppuswami Naidu A.I.R. 1936 Mad. 785, a Full Bench of this Court has held that, since the defendants (in that case) could not be prejudiced by allowing, an amendment of the plaint, except that it deprived them of the plea of limitation as regards the promissory note, the original debt could be sued upon irrespective of the promissory note and that it did not appear that the defendants could have any possible defence to that claim save the one sought, namely, discharge which had been negatived.

10. The law is therefore clear that it is open to a plaintiff to amend the plaint based on an insufficiently stamped promissory note in order to convert it into one based on the loan and the Court is bound, having allowed the amendment, to decree the claim, if it is otherwise in order, although on the date when the amendment was prayed for, the claim was time-barred.

11. These two cases clearly imply that, an amendment allowed under Order 6, Rule 17, Civil Procedure Code, in cases where the plaintiff seeks amendment of the plaint based on an insufficiently stamped promissory note into one based on the original loan, will relate back to the date of the presentation of the original plaint. In this case the trial Court should be deemed to have approved of the amendment of the plaint by registering it as a suit, after the petitioner represented the plaint on 13th April, 1967, with the amendment showing that the loan was taken in the morning, that the promissory note was executed in the evening on 30th March, 1964, as a security for the loan and that the cause of action is based on the loan.

12. In the result, the civil revision petition is allowed and the order of dismissal passed by the District Munsif in the suit S.C.S. No. 532 of 1967 is set aside. The suit will be restored to file and disposed of according to law on other issues. There will be no order as to costs.