

(1924) 10 MAD CK 0097
In the Madras High Court

Asirvada Nadan

APPELLANT

Vs

S. Vedamuthu Nadan

RESPONDENT

Date of Decision : 17-10-1924

Acts Referred:

Contract Act, 1872 — Section 25

Citation : AIR 1925 Mad 1147

Hon'ble Judges : Srinivasa Aiyangar, J

Bench : Division Bench

Judgement

Srinivasa Aiyangar, J.—This is a Civil Revision Petition by the plaintiff in a Small Cause suit from the decree of the Subordinate Judge of Tuticorin dismissing the action. The plaintiff's suit was that there was an oral settlement of account in 1915 in respect of a debt advanced by him to the defendant about four years previous thereto and that at the time of this settlement it was arranged that he should be put in possession of a piece of land belonging to the defendant for the purpose of his enjoying the land in lieu of the interest payable for the amount. Under the settlement a sum of Rs. 200 was, according to the plaintiff, agreed to be paid to the defendant. This suit being a Small Cause suit should be deemed to be based only on the personal covenant on the part of the defendant to pay the amount. The learned Subordinate Judge found that assuming : a promise to pay at the time of the settlement in the year 1915, there was no consideration for it because at that time the original debt had become barred. The promise to pay was not in writing as required by Section 25 of the Contract Act. It was an oral promise and there not being any consideration which has been proved for that promise, the covenant was not enforceable and the plaintiff could not, therefore, recover. The learned vakil for the petitioner has also argued that the settlement in 1915 would of itself give rise to a fresh cause of action to the plaintiff. He has argued that, as the plaintiff was in possession of the land, he was put in possession of by defendant, till very recently, the receipt of the profits of this land by the plaintiff would be the payment of interest as such within the meaning of Section 20 of the Limitation Act as was held in the case of Mylan v. Annavi

Madan (1906) 29 Mad. 234. It is, however, unnecessary to consider the question decided in that case because the settlement of the year 1915 could not in my view be held to be a fresh contract giving rise to fresh cause of action. The settlement in order to constitute a fresh cause of action in law must be a settlement of what is called a mutual current and open account; that is to say, a settlement in which both parties coming together set off their mutual rights and liabilities and arrive as a particular figure as the result of such set off. There is absolutely no evidence in this case of any such set off or mutual rights and liabilities. The transaction was unilateral consisting of the plaintiff lending the amount to the defendant. There is no evidence whatever of any debts or amounts due or payable by the defendant to the plaintiff. In those circumstances it cannot be possibly held that the settlement of 1915 was such a settlement as would give rise to a fresh cause of action to the plaintiff. If it were not such a settlement but an ordinary settlement in which the process of addition and subtraction, are gone through merely for the purpose of arriving at the amount due by one party to the other, there is no fresh contract or fresh cause of action; and for the purpose of affording a further starting point for limitation the law of limitation requires under Article 64 in the third column of it "The settlement should be in writing signed by the defendant or his agent duly authorized." Therefore, in either view, I consider that the learned Subordinate Judge was right in holding that as a money claim, the plaintiff's action was barred by limitation.

2. It is also possible no doubt to regard the allegation in the plaint as including a cause of action against the defendant on the ground that there was an agreement by the defendant to keep the plaintiff in possession of the property delivered to him at the time of settlement. If that transaction, which also is said to have been oral, was in any manner calculated to constitute the property as security for the debt, then the transaction, not having been embodied in a registered instrument, cannot be proved. If the transaction, however, did not create any security for the debt, but was merely a collateral agreement entered into between the parties for the purpose of entering into some agreement by which the interest accruing due on the amount should be paid off, then a breach of any such collateral agreement could only relegate the plaintiff to the remedy he had originally, namely, his right to recover the interest.

3. I, therefore, consider that the decree of the learned Subordinate Judge was right. The Civil Revision Petition is accordingly dismissed with costs.