

(1922) 11 MAD CK 0023
In the Madras High Court

Budavaram Narasimhulu Chetti

APPELLANT

Vs

Noota Ibbundrum Nagaram Varu by representative Revoor
Subbaroya Chetty

RESPONDENT

Date of Decision : 29-11-1922

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 8

Citation : (1923) 44 MLJ 240

Hon'ble Judges : Krishnan, J

Bench : Division Bench

Judgement

Krishnan, J.—This is an application to revise the decree of the District Munsif of Chittoor in Small Cause Suit No. 107 of 1921. The suit

was brought for a sum of Rs. 28-0-0 and interest thereon Rs. 9-10-0 in all for Rs. 37-10-0 alleged to be due on account by the defendants to the

Vysia community of Mogarala village in Chandragiri Taluk, as evidenced by a deed executed by the 1st defendant. It says ""On 3rd March 1918, I,

Budhavaram Narasimhulu Chetti said at the time of the death of Budhavaram Chengalroya Chetty that I would pay Rs. 28-0-0 to Mogarala

Nootayibandum Nagaramvaru as charity. Interest should be charged hereon at the rate of Re. 1-0-0 per cent per mensem. I shall pay the amount

of principal and interest thereon to the aforesaid Nootayibandam Nagaramvaru on 15-10-1918 "". There is clear evidence that the 1st defendant

did undertake to pay Rs. 28-0-0. and interest to the Vysia community of the village in question.

2. The main objection taken by the 1st defendant before me is that such a claim as this could not be enforced at all as no promise to pay any

money to a fluctuating body like the Vysia community of Mogarala is legally

enforceable. I may say at once that I do not look upon the document executed by the 1st defendant as a promissory note or negotiable instrument; it is really only a memorandum of what he orally promised to pay at the time of the death of the deceased. Therefore the question whether a promissory note can be executed in the name of a community does not arise for decision. The only question is whether a person can make himself liable to a community by agreeing to pay a certain sum of money to it.

The frame of the suit in the present case cannot be objected to, because leave was obtained by the plaintiff Subbaraya Chetti to sue on behalf of the Vysia community of Mogarala under Order 1, Rule 8, C.P.C. It has been held in several cases that an indefinite body like the Vysia community of Mogarala can own property; vide *Navroji Manekji Wadia v. Dastur Khursedji Man-cherji* I.L.R.(1903) 28 Bom. 20, *The Secretary of State for India v. Haibat Rao Hart* I.L.R(1903) . 28 Bom. 276, and *Periyava Nadar v. Velumuruga Nadar* (1921) 30 M.L.T. 47 (H.C), and the position has also been recognised by the Privy Council in *Idris v. Mrs. Jane Skinner* (1920) 56 I.C. 723, where a right of pre-emption was allowed to be enforced In favour of an indefinite body like the occupancy tenants in an estate in the Punjab.

3. The petitioner has cited some cases from the Allahabad Reports on the authority of which he contends that the present suit should be dismissed as improperly laid. The cases cited are *Yusuf Beg v. The Board of Foreign Missions of the Presbyterian Church of New York in America through the Revd. W. F. Johnson Principal Officer*, ILR (1894) . All .420, *Panchaiti Akhara etc., v. Garukuar* ILR (1897) All, 167, and *The Mahometan Association of Meerut v. Bakhshi Ram* I.L.R.(1884) All. 284. Now all these cases deal with suits which are brought in the name of a community or indefinite body of persons by some one individual or more without any authority being obtained by that individual or those individuals either under Order 1, Rule 8, CPC or by getting the body registered under the Societies' Registration Act or any other act, and it was held that such suits were not properly instituted. But these, decisions do not apply to the present case, as in this case leave has been obtained from the court by the plaintiff to sue on behalf of the community. The petitioner has also cited the case in *Maharaj Bahadur Singh v. Gandrai Singh* (1917) 2 Pat.

L.J. 323 That case does not seem to have any direct bearing on the present case. What was held there was that a right to hunt in a certain jungle

for a day in the year cannot be acquired as an easement by 20 years' enjoyment, u/s 26 of the Limitation Act of 1908, by the members of a tribe

such as the Son-thals or Gharwalis. It is not necessary to consider whether that is rightly decided, because here no such question is raised. The

only question here is whether a body like the Vysia community of Mogarala which I understand consists of a very few individuals can enter into a

contract to receive money from a third party. I have no doubt that as they can own property they can do so just as they can enter into contracts to

pay money for work done for them. I therefore overrule the first objection.

4. Another objection has been taken in this case, namely, that on the face of the document, Ex. A (1) the promise to pay is not supported by

consideration, because it was only intended as a charity as the document says. The District Munsif has considered this point and has found on the

evidence given in this case that although Ex. A speaks of the payment as a matter of charity, there was consideration for the payment in as much as

the members of the Vysia community of Mogara-la helped 1st defendant in carrying the corpse of the deceased brother and in having the

cremation of the dead body carried out and that instead of bargaining for payment to themselves they asked that payment should be made to the

community as a whole. I think the District Munsif is right in his view that this would form sufficient consideration for the promise to pay Rs. 28-0-0

to the community. It is not necessary that consideration should move from the person to whom the promise is made. The fact that the document

does not mention this is only a matter to be taken into consideration in weighing the evidence; it does not prevent such evidence as has been given

in this case from being given. This objection also fails.

5. As both the points taken in the Revision Petition fail, the Revision petition itself fails, and is dismissed with costs.