

(1973) 04 MAD CK 0039

In the Madras High Court

Case No : Civil Revision Petition No. 2837 of 1972 and C.M.P. 4115 of 1973

C.K. Kuppuramulu

APPELLANT

Vs

A. Varadarajulu

RESPONDENT

Date of Decision : 17-04-1973

Acts Referred:

Evidence Act, 1872 — Section 92

Citation : AIR 1973 Mad 479 : (1973) 86 LW 497 : (1973) 2 MLJ 108

Hon'ble Judges : Raghavan, J

Bench : Single Bench

Judgement

Raghavan, J.

1. Defendant is the petitioner. The suit is to recover the amount due under the promissory note dated 25-7-1968 executed by the defendant in favor of the plaintiff. The execution of the said promissory note is substantially admitted, but what is pleaded in the written statement is that by a subsequent agreement, the plaintiff undertook to account for the rents collected by him and also agreed to take into account the probable rent for the portion in his occupation, and if that is taken into account, nothing will be recoverable under the suit promissory note.

2. The plaintiff and the defendant have married sisters and the wives of the plaintiff and defendant lost their mother while they were young. While the plaintiff's wife was very young the case of the defendant is, that the plaintiff's wife was brought up by the defendant's wife that for the marriage several presents were given by the defendant and his wife, that for the confinement of the plaintiff's wife defendant and his wife spent moneys that the eldest child of the plaintiff is a polio patient that for the medical expenses considerable amounts were spent and if these amounts were taken into account, it will be found that the defendant had spent more than Rs. 4,500 that after the father-in-law of the plaintiff and defendant died on 7-5-1970, misunderstandings arose and it was agreed that the defendant need not pay the sum due under the promissory note, now sued on to which the plaintiff agreed, but contrary to the said arrangement

the present suit is filed. The other defenses put forward are that the promissory note is barred by limitation, and that in any event the promissory note was executed at Erode and not at Coimbatore and that the court in Coimbatore has no jurisdiction to entertain the suit.

3. When the suit came up for trial the defendant sought to lead oral evidence regarding the subsequent arrangements pleaded in the written statement. The plaintiff objected to the evidence relating to the subsequent oral evidence on the ground that Section 92 of the Indian Evidence Act would be a bar amounting to a subsequent oral agreement varying the terms of the written document. viz., the promissory note, and that such evidence should be excluded. The learned Subordinate Judge upheld the objection and refused to allow the defendant to lead oral evidence and the subsequent agreement pleaded in the written statement and also the equitable set off. Against the said order of the learned Subordinate Judge the present revision petition the filed.

4. I am of opinion that the oral of the lower court is correct and the oral evidence varying the terms of the written contract, viz., the promissory note is inadmissible. But the learned counsel for the petitioner has filed C. M. P. 4115 of 1973 for leave to amend the written statement to the following effect-

"Defendant states that by reason of the said agreement between the parties hereto the amount due under the promissory note sued upon is fully discharged or in any event must be deemed to have been fully discharged and that no liability to pay any amount under the promissory note arises. Therefore, the defendant denies the liability to pay the amount claimed."

The question now is whether by reason of the application for amendment pleading a discharge of the amounts claimed in the suit on the promissory note oral evidence is admissible. That is to say that the plea put forward is one of discharge and not that it amounts to variation of the terms of the written contract. I am ordering the amendment and direct the matter to be remitted to the trial Court for considering this question in the light of the amended written statement. If the court below comes to the conclusion that substantially the plea is a variation of the terms of the written contract, then oral evidence will be excluded. But if the lower court comes to the conclusion that the plea now raised amounts to a complete discharge then perhaps oral evidence relating to discharge is admissible the matter will have to be gone into on that basis.

5. The matter is remitted to the trial Court and the trial Court will proceed with the suit in the light of the observations contained herein. There will be no order as to costs.

Order accordingly.