

(1912) 08 MAD CK 0053
In the Madras High Court

Cotha Krishnasawmy Chetty

APPELLANT

Vs

Sitaram Chetty and Another

RESPONDENT

Date of Decision : 05-08-1912

Acts Referred:

Evidence Act, 1872 — Section 115

Citation : 17 Ind. Cas. 513 : (1912) 23 MLJ 335

Judgement

1. This is a suit instituted by the plaintiff to recover certain instalments due on a bond which was executed in his favour by the defendants under an

award made in a dispute between the plaintiff and the defendants as to the share which he was entitled to in their business. Under the award the

defendants executed a promissory note, which is Exhibit A dated 12th December 1904, by which the sum of Rupees Thirty thousand (Rupees

30,000) only, interest at 9 per cent per annum was payable by monthly instalments of Rs. 1,000/-, the first instalment being due on the 15th

January 1905 and each instalment being payable with interest on the unpaid portion of the principal. If the amount of three instalments be allowed

to fall into arrears, the balance of principal and interest then due shall at once be recoverable without reference to the aforesaid provision for

instalment.

2. The defendants duly paid the instalments under the bond including the instalment of May 1906. But the cheque they sent was returned to them.

Then they wrote to the plaintiff a letter Exhibit C, dated 13th May 1906, enquiring the reasons for the refusal; and in answer to that, the plaintiff's

solicitors wrote Exhibit D of the 22nd May 1906, in which they said that the whole settlement was a fraud upon the plaintiff and that he was not

going to be bound by it. Again in June 1906 the defendants appear to have tendered the instalment for that month which was returned to them and

in July they wrote the letter--Exhibit E--mentioning the previous two instalments have been returned and asked whether the plaintiff ""would not in

future receive payments tendered for the instalments of the bond, so that we may cease to go through the farce of sending a cheque every month,

only to be returned."" To that letter they received no answer but in the following month a suit was filed by the plaintiff to set aside the whole award

and recover the share of the business to which he claimed to be entitled. That suit was eventually dismissed by a decree of the Appellate Court.

Then the plaintiff demanded the payment which was due to him under the instalment note but payment was refused; when the present suit was filed

the defendants pleaded that the claim had become barred by limitation. Now, the plaintiff contends in this suit, in the first place that the suit had not

become barred either wholly or in part, both of which contentions were urged by the defendants. Secondly, the plaintiff says that the defendants

are estopped from raising this contention of what passed in Court on the delivery of the judgment of the Appellate Court.

3. His Lordship after dealing with the questions of waiver and limitation which are not necessary for the purpose of this report proceeded as

follows as regards the question of estoppel. Ed.

4. I will now deal with the second part of the case whether the defendants are estopped by reason of what passed when the appellate court's

judgment was being delivered, from setting up this bar of limitation at all when judgment came to be delivered in the Appellate Court confirming the

decree of this Court dismissing the plaintiff's suit. His Vakil applied that at any rate, judgment might be given for him in that suit for the amount of

the unpaid instalments on the promissory note which is the subject of this suit. Now, the defendants might have, perhaps did, argue that it was not

open to the appellate court in that suit to grant any such relief and that no such relief ought to have been granted. They did not, however, stop

there. For the purpose of inducing the appellate court to reject that application they stated, through their Vakil, that, to use the words of the

judgment. ""The defendants do not deny their liability to pay and they submit they have been always ready and willing to pay but they contend that

no decree should be passed in this suit."" Now it was perfectly open to the defendants to submit that no decree should be passed in that suit against them on this instalment bond. But was it open to them; for the purpose of getting that application rejected, to state to the Court they did not deny their liability and had always been ready and willing to pay and then when they got application rejected upon that basis as soon as ever they were asked to pay to turn round and plead that before that application had been made the suit had become entirely barred. No precedent has been cited before me which exactly corresponds to this case; probably I cannot help thinking because, rarely, if ever, have defendants taken so ill-advised a course as they have taken in this case. It seems to me that it would be a lamentable thing if it were open to parties to play fast and loose with the court in this manner. It may very well be that if the defendants had made no admission at all, exactly the same result would have followed and the application would have been dismissed. But I am not the appellate court, I cannot put myself in their place. I cannot say what effect it might or might not have had upon the court if no such admission had been made. I know that the admission was made in the defendant's interest with regard to the application then before the Court and that they authorized the eminent Vakil who appeared for them to make it, though even that is challenged in the pleadings. One knows very well that Mr. Sundara Aiyar would never have made such an admission unless he had been authorized to make it. As I already said, I find myself in this position, that it is impossible for me to say whether the result of the application would have been the same if no such admission had been made.

5. Mr. Rat lachandara Aiyar endeavoured to bring this case within the wording of Section 115 of the Evidence Act. I confess I find some difficulty in following him. But that is, by no means an exhaustive exposition of the law of estoppel. And in such a case as this we can, with advantage, I think, refer to the very learned and authoritative treatise of Mr. Bigelow, a high authority not only, in this in other branches of law. In his treatise on the Law of Estoppel, I find that he does not refer to any case precisely like this, because, as I am inclined to think happily, no such case could be found where parties had gone back in this unblushing way on the admissions which they make to the Court,--yet, but the principles which he lays

down appear to me to cover the case and if any precedent is wanted I am prepared to make one. Now at page 117 Mr. Bigelow deals with what he calls ""Inconsistent Positions in Court"" and he says ""If parties in Court were permitted to assume inconsistent positions in the trial of their causes, the usefulness of Courts of Justice would in most cases be paralyzed; the coercive process of the law, available only between those who consented to its exercise, could be set at naught by all. But the rights of all men, honest and dishonest, are in the keeping of the Courts and consistency of proceeding is therefore required of all those who come or are brought before them.. It may accordingly be laid down as a broad proposition that one who, without mistake induced by the opposite party, has taken a particular position deliberately in the course of a litigation must act consistently with it; one cannot play fast and loose. Thus if counsel seeks to amend his pleadings and his request is granted upon a condition and the amendment made accordingly, he cannot thereafter object to the condition; supposing at all events that it was competent to him to accept it. Then he gives some other authority. He goes on to say that ""the principle under consideration will apply to another suit than the one in which the action was taken, where the second suit grows out of the judgment in the first. It is laid down that a defendant who obtains judgment upon an allegation, that a particular obstacle exists cannot in a subsequent suit based upon such allegation deny its truth."" It appears to me that it would be opposed to good conscience to allow defendants, who for the purpose of resisting an application against them have stated that they did not deny their liability and were always ready and willing to pay, to turn round immediately afterwards and allege that long before the date of their admission the suit had become barred by limitation. In my opinion there must be a finding for the plaintiff on the 3rd issue. ""Are the defendants estopped from denying their liability as alleged in paragraph 17--C of the plaint?"" The result is that there must be a judgment for the plaintiff.

6. There is another question as to interest, namely whether in view of the action of the plaintiff in returning the instalments, interest should run against him. It is not contended that there was anything that amounted to a true legal tender of these instalments and that being so I must decide, following a decision of my own in which the point was discussed in (C. Section 53 of 1907), that interest will continue to run. There must

therefore be a judgment for the plaintiff for the amount claimed with interest and costs.