(1941) 04 MAD CK 0004

In the Madras High Court

K.M. Rangiah Chettiar APPELLANT

Vs

Syed Karim Sahib RESPONDENT

Date of Decision : 16-04-1941

Acts Referred:
Transfer of Property Act, 1882 — Section 10(2)(ii), 55(4)(b)

Citation : AIR 1941 Mad 890 : (1941) 54 LW 310 : (1941) 2 MLJ 453

Hon'ble Judges : Wadsworth, J

Bench : Division Bench

Judgement

Wadsworth, J.—This civil revision petition arises out of a Small Cause suit on a promissory note executed by the first defendant in favour of

the second defendant who endorsed the note to the plaintiff. The present petitioner, who is the plaintiff, does not object to the decree passed

against the first defendant who has been given the benefit of Act IV of 1938. But as against the second defendant he contends that by reason of

Section 10 (2) (it) of Act IV of 1938, the liability of the second defendant--the endorser--is one in respect of which a charge is provided u/s 55

(4) (6) of the Transfer of Property Act and that therefore cannot be reduced. It was held in P.S. Poovanalingam Pillai Vs. Nagaratnam Pillai, that

the liability of the endorser of a promissory note is a personal liability incurred on the date of the endorsement. This Court has also held in a number

of cases that Section 10 (2) (ii) of Act IV of 1938 protects . any liability for which at its inception a charge was provided regardless of whether the

charge could actually have been enforced in the particular suit. It is contended for the respondent that when the promissory note was executed, it

had nothing to do with a sale of immovable property and therefore it was not a liability in respect of which at its inception a charge was provided.

This contention seems to me to rest on a confusion of ideas. When this promissory note was executed, the second defendant was not the debtor

but the creditor. His liability arose when in partial payment of the price of the sale of Immovable property he endorsed the promissory note to the

plaintiff. The effect of this endorsement was that he made himself liable for a promissory note debt in respect of which upto that date he was under

no liability at all; that is to say, on the date of the endorsement, the second defendant promised to pay the amount of the promissory note to the

plaintiff and at the inception of this liability, that is, the liability of the second defendant, there was a charge provided u/s 55(4)(b) of the Transfer of

Property Act. It follows therefore that Section 10 (2) (ii) of Act IV of 1938 excludes the liability of the second defendant from the operation of

Sections 8 and 9 of that Act.

2. The petition is therefore allowed with costs and the plaintiff will be given a decree as against the second defendant for the full amount claimed

and full costs in the Court below. The decree as against the first defendant is not modified.

