

(1932) 11 MAD CK 0026
In the Madras High Court

Kottamasu Venkataratnam

APPELLANT

Vs

Polisetty Butchayya and Others

RESPONDENT

Date of Decision : 01-11-1932

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 4

Citation : (1933) 37 LW 260 : (1933) 64 MLJ 204

Hon'ble Judges : Reilly, J;Cornish, J

Bench : Full Bench

Judgement

Reilly, J.—The learned Subordinate Judge has not thought it necessary to try this suit in full. He dismissed it as a result of his finding on issue 5, which he took up as a preliminary issue. That issue is:

Whether the suit document is a promissory note under the Stamp Act as contended by the defendants 3 and 4 and is inadmissible in evidence.

2. The learned Subordinate Judge has found that the document is a promissory note, and, as it has not been stamped, he has found it inadmissible in evidence. He has therefore dismissed the suit.

3. Plaintiff 2 has appealed, contending that the document on which the Plaintiffs sued is not a promissory note. The crucial part of the document appears to me to be contained in two sentences: "We shall pay to you the said sum together with interest thereon at the rate of 6 per cent, per annum from this date as soon as you settled the High Court affair. If it shall be ordered by the Court that the aforesaid amount should be deposited in Court, we shall deposit only the said amount in Court and pay to you the amount of interest accruing thereon till that date." I do not think it can be reasonably contended that a document so framed is a promissory note within Section 4 of the Negotiable Instruments Act. It is clear that it does not contain an unconditional promise to pay the amount in question to the payees or to their order or to the bearer of the document. The promise is to pay the amount to the payees unless the Court directs that the

amount shall be deposited in Court.

4. But it is contended for the Defendants that for the purpose of the Stamp Act "promissory note" includes more than that expression does as defined in the Negotiable Instruments Act. That is so. Section 2(22) of the Stamp Act runs:

"Promissory note" means a promissory note as defined by the Negotiable Instruments Act, 1881; it also includes a note promising the payment of any sum of money out of any particular fund, which may or may not be available, or upon any condition or contingency which may or may not be performed or happen.

5. It is contended for the Defendants that this document in question, though not a promissory note under the Negotiable Instruments Act, is a promissory note as the meaning of that term has been extended by Section 2(22) of the Stamp Act, because the executants promise to pay the amount to the payees upon a contingency which may or may not happen. But if we examine the language of the document carefully, I think it becomes clear that they promised to pay the amount to the payees, not if something happened or did not happen, but to pay to them unless something happened, unless the Court directed that the amount be deposited in Court. Grammatically I do not think that this document, properly interpreted, comes within the extended definition of "promissory note" as given in the Stamp Act. But there is something more than mere grammar in the matter, as Mr. Raghava Rao has urged. Section 2(22) of the Stamp Act extends the definition of "promissory note" as given in the Negotiable Instruments Act in the ways I have mentioned when quoting the sub-section in full. But it does not do away with, or in any way affect, one essential characteristic of a promissory note, that it must contain a promise to pay to some person or persons or to their order or to the bearer of the note. Here, quite apart from any question of a contingency happening or not happening, the promise is to pay in one event to the payees, in the other event to deposit the money in Court. Mr. Lakshmanan for the Defendants has contended that in the circumstances payment into Court to the credit of a particular suit, as is provided in one event in this document, would be the same thing as payment to the payees, because the payees were judgment-debtors, who were under liability in certain circumstances to pay the amount to the credit of a suit in which a decree had been made against them. In effect his argument is that in one event the executants had promised to pay the amount to the payees, in the other event to pay it into Court to the credit of a suit on their behalf, because it was money which in that event they would be liable to pay. It is quite true that the principal money concerned in this suit was on the pleadings money drawn by the Plaintiffs from Court on security being given that they would, if they lost a certain case in the High Court, pay it back into Court; and in that sense, if in the one event the executants of the document in question here had to deposit the amount in Court, they would be paying it into Court on behalf of the Plaintiffs (judgment-debtors). But it would be a very extraordinary and to my mind unpermissible extension of the definition of a promissory note in Section 4 of the Negotiable Instruments Act to say that it is

the same thing for the purpose of that definition to promise to pay an amount to a person or to his order and to promise to pay that amount on his behalf to some third person on the order of that third person, though it may be equally advantageous to the payee if either course is adopted. To pay money to a third party on behalf of the payee but on the third party's order cannot be treated as the same thing as, or equivalent to, payment to the payee or to his order which is the promise necessary in any note not payable to the bearer or to the payee only in order to bring it within the definition in Section 4 of the Negotiable Instruments Act. That element of a promissory note has not been extended or altered in any way by the extended definition of a promissory note given in Section 2(22) of the Stamp Act. In my opinion this document with which we are concerned is not a promissory note either within the meaning of the Negotiable Instruments Act or within the meaning of the Stamp Act. For these reasons, apart from other consideration in my opinion the finding of the learned Subordinate Judge was wrong.

6. I may mention that the learned Subordinate Judge thought that Section 13(2) of the Negotiable Instruments Act might be applicable to this case treating the document as one containing a promise to pay to alternative payees. But it is unnecessary to discuss that aspect of the matter beyond saying that his opinion is clearly wrong and that it has not been contended by Mr. Lakshmanan that that section is really applicable to this case. In my opinion therefore the decree of the learned Subordinate Judge should be set aside and the suit should be remanded to him for fresh trial, the Court-fee paid by the Appellant being refunded to him. Costs of this appeal should abide and follow the result.

Cornish, J.

7. I agree. In deciding whether the document is a promissory note, the question, as observed by Pollock, B. in *Mortgage Insurance Corporation v. Commissioners of Inland Revenue* (1887) 20 Q.B.D. 645, is what is the dominant, the substantial effect of the instrument. And in the determination of the question, two tests are applicable: (1) was it the intention of the parties that the instrument should be a promissory note, and (2) is the document a promissory note in the common acceptance of the term by businessmen? Taking first the second of these tests, I find it difficult to believe that the suit document would be regarded by businessmen as a promissory note. It is addressed to the plaintiffs and purports to be written by two of the defendants and to be signed by all the three defendants. It is in these terms:--"A sum of Rs. 17,000 has been in Civil Court deposited to your credit to the account of O.S. No. 31 of 1921 on the file of the Additional Sub-Court. To-day I have withdrawn that amount on furnishing security of our own property. We shall repay to you the said sum together with interest thereon at the rate of six per cent, per annum from this date as soon as you settle the High Court affairs. If it shall be ordered by the Court that the aforesaid amount should be deposited in Court, we shall deposit only the said amount in Court and pay to you the amount of interest accruing thereon till that

date." It is true that the document contains a statement that the defendants would repay the money. But a mere promise to pay is not sufficient to make the document a promissory note, if it appears from the context that the document was not intended to operate as a promissory note. In my opinion, the fair interpretation of the suit document is that it was intended to be a memorandum or recital of an agreement whereby the defendants were to repay the money withdrawn from Court to the plaintiff if he succeeded in his appeal, or to the Court if the Court so directed. I also think that the document fails when tried by the first test. It was neither the plaintiff's case nor the defendant's case on the pleadings that a promissory note was executed. The plaintiff's allegation was that the document in question was an acceptance by the defendants of an offer made by the plaintiff for use of money drawn from Court on which the defendants were to pay him interest. The defendants on their part deny the genuineness of the document, and they deny that they withdrew the money on loan from the plaintiff. Their case was that there was an agreement between the parties that the moneys withdrawn from Court should be lent by defendants for the mutual benefit of both parties. When therefore it was nobody's case that a promissory note was intended to be executed and when the document itself did not clearly reveal any such intention, I think the Lower Court was not justified in holding that the document was a promissory note.