
(1949) 10 MAD CK 0063

In the Madras High Court

Case No : Civil Revision Petition No"s. 1594 and 1595 of 1947

Manda Subbamma and Another

APPELLANT

Vs

Karri Venkanna

RESPONDENT

Date of Decision : 28-10-1949

Acts Referred:

Limitation Act, 1908 — Article 73, 80

Citation : AIR 1950 Mad 749

Hon'ble Judges : Basheer Ahmed Sayeed, J

Bench : Single Bench

Advocate : D. Narasaraju and K.B. Krishnamurthi, for the Appellant; K. Venkataramana, for the Respondent

Final Decision : Dismissed

Judgement

Basheer Ahmed Sayeed, J.—C. R. P. No. 1594 of 1947, arises out of the decision of the learned Subordinate Judge of Kakinada in S. C. S. No. 47 of 1947 and C. R. P. 1595 of 1947 arises out of the decision of the same learned Judge in S. C. S. No. 48 of 1947. S. C. S. No. 47 of 1947 was filed for recovery of a sum of Rs. 651-4-0 due under two promissory notes, one dated 27-7-1940 for Rs. 100 and the other dated 4-6-1942 for Rs. 400. S. C. S. No. 48 of 1947 was filed for the recovery of a sum of Rs. 707-12-0, on three promissory notes. Of these three promissory notes, only one is in question, viz. that executed on 27-4-1943 for a sum of Rs. 334.

2. Both these suits were filed on 31-1-1947, that is to say, long after the date on which the promissory notes had become time-barred prima facie. In order to save time the plaintiff, who is the same in both the suits, relied upon certain agreements of even date entered into by the defendants who are identical in both the suits, which he claimed had the effect of postponing the payment of the amount due under the promissory notes to a future date, which was very much later than the actual date on which the suit should have been filed if the promissory notes stood by themselves.

3. The defendants contended in the lower Court that the agreements relied upon by the plaintiff did not have the effect of postponing the date of payment of the amounts due under the promissory notes and that both the suits were barred. The learned Subordinate Judge agreed with the contention of the plaintiff and decreed both the suits. Against these decrees the present civil revision petitions have been filed by the defendants.

4. The main point that arises for consideration in the present petitions is whether Ex. P. 3 dated 4-6-1943 and Ex. P. 5 dated 27-4-1943 have the effect of saving the limitation. The petitioners contend that Article 73, Limitation Act governs the case and relied upon the decision in *Bhagwan Sahai v. Bhuria*, 140 I. C. 855 : A. I. R. 1933 Lah. 84 in Support of their contention. The petitioners contend further that no particular date is given in Ex. P. 3 and Ex. P. 5 for the purpose of payment of the promissory note amounts, that there has been no suit for any mortgage filed and that no date is also given as to when the usufructuary mortgage referred to in EX. P-8 and Ex. P-6 was to be redeemed. I have considered the decision of the Lahore High Court relied upon by the learned counsel for the petitioners and I am unable to agree with him that this case applies to the facts of the present petitions.

5. The learned counsel for the petitioners farther contends that the agreements comprised in Ex. P-3 and Ex. P-5 are not mutual or bilateral agreements so as to bind the plaintiff and restrain him from instituting the suit on the promissory notes and from this aspect he seeks to distinguish the present cases from those decided in *Annamalai Chetti v. Velayudha Nadar*, (1917) 30 M. L. J. 61 : A. I. R. 1917 Mad. 589 and *Ponnuswami Chetty and Another Vs. The Vellore Commercial Bank Ltd.* by Agent Kumaraswami Aiyar, . I am afraid I cannot agree with the learned counsel for the petitioners with his further contention.

6. Exhibit P-3 executed by the defendants on the same date as Ex. P-1 which is the promissory note the subject-matter in S. C. S. No. 47 of 1947, definitely recites that if the defendants do not discharge the debt relating to the promissory notes dated 4-6-1942 and 27-7-1940 before discharging the debt due under the usufructuary mortgage for a sum of Rs. 600 executed and delivered by the defendants in favour of the plaintiff previously on 16-6-1938, the defendants shall pay the entire amount due under the promissory notes along with the debt due under the mortgage document cause the payment endorsed thereon, take back the same and take delivery of possession of the lands under the usufructuary mortgage. Even so, Ex. P-5 executed by the defendants on 27-4-1943 recites that if before discharging the debt due under the usufructuary mortgage deed dated, 16-6-1938, the defendants do not pay to the mortgagee the debt relating to the promissory note executed on 27-4-1943 in favour of the mortgagee for Rs. 334, as also the sum of Rs. 400 being the principal amount relating to the promissory note executed and delivered on 4-6-1942 in favour of the mortgagee together with interest due thereon, i. e., the entire principal amount and interest due under the said two promissory

notes, the defendant shall at the time of discharging the debt due under the aforesaid mortgage deed pay in full the amounts relating to these notes and then take delivery of possession of the mortgaged lands etc. It has to be noticed that these two exhibits have been executed on the same date as the promissory notes covered by the two suits and they must be considered as part and parcel of the same transaction. Further, from a reading of the recitals in the said two exhibits, it is clear that the defendants undertake by means of these agreements to pay the amount in the first instance before the discharge of the usufructuary mortgage and in case they fail to do so they further undertake to discharge the promissory note amounts on the date of the redemption of the usufructuary mortgage. On a proper construction of the recitals in these agreements, one cannot come to any other conclusion than that the recitals in the two exhibits in question have the effect of postponing the time for the payment of the amounts due under the promissory notes. The plaintiff, who has accepted Exs. P-3 and P-5, will not be entitled to file the suits for the amounts due under the promissory notes in derogation of the undertaking and the assurance contained in the said Ex. P. 3 and P-5. It is no doubt possible to argue that the recitals in these two exhibits have the effect of postponing the payment of the amount due under the promissory notes to an indefinitely long date, viz. the dates when the defendants choose to redeem the usufructuary mortgage by payment of the mortgage amounts due thereunder; but, since the plaintiff has chosen to accept such an arrangement from the defendants, it should be considered to be a matter of his own choice and if he has agreed to wait so long he must be left to bear the consequences which naturally flow from such a choice. There is nothing inconsistent or illegal in the plaintiff agreeing to the arrangement contained in EXS. P-3 and P-5. Actually, as is averred in para. 5 of the plaints, the usufructuary mortgage appears to have been discharged on 17-1-1946 and this is not denied by the defendants in their written statements. Such being the case, the time for payment of the promissory notes got extended up to three years from the date of the discharge of the mortgage by virtue of the agreement under Ex. P-3 and P-5. But, actually the suits have been filed on 31-1-1947.

7. This view of the case, viz, that the recitals of Exs. P-3 and P-5 have the effect of saving limitation for the recovery of the amounts under the suit promissory notes, is supported by the decisions in Mahabir Prasad v. Durbijai Rai, 9 I. C. 482: 8 A. L. J. 233, Annamalai Chetti v. Veliyudha Nadar, (1917) 30 M. L. J. 51: A. I. R. 1917 Mad. 539 and Ponnuswami Chetty and Another Vs. The Vellore Commercial Bank Ltd. by Agent Kumaraswami Aiyar, . These decisions are clear authority for the proposition that agreements like those covered by Exs. P-3 and P-5 giving time for payment of the debts under the promissory notes which are payable on demand, have the effect of bringing the promissory notes under Article 80. Limitation Act, and saving the time for the purpose of limitation ;that is to say, by reason of the Exs. P-3 and P-5 the plaintiff became entitled to file suits within three years after the date of the discharge of the mortgage. Following the decisions referred to above. I hold that the learned Subordinate

Judge was right in decreeing the suits against the defendants as in nay view Article 80, Limitation Act applies to the case and not Article 73 as contended by the counsel for the petitioners.

8. The petitions have, therefore, to be dismissed with costs.