

(1936) 08 MAD CK 0004
In the Madras High Court

Marudakonar and Another

APPELLANT

Vs

Veerammal and Others

RESPONDENT

Date of Decision : 11-08-1936

Acts Referred:

Citation : 168 Ind. Cas. 402 : (1936) 44 LW 710 : (1937) 2 MLJ 17

Hon'ble Judges : Varadachariar, J;Mockett, J

Bench : Division Bench

Judgement

Varadachariar, J.—This is an appeal by the plaintiff who, as assignee of the rights of one Rangaswami Naidu under the suit mortgage bond

Ex. A, sued to recover from the defendants and from the mortgaged properties a sum of Rs. 8,000.

2. The plaint followed the lines suggested by the assignment deed, as to the nature of the plaintiff's claim. Rangaswami Naidu had been conducting

a kuri chit with 18 members and it was expected that the chit will run for 18 years. The first defendant Veerammal was one of the subscribers to

that chit and was holding 1 1/2 tickets in respect of which Rs. 750 was payable per annum at the rate of Rs. 500 per chit. In the first auction held

on November 11, 1921, the first defendant became the successful bidder. As per the rules of the kuri chit she was willing to bid at a discount of

more than Rs. 5,600 per ticket, with the result that out of the Rs. 9,000 which constituted the collection for the first year she received only Rs.

3,374 per chit or Rs. 5,0151 for the If chits. The balance which was given up by way of discount was of course distributed amongst all the

subscribers as profits of the chit. The chit fund rules provide that a successful bidder at an auction should receive his bid amount only after

executing a bond securing the payment of future instalments. The first defendant had apparently no property of her own, at any rate that is the basis

on which Ex. A proceeds. The other defendants are her sons and as they had the benefit of the amount which she received as the result of her bid,

they agreed that their properties might be given as security for the purpose of enabling Veerammal to draw the bid, amount. Hence Ex. A was

executed by Veerammal and five of her sons, the two youngest being minors represented by herself as guardian.

3. It is common ground that the chit continued to be conducted only for two more years. The auction that was to take place, in November, 1924,

did not take place because, it is alleged, a number of subscribers expressed themselves unable to pay their subscriptions. It is also said that they

suggested that the chit may be closed. It is accordingly recited in Ex. B and it has also been attempted to be proved as part of the plaintiff's case,

that all the subscribers met on January 9, 1925, and entered into an arrangement providing that the chit might be stopped and that the non-benefited

subscribers might be refunded the amounts so far subscribed by them and that the benefited or prize winning subscribers should refund with interest

the amounts drawn by them subject to their right to take back the amounts actually subscribed by them with a certain rate of interest. On the basis,

it was worked out in Ex. B that up to February 9, 1925, Veerammal was liable to pay to Rangaswami Naidu the chit-conductor a sum of Rs.

4,177-2-0. The amount was calculated up to February 9, because it is the plaintiff's case that on January 9 it was resolved that all parties should

be given one month's time to carry out the arrangement then arrived at.

4. After setting out the details above referred to and the process by which the amount to be paid was arrived at, Ex. B goes on to state:

Although I made demands for the payment of this sum of Rs. 4,177-2-0 and interest from the said date according to the resolutions passed in

meeting and according to the terms of the deed, the same was not paid. The amount of interest due on Rs. 4,177-2-0 as per terms, is Rs. 407-13-

0. Total amount of principal and interest is Rs. 4,584-15-0. For this sum of Rs. 4,584-15-0 I have assigned to you this day the said mortgage-

deed in respect of chit fund the said mortgage deed has been assigned to you. So you shall yourself recover with interest due as per terms of the

said deed, Rs. 4,177-2-0 being the amount of principal, and interest thereon tiff this date and subsequent interest thereon according to the terms of

the deed In future myself or my heirs shall have no right or claim whatever in respect of the said mortgage-deed.

5. I have set out the provisions of Ex. B because one of the questions raised in the course of the argument related to the nature of the rights

assigned to the plaintiff. After referring to the facts above set out, the plaint claims relief on the basis that as per the arrangement of January 9,

1925, the sum of Rs. 4,177-2 0 was due to the plaintiff a3 assignee and that interest was payable thereon as per the terms of Ex. A, including its

provisions relating to penal interest on default. The defendants contended that the story as to the meeting alleged to have taken place on January 9,

1925, and the"" arrangement said to have been come to on that day was not true and that in any event the first defendant was not a party to any

such arrangement.

6. It will be convenient to dispose of the issue relating to the alleged arrangement of January 9, 1925, at the outset. Rangaswami Naidu was not

examined as a witness in the case nor was any written evidence produced purporting to record what is said to have taken place on January

9,1925, though witness after witness on the plaintiffs side stated that the arrangement of that day was embodied in a resolution signed by the

persons present. I am not by any means satisfied with the explanation given on the plaintiff's side for the non-production of the written record of

that arrangement. The learned Subordinate Judge held that the oral evidence relating to the alleged meeting of January 9, 1925, was wholly

unsatisfactory and refused to believe it. It cannot be denied that the witnesses examined by the plaintiff have given very vague evidence, on the

point and are not even able to agree as to whether there was any notice convening such a meeting or whether any resolution at such a meeting was

then reduced to writing, as to the place where and the date on which the alleged meeting took place and as to whether the first defendant

Veerammal was present at that meeting, and if so, what part she took. In these circum-stances, no reason has been shown for disturbing the

conclusion of the learned Subordinate Judge that the alleged arrangement of January 9, 1925, has not been proved and much less that the first

defendant was party to any such arrangement. On this finding the case as put forward in the plaint must fail.

7. In the argument before this Court, the learned Counsel for the appellant has invited us to deal with the case on a different footing. He has argued

that on the defendant's case that no arrangement of the kind alleged by the plaintiff took place on January 9, 1925, the defendant's liability under

Ex. A would continue to subsist and that the plaintiff is entitled to a decree at least on the basis, even though the plaint has not been framed on

those lines. There can be very little doubt that the basis of the relief thus suggested is very different from the basis on which relief was claimed in the

plaint; and it is doubtful if an amendment on these lines could have been permitted at all, even if applied for at an early stage. Putting aside that

objection I should perhaps have tried to help the plaintiff if I had felt the way clear to uphold the contentions advanced by Mr. Sampath Ayyangar

on his behalf but having had the benefit of a full argument both from and from the learned Counsel for the respondents as to the construction of

Exs. A and B, I am not by any means satisfied that Mr. Sampath Ayyangar's claim that in the events that have happened the plaintiff is entitled to

relief on the basis of Ex. A is beyond doubt. It being admitted that from and after 1924 the chit had collapsed, Mr. Sampath Ayyangar argued that

whatever rights a subscriber might have as against the chit manager is on a breach of contract, that circumstance would not absolve a benefited

subscriber, that is, one who had already drawn his prize, from continuing to pay his future subscriptions. He contended that the terms of Ex. A are

absolute and not conditional upon the continuance of the chit and he maintained that even if an obligation should be assumed to have been cast

upon the chit manager to continue the chit for the full term, the non-fulfilment of that obligation must be held to be independent of the liability of the

benefited subscriber to pay the future instalments and that the continuance of the chit is not a condition precedent to the enforcement of the liability

of the benefited subscriber. On the other hand, Mr. Krishnaswami Aiyar maintained a security bond like Ex. A must be construed only in the light

of the chit rules and not as if there was an independent debt payable by instalments, that according to the true construction of the chit rules,

subscriptions have to be paid on the date when the chit is to be drawn and that if the chits are no longer to be drawn, because the chit has

collapsed, the obligation to pay the subscriptions as per the terms of the rules also comes to an end, whatever other liability might exist under the general law on the part of the benefited subscriber. It seems to me only reasonable to hold that in cases like the present the security bond must be interpreted in the light of the rules and the obligation undertaken by it is not repayment of the benefit already received as if it were a debt but the payment of future subscriptions whether the continuance of the chit was a condition precedent or not will not depend merely on the terms of this bond but must be decided with reference to the surrounding circumstances, including the rules-"of the chit fund. For this purpose, a distinction may well have to be drawn between cases in which benefited subscribers cease to have any share in the profits arising out of future drawings and cases in which they continue to share in such profits. The present case belongs to the latter category.

8. Trusting next to the terms of the assignment bond, there are even greater difficulties in the plaintiff's way. Reading it as a whole, it is clear that

the intention was to transfer the first defendant's supposed liability under the alleged arrangement of January 9. 1925, and the fact that the assignor

thought that the mortgage bond will be available to secure even the amount due under the arrangement will not justify the Court in reading into the

assignment deed an intention to assign the mortgage independently of the truth or otherwise of the alleged arrangement of 1925, A. further difficulty

arises from the provision in the chit fund rules that the conduct of the chit fund affairs cannot be assigned by the manager except with the consent of

all the subscribers. If as I have already stated the security given under Ex. A. is to be regarded only as a part of the chit fund scheme, it will be

scarcely fair to allow the manager to treat Ex. A as an independant transaction by itself and assign it over to a third party who will have nothing to

do with the conduct of the chit fund affairs. According to the ruling in *Subramania Iyer v. Subramania Aiyar* 40 M. 683 : 34 Ind. Cas. 859 : (1916)

1 M.W.N. 351 : 30 M.L.J. 615 the subscriber whose mortgage bond is thus transferred will be deprived of the opportunity of pleading as against

the assignee, claims he may have as against the assignor. So to hold, in a case like the present may in a large measure frustrate the purpose of the

provision against assignment of the chit fund affairs by the manager without the consent of the members.

9. There is again the fact that the mortgage bond in this case has been executed not by the subscriber Veerammal but by her sons, in respect of property belonging to them. The sons themselves are not parties to the chit fund arrangement; it cannot therefore be said that any liability that will fasten itself on general principles upon a benefited subscriber on the collapse of the chit fund will necessarily fasten itself to them as well. A reasonable interpretation of the mortgage bond as against them, can only be that it was intended to secure the first defendant's obligation on the assumption that the chit fund would run its normal course. In these circumstances I do not feel that it will be proper to allow the appellant at this stage to ask the Court to give him relief on a basis wholly different from the one on which the plaint was framed. The appeal accordingly fails and is dismissed with costs.

Mockett, J.

10. I agree. With regard to the question of amendment, I would only add this: As framed on the alleged resolution a suit must fail; as my learned brother pointed out it must be based solely on Ex. A. The appellant, therefore, is bound, as the learned Counsel says to ask for a decree for the amounts due in instalments. There is a complete answer to any application for amendment, i.e. Ex. 11. The appellant has never at any time suggested that the 1st defendant was not willing to pay the instalments. Exhibit 11 which is a letter to the assignee sent on her behalf clearly indicates that she in fact asked him to receive the instalments and expressed her willingness to pay them if the chit fund is to be continued. Under the circumstances I do not think that it would be in any way possible to allow an amendment which is not only changing the cause of action but is also not supported by the record.

11. For the reasons given by my learned brother, I agree that the appeal should be dismissed with costs.