
(1943) 04 MAD CK 0033
In the Madras High Court

Mogulluri Vira Raghavayya

APPELLANT

Vs

Kovaluri Sita Ramayya and Others

RESPONDENT

Date of Decision : 16-04-1943

Acts Referred:

Limitation Act, 1963 — Section 19

Citation : AIR 1944 Mad 57 : (1943) 56 LW 633 : (1943) 2 MLJ 456

Hon'ble Judges : Shahabuddin, J

Bench : Division Bench

Judgement

Shahabuddin, J.—The petitioner is the plaintiff in the Small Cause Suit No. 208 of 1941 on the file of the Subordinate Judge of Bezwada.

That suit was based on a promissory note executed by the defendants on 23rd April, 1937, for a sum of Rs. 1, 000 in favour of the Vijavada

National Bank,, Limited, Eezwada. This promissory note has been indorsed in favour of the plaintiff-petitioner for consideration. On the same date

there was with reference to this promissory note an agreement between the promisors and the promisee to the effect that the promisors should pay

the amount of the promissory note Rs. 1,000 in twenty-five monthly instalments of Rs. 40 each each instalment being payable by the 20th of every

month and that in default of paying any of the instalments the promisee, that is, the Bank should be at liberty to recover the whole amount due from

the promisors without waiting for the future instalments. The instalments due up to 19th June, 1937, were paid but the instalment due on 19th July,

1937, was not paid. There was, however, a payment of Rs. 5 towards the promissory note on 15th June, 1940. The payment of the instalments

was not endorsed on the promissory note, but the payment of Rs. 5 on 15th June, 1940, was indorsed on it. Subsequent to this payment, on 19th

July 1940, the Bank, that is, the promisee, indorsed the promissory note to the present petitioner in the following words

As the balance due under this promissory note, namely, Rs. 795 (in words Rupees seven hundred and ninety-five) has this day been received by us

from Mogulluri Lakshmayya Garu's son Veeraragha-vayya Garu, resident of Bezwada village, this document is transferred to the said

Veeraraghavayya Garu. authorising him or order to recover the balance of principal and interest due under this promissory note according to the

terms of the agreement under this promissory note.

2. The petitioner relies on the payment made on 15th June, 1940, as saving the suit from the bar of limitation. The suit was filed on 21st July, 1941.

Various points were raised in defence but it is not necessary to refer to all of them. The only two contentions that have been accepted by the

learned Subordinate Judge and which are pressed before me on behalf of the respondent are that there has been no transfer of the agreement

which postpones the right to sue on the promissory note and that even if it were assumed that the petitioner could take advantage of the agreement

the suit could be decreed only with regard to those instalments that were due within three years preceding the institution of the suit. The learned

Subordinate Judge dismissed the suit as he took the view that the petitioner could not avail himself of the agreement entered into between the

parties on the same date as the promissory note as there is no indorsement of a definite transfer of the agreement. With regard to the last clause in

Ex. P-I (b) authorising the petitioner to recover the balance according to the terms of the agreement, the learned Subordinate Judge expressed a

doubt whether those words could be considered as amounting to a transfer of the agreement. He therefore held that though the payment of Rs. 5

on 15th June, 1940, would amount to an acknowledgment u/s 19 of the Limitation Act it would not help the plaintiff-petitioner as it was made

beyond three years from the date of the promissory note.

3. It is contended on behalf of the petitioner that the agreement and the promissory note form parts of the same transaction, that therefore the

indorsement of the promissory note in favour of the petitioner by itself entitles him to take advantage of the agreement and that even if it were to be

considered that a separate assignment of the agreement was necessary, the last

words of the indorsement authorising the petitioner to collect the balance due in accordance with the terms of the agreement are sufficient to constitute a transfer of that agreement. In support of this contention reliance is placed on the decision of a Bench of this Court reported in Ponnuswami Chetti v. The Vellore Commercial Bank, Ltd. (1919) 38 M.L.J. 70 and a decision of the Allahabad High Court reported in Jwala Prasad v. Shama Charan I.L.R.(1919) All. 55. On behalf of the respondents it is conceded that the agreement and the promissory note are parts of the same transaction and that if the petitioner were the promisee, it would not be open to the respondents to raise the plea of limitation. But it is argued that inasmuch as the petitioner is the indorsee of the promissory note there should have been a regular assignment of the agreement in his favour and that the words of the indorsement relied on by the petitioner do not constitute a transfer. In my opinion the petition has to be allowed. From the date and language of the agreement it is very clear that the arrangement that the amount of the promissory note should be paid in instalments was not an independent transaction and that even when the promissory note was executed it was the intention of the parties that payment should be by instalments. In Ponnuswami Chetty v. The Vellore Commercial Bank, Ltd. (1919) 38 M.L.J. 70 it was held by this Court that the proper mode of looking at an agreement of this kind is to regard it as forming part of the same transaction as the promissory note and as fixing the period of payment at a later date than that of the transfer. In that case there was no agreement of the kind under consideration but only a note on a printed form by the Bank, the words being "" for six months thavanai,"" but that circumstance does not make any difference. The plaintiff in that case was no doubt the promisee and not the indorsee of the note but even that circumstance I do not think makes any difference, for if it is considered that the agreement and the promissory note are parts of the same transaction, the indorsement of the promissory note gives the indorsee the advantage which can be derived from the agreement. In the Allahabad case the plaintiff was the indorsee of the note and there also the agreement was that the amount of the promissory note should be recovered only after a certain date. It was held that limitation did not begin to run until the expiration of the period which was fixed in the agreement

as the period during which the amount could not be recovered. Even if it is considered that there should have been a transfer of the agreement, the words of the indorsement in my opinion are sufficient to transfer the interest of the promisee in this respect to the petitioner/plaintiff. In this view limitation in this case would run from 20th July, 1937, as it is admitted that the instalments due up to 19th June, 1937 were Paid. The suit was no doubt filed on 21st July, 1941, that is beyond three years from 20th July, 1937, which was the date on which the sixth instalment was due but, as already stated, there was a payment on 15th June, 1940, towards the promissory note which amounts to an acknowledgment of liability u/s 19 of the Limitation Act. The suit is therefore in time and is decreed with costs here and below.