

(1918) 11 MAD CK 0011
In the Madras High Court

Muthu Ar. St. Arunachallam Chettiar and Others	APPELLANT
Vs	
St. N. Narayanan Chettiar and Others	RESPONDENT

Date of Decision : 27-11-1918

Acts Referred:

Paper Currency Act, 1910 — Section 26

Citation : (1919) ILR (Mad) 470 : (1919) 19 LW 438 : (1919) 36 MLJ 301

Hon'ble Judges : Seshagiri Aiyar, J;Phillips, J

Bench : Full Bench

Judgement

Seshagiri Aiyar, J.—This is a suit by an endorsee of a hundi. On the 9th of April 1914, the 1st defendant drew the hundi--Ex.A--on a

Rangoon firm. At the top of the hundi, the 3rd defendant is described as the creditor and the 1st defendant as the debtor. The exact rendering of

the hundi omitting unnecessary portions is : "" the money with Rangoon current rate of interest should be paid on demand to the person who brings

this, by the Rangoon firm."" This was signed by the 1st defendant. Subsequently the 3rd defendant put his signature by way of endorsement.

Plaintiffs lent to the 1st defendant on the strength of the endorsement. Hence the suit. The defence was that the debt was discharged, and that as

the hundi offended against the provisions of the Paper Currency Act the suit is not maintainable. The court below held that the hundi was not

discharged. They came to the conclusion relying upon Chidambaram Chettiar v. Aiyasami Thevan ILR (1916) M. 585 that the suit should be

dismissed.

2. Mr. Venkatachariar in the second appeal tried to distinguish Chidambaram Chettiar v. Aiyasami Thevan ILR (1916) M. 585 from the present

case on the ground that the (sic) be regarded as not being made payable to the payee or bearer. I am unable to agree with him. The fact that the name of the payee is entered at the top of the hundi does not matter. In effect the hundi is drawn in favour of the 3rd defendant, and is made payable to bearer. I think that even without the endorsement of the 3rd defendant the hundi could have been presented for payment. Consequently it is obnoxious to Section 26 of the Paper Currency Act.

3. This case, however, is distinguishable from *Chidambaram Chettiar v. Aiyasami Thevan* ILR (1916) Mad 585 on another ground. In the first

place, I think that the document in question is covered by the proviso to the section. Under it, a draft can be made payable "" to bearer on demand

in respect of deposits of money in the hands of bankers and held at the credit and disposal of persons drawing such drafts."" Mr. Patanjali Sastri

contended that in the present instance the hundi should not be regarded as being drawn against a deposit of money because on the date of the

hundi there was no money in the Rangoon firm due to the 1st defendant. If we turn to the admissions of the 1st defendant contained in his

deposition it is clear that this contention must be overruled. He says : ""When the hundi was drawn on it I had no money in that firm but I had

written to Saigon where I had money to send it on to the said Rangoon firm, and so I drew the hundi on it."" ""My account with that firm as regards

that money is not yet closed. No money is due to me from that firm. The money I wanted to be sent to the Rangoon firm from Saigon was not sent.

After the suit hundi my money has gone to that firm and I have, drawn it."" Notwithstanding the evident intention of the, 1st defendant to tell as many

lies as would save him from liability the net import of this evidence is that he drew the hundi on money which he directed to be sent to the Rangoon

firm and that after drawing the hundi and before presentation for payment at Rangoon, he drew that money out. It is clear from this statement that

the case comes within the proviso, because the draft was drawn in respect of an intended deposit of money which was expected to be held by the

bankers at the credit and disposal of the 1st defendant. The money that apparently reached Rangoon firm would, but for the dishonest conduct of

the 1st defendant have been available to the plaintiffs. To hold otherwise would be to decide that when a customer draws a cheque or hundi on a

bank to which he has directed a payment to be made which would cover the draft is guilty of an offence. The object of the proviso is to enable

bona fide customers to operate on actual or intended deposits. There is nothing against public policy in so doing and I am of opinion that the hundi

was validly drawn on the bank. The subsequent misconduct of the 1st defendant in drawing out the money would not invalidate it.

4. There is another possible ground. It was not disputed that the plaintiff was a holder in due course. He had paid consideration for the hundi

before it had become payable, and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived

his title. Prima facie therefore the 3rd defendant is estopped from saying that the hundi which he endorsed is not a valid document. Under the

English Bills of Exchange Act the position of the plaintiffs would have been unassailable. Section 55, Clause 2(c) runs thus : "" The endorser of a bill

by endorsing it, is precluded from denying to his immediate or subsequent endorsee that the bill was at the time of his endorsement a valid and

subsisting bill and that he had then a good title thereto,"" This rule is an illustration of the principle of estoppel contained in Section 115 of the Indian

Evidence Act. The Indian enactment though passed a year previous to the passing of the English Bills of Exchange Act, was apparently modelled

on its provisions. In the chapter headed Special Rules of Evidence. Sections 120 and 122 refer respectively to estoppel against makers and

endorsers. Section 120 says that ""the maker or drawer of a Bill of Exchange shall not be permitted in a suit thereon by a holder in due course, to

deny the validity of the instrument as originally made or drawn."" This would undoubtedly make the 1st defendant liable. As regards the endorser :

Section 122 says. "" No indorse of a negotiable instrument shall, in a suit thereon by a subsequent holder, be permitted to deny the signature or

capacity to contract of any prior party to the instrument."" There are two noticeable differences between the two sections. One is that under the

latter section the liability is incurred not only to the holder in due course but to any holder. In the second place, the estoppel is only against denying

the signature or capacity of the prior party, and not against the validity of the instrument as originally made or drawn. There is no reason why there

should be this distinction between the position of a drawer of a Bill of Exchange or the maker of a promissory note and the endorser. The English

law does not recognise such a distinction, and I am inclined to think that it is a case of inadvertent omission rather than of deliberate departure from the English rule. If we turn to Section 36 of the Act we find that "every prior party to a negotiable instrument is liable thereon to a holder in due course until the instrument is duly satisfied." Section 38 says: "Each prior party is, in the absence of a contract to the contrary, liable thereon as a principal debtor in respect of each subsequent party." The illustration to the section shows that the drawer will be the principal debtor and endorser will be the surety. Ordinarily an estoppel which would apply against the principal party would also be available against the surety unless there are circumstances such as those mentioned in Section 40, etc. Byles in his book on Bills of Exchange (16th Edn.) says at page 180 "The endorser makes a similar contract, and promises in the same way to compensate the holder or any subsequent endorser; he is estopped from denying to a holder in due course the genuineness and regularity in all respects of the drawer's signature and all previous endorsements; is estopped from denying to his immediate and any subsequent endorsee, that the bill was at the time of his, endorsement, a valid and subsisting bill, and that he had a good title thereto." I fail to see why this salutary principle of estoppel should not be applied in India. However, having regard to the language of Section 122, I shall not base my decision on the rule of estoppel enunciated in Section 55(2)(c) of the English Act. The legislature should make this point clear. As I have held that the hundi is covered by the proviso to Section 26 of the Paper Currency Act, this appeal should be allowed and the decrees of the courts below reversed; plaintiff is entitled to a decree as prayed for and to costs in all the courts.

Phillips, J.

5. I agree that the suit document comes within the proviso to Section 26 of the Paper Currency Act. The finding that 1st defendant had no money with his bankers at the time he signed the hundi is not by itself sufficient to show that he was not operating on money deposited by him with his bankers. In fact he admits that he was so operating and had given instructions for a remittance to be made to his bankers to meet the suit hundi. The Subordinate Judge's conclusion from the mere fact that no money was actually in the banker's hands when the hundi was signed is not

warranted, for it would involve the proposition that a cheque drawn payable to bearer at a time when as a matter of fact the drawer had no balance at the bank is an offence against the Paper Currency Act, although the drawer believed he had sufficient funds in the bank or intended to put the bank in funds before the cheque, could be presented. The words of the proviso to Section 26 ""in respect of deposits of money in the hands of the bankers"" do not seem to me to warrant such a broad proposition. I therefore agree in the order proposed, and think it unnecessary to discuss the further question of estoppel.