

(1965) 12 MAD CK 0003

In the Madras High Court

Case No : C. R. P. No. 1131 of 1964 & Civil Revision Petition No. 1131 of 1964

Muthu Thevar

APPELLANT

Vs

Singaram represented by Power Agent Muthuswami

RESPONDENT

Date of Decision : 02-12-1965

Acts Referred:

Citation : (1967) ILR (Mad) 527

Hon'ble Judges : Veeraswami, J

Bench : Single Bench

Advocate : R. Gopalaswami Ayyangar, for the Appellant; T.K. Subramania Pillai, for the Respondent

Final Decision : Allowed

Judgement

Veeraswami, J.—The petitioner instituted a suit for recovery of certain money due to him from the respondent under two documents. The

petitioner's case was that they were promissory notes executed by the respondent in favour of one Meikken and he had taken an assignment

thereof The Court below accepted the contention of the respondent that the two documents were not promissory notes and were not admissible in

evidence as such. The documents were admittedly executed in Singapore. The objection to the admissibility was on the ground that to was not

properly stamped because as was urged by the respondent the documents created a charge and required to be stamped as such. The petition is to

revise the order of the Court below accepting the contention of the respondent. It is argued for the petitioner that the primary intention of the two

documents was to create promissory notes and it is only in default of payment on demand would the alternative arise involving a charge. The

further contention for the petitioner is that the alternative, having regard to the language in the two documents, did not effect a transfer of an interest

and, therefore, could not be regarded as creating a mortgage.

2. The two documents broadly speaking follow the same scheme. The first is dated 6th October, 1958 and recites with reference to a loan of Rs.

800 taken :

3. Then follows a further recital that in case it was not convenient for the promisor to pay the amount at Singapore, the promisee would be at

liberty to realise the amount from the properties of the promisor in India. The second document, which is dated 17th November 1960 used more

or less similar language in respect of a loan of Rs. 450 dollars equivalent to Rs. 698, but with this difference that in this document the promisor, as

it is stated, was at liberty to realise the amount in default of payment from certain properties in India; the survey numbers of which were specified.

4. It seems to me that reading each of the documents as a whole the petitioner's contention is correct. That the first part in the two documents is a

promissory note can admit of no doubt. There is a sum borrowed on interest with a promise to pay the same on demand. The question is whether

the default clause providing for a liberty to the promisee to realise the amount due under the document from properties in India, specified or not,

will convert the document into one of charge or mortgage. In my view, the default clauses in the two documents will not have that effect. In the first

place, it is not possible to accept the contention of the respondent that there was at all a charge created under the second part of the documents.

The language used, as it appears to me, is insufficient for the purpose. It is true that a charge need not necessarily involve a transfer of an interest in

immovable property. Even assuming that the latter part of the documents created a charge, that does not have the effect of altering the character of

the document. The parties intended primarily that the documents should be treated as promissory notes. The default clause might or might not

operate and does not qualify the nature of the promissory notes.

5. This view seems to receive support from *Subramania Iyer v. Muthuperumal Pillai* AIR 1965 TC 141, and *Ramachandra v. Sessa* 17 Mad. 85.

In the Travancore case, the language of the document was more or less similar to the one here under consideration. The document started by

describing it as promissory note and after the usual terms to pay on demand, it contained the following clause-

If I fail to pay as stated above myself and my properties shall be liable for the principal, interest and all damages consequent on such default.

6. The learned Judges construing the document held :

A clause in a promissory note that if the promisor fails to pay he and his properties shall be liable for the principal, interest and all damages

consequent on such default does not amount to an agreement making the liability of the promisor conditional. It merely shows what the

consequence of non-payment on demand would be and does not qualify the operation of the note. The intention of the parties is to make a

promissory note and not a bond or agreement.

7. Later in the same case they observed:

Judged by in the light of these decisions it is impossible to hold that Ex. B, is not a promissory note.

8. These observations equally apply to the construction of the documents before me. *Ramchandra v. Sessa* 17 Mad. 85, related to the

construction of document which stated :

On deposit of title deeds named herein below for value received by me I promise to pay three months after date Rs. 160 to A, B, or order.

9. The details of the title deeds were then given in the document. A Division Bench of this Court was of the view that the instrument was a

negotiable instrument notwithstanding the fact that the documents mentioned "In deposit of title-deeds." Said the Division Bench:

Deposit of title deeds as a collateral security does not make a promissory note the less a negotiable instrument, and it was so held in *Wise v.*

Charlton 4 Ad, and E. 790. Do the words "on deposit of title-deeds" import in the case before us more than that a collateral security is given also,

or in any way restrain the operation of the promissory note as a negotiable instrument? We do not think an allusion to the mere deposit of title

deeds makes the payment contingent or otherwise qualifies the operation of the document as a negotiable instrument.

Following the line of construction adopted in these two cases, I hold, differing from the Court below, that the two documents are promissory notes.

The petition is allowed, but with no costs.