

**(1958) 10 MAD CK 0033**

**In the Madras High Court**

**Case No : O.S. Appeal No. 1 of 1954**

P.N. Venkatasubramania Ayyar

APPELLANT

Vs

K.V. Srinivasa Ayyangar and Others

RESPONDENT

**Date of Decision : 10-10-1958**

**Acts Referred:**

Bankers Books Evidence Act, 1891 — Section 4, 5  
Tamil Nadu Agriculturists Relief Act, 1938 — Section 8

**Citation : AIR 1959 Mad 445 : (1959) 72 LW 316 : (1959) 2 MLJ 173(1)**

**Hon'ble Judges : P.V. Rajamannar, C.J;Ganapatia Pillai, J**

**Bench : Division Bench**

**Advocate : T.R. Sangameswaran, for the Appellant; A. Seshachari, A. Srinivasan and M. Sundaram, for the Respondent**

**Final Decision : Allowed**

## Judgement

1. This appeal arises out of a suit filed on the Original Side of this court -- C. S. No. 62 of 1949 -- for the recovery of a sum of Rs. 14,402-5-0, as balance of the principal and interest due on a promissory note dated 28-1-1946, executed by the defendant, K. V. Srinivasa Ayyangar in favour of P. S. Narayana Iyer, the plaintiff who originally filed the suit. P. S. Narayana Iyer died pendente lite and plaintiffs 2 to 5 were brought on record as his legal representatives.

The promissory note was for a sum of Rs. 10,600 and provided for interest at 12 per cent per annum. The defendant in his written statement did not deny the execution of the suit promissory note but pleaded that he was entitled to the benefits conferred by the Madras Act IV of 1938 as amended by Madras Act XXIII of 1948. The plea of the defendant was based on the following allegation, namely, that the suit promissory note was only a renewal of successive earlier promissory notes executed by him each in renewal of a previous one and that in respect of these promissory notes only two sums of Rs. 1000 and Rs. 350 had been received by way of consideration.

The first promissory note in 1930 was actually executed by the defendant's

brother in favour of Narayana Iyer for a sum of Rs. 1000. After the death of defendant's brother in 1932, the defendant executed a promissory note in renewal of his brother's debt. On 11-1-1937 there was a renewal of the promissory note of 1932, but then the plaintiff advanced an additional sum of Rs. 350. This promissory note was, however, in favour of the General Bank Ltd., a private limited company of which the plaintiff was the "chief figure".

There were further renewals on 3-1-1940 and 30-1-1944 for Rs. 5650 and Rs. 9275 respectively, both in favour of the General Bank, Ltd. Finally on 28-1-1946, the suit promissory note for Rs. 10,000 was executed in renewal of the promissory note of 1944 but in favour of Narayana Iyer, the plaintiff. The defendant stated that he was an agriculturist and that he was entitled to the benefits of the Madras Act IV of 1938 as amended in 1948, and that under the provisions of that Act he was entitled to trace the suit claim to the original borrowing and that on a proper scaling down of the debt the defendant would be liable to pay only Rs. 1350 towards principal and interest thereon at such rate as is allowed under the Act.

The suit was tried by Subba Rao J. as he then was. The learned Judge held that the defendant was an agriculturist as defined in the Madras Act IV of 1938, and that suit promissory note was a renewal of the promissory note executed in favour of the General Bank Ltd., that the defendant was entitled to have the debt scaled down and that if so scaled down, the amount payable was only a sum of Rs. 1350 with interest thereon as provided in the Act. He, therefore, passed a decree in favour of the plaintiff only for a sum of Rs. 1350 together with interest thereon at 6 1/4 per cent per annum from 22-3-1938, upto the date of the decree. The fourth plaintiff is the appellant before us. The material provisions of the Madras Agriculturists Relief Act. (Act IV of 1938) including the subsequent amendments are as hereunder :

## 2. Section 8 which provided for scaling down

of debts incurred before 1-10-1932 contained an explanation which ran as follows :

""Where a debt has been renewed or included in a fresh document in favour of the same creditor the principal originally advanced by the creditor together with such sums, if any, as have been subsequently advanced as principal shall alone be treated as the principal sum repayable by the agriculturist under this section."

The Amending Act XXIII of 1948 substituted for this explanation the following;

Explanation JJ :

"Where a debt has been renewed or included in a fresh document executed before or after the commencement of this Act, whether by the same or a different debtor and whether in favour of the same or different creditor the principal originally advanced together with such sums if any as have been subsequently advanced as principal shall alone be treated as the principal sum

and repayable under this section."

There was a further amendment by the Madras Act XXIV of 1950 and the explanation as amended by this Act runs as follows :

"Where a debt has been renewed or included in a fresh document executed before or after the commencement of this Act, whether by the same debtor or by his heirs, legal representatives or assigns or by any other person acting on his behalf or in his interest and whether in favour of the same creditor or of any other person acting on his behalf or in his interest, the principal originally advanced together with such sums, if any, as have been subsequently advanced as principal shall alone be treated as the principal sum repayable under this section."

It was common ground before us that the explanation as amended in 1950 applies to this case. The question for decision is whether in this case there is a debt which has been renewed or included in a fresh document in favour of the same creditor or of any other person acting on his behalf or in his interest. We have omitted reference to the debtor because except the first promissory note of 1930 the other promissory notes were all admittedly executed by the present defendant

If the history of the promissory notes as given by the defendant is accepted, originally the promissory notes were in favour of the plaintiff, subsequently the promissory notes including the promissory note of 1944 were in favour of the General Bank Ltd., a private limited company and the suit promissory note was in favour of the plaintiff individually. On behalf of the plaintiffs it was contended that it could not be held in law that the suit promissory note was a renewal of an earlier promissory note in favour of the General Bank Ltd., because the renewal was not in favour of the same creditor, the plaintiff and the bank being two different persons in law; nor can it be said that the plaintiff was a person acting on behalf of or in the interests of the General Bank Ltd.

On behalf of the defendant the following facts were pressed into service; namely, that Narayana Iyer was the managing director of the General Bank Ltd., that the plaintiff had full powers of management of the entire business of the bank, that out of a total subscribed capital of Rs. 2,72,500 Narayana Iyer and his sons and daughters owned shares of the value of Rs. 2,45,000; that the holders of the remaining shares were also his close relatives and therefore virtually the members of the family of Narayana Iyer owned all the shares and had absolute control of the bank.

It was, therefore, argued on behalf of the defendant that Narayana Iyer was interested in the progress of the bank because though in law the bank was a different person in fact his interests and the interests of the bank were the same.

3. On behalf of the plainer a clerk of the bank produced copies of day book and ledger, Exs. P.6 and P.7. The day book related to January, 1946, that is the

month in which the suit promissory note was executed. These accounts show that Narayana Iyer issued a cheque on the Indian Bank in favour of the General Bank Ltd., for a sum of Rs. 10,600, and the loan account of the defendant was credited with this sum and the defendant's account with the bank was closed. The learned Judge was not satisfied with the demeanour of the witness in the box evidently because for every important question he repeated the answer that he did not know, but nothing turned on the oral evidence given by this witness.

The learned Judge, however, on that ground refused to accept Exs. P. 6 and P. 7 as copies of the accounts kept by the bank. With respect to the learned Judge we think that he was not justified in this. u/s 4 of the Banker's Books Evidence Act (XVIII of 1891) a certified copy of any entry in a banker's book shall in all legal proceedings be received as prima facie evidence of the existence of such entry and shall be admitted as evidence of the matters, transactions and accounts therein recorded in every case where and to the same extent as the original entry itself is now by law admissible, but not further or otherwise.

Section 5 provides that no officer of a bank shall in any legal proceedings to which the bank is not a party be compellable to produce any banker's book the contents of which can be proved under the Act unless by order of the court or a Judge made for special cause. If the learned Judge was not satisfied that Exs. P.6 and P.7 are true copies of the accounts maintained by the bank then it was open to him to direct the authorities of the bank to produce the original books, But not having done so the learned Judge should not have rejected copies of accounts as not being true. In the absence of anything tangible to cast any doubt on the genuineness of the copies of the accounts we accept them as true copies.

These certainly show that Narayana Iyer individually paid Rs. 10,600 by means of a cheque drawn by him on the Indian Bank in discharge of the loan due to the bank by the defendant under the promissory note dated 30-9-1944. A letter written by the defendant to the plaintiff on the same date as the date of the promissory note confirms this because therein he requests the plaintiff to pay a sum of Rs. 10,600 for discharging his promissory note with the General Bank Ltd.

4. The learned Judge was prepared to hold that the suit promissory note was a renewal of an earlier debt in favour of the same creditor. He held thus because according to him the creditors were substantially the same as the interests of the plaintiff and the bank were one and the same. The learned Judge further went on to hold that the suit promissory note was executed in favour of the plaintiff as a person acting in the interest of the bank. According to the learned Judge, the words "in his interest" which occur in Explanation III to Section 8 as amended by Act XXIV of 1950 were intended to cover a case like this namely where A executes a promissory note in favour of B and later on with the consent of B, A executes another promissory note in discharge of this earlier promissory note in favour of C a nominee of B.

5. In our opinion the essential requisite for the application of Explanation III to

Section 8 is the preservation of the identity of the debt. It in any case the debt is deemed to have been extinguished by payment for instance, there can be no scope for applying the conception of renewal or inclusion of that debt in a fresh document. In Ramaswami Pillai Vs. Sankara Mudaliar and Others, , Subba Rao J., himself delivering the judgment on behalf of a Division Bench refers to three different circumstances in which a document may be executed in favour of another:

(1) A executes a promissory note in favour of B and later on executes a renewed promissory note in favour of B for the amount due under the earlier promissory note;

(2) A may execute a promissory note in favour of B and later on with the consent of B, A may execute another promissory note in discharge of the earlier one in favour of a nominee of B; and

(3) A may execute a promissory note in favour of B and later on execute another promissory note in favour of C and discharge the earlier promissory note either paying the amount directly or by directing the second promisee to pay the amount to the first promisee.

Discussing the three instances the learned Judge observed thus:

"In the third class of cases there is no identity of the debt at all. It is really a discharge of the earlier indebtedness by payment either directly or indirectly ..... To state that the document executed in favour of a third party with a direction that the amount may be paid to the earlier creditor is a renewal of the earlier promissory note is certainly doing violence to the language of the" Explanation."

With respect to the learned Judge we entirely agree with these observations. The case before us falls under the third category enumerated by Subba Rao J. At the request of the defendant Narayana Iyer discharged the earlier promissory note in favour of the General Bank Ltd., by issuing a cheque in favour of the bank and for the sum so paid by him he obtained a promissory note from the defendant. Once the payment was made to the bank the debt in its favour under the promissory note of 1944 became extinct.

It could not be renewed either in favour of the bank or in favour of any other person either as nominee of the bank or as a person acting in the interests of the bank. In this view it is not material to consider whether the plaintiff and the General Bank Ltd., a private limited company, can be deemed to be the same creditor. Equally it is unnecessary to decide whether the promissory note was executed in favour of Narayana Iyer as a person acting in the interests of the bank.

The suit promissory note was executed in favour of the plaintiff for money paid by the plaintiff to the bank to discharge the debt under the promissory note of 1944 in favour of the bank.

6. Mr. A. Seshachari on behalf of the defendant raised a new contention that the plaintiff must be deemed to be an assignee of the General Bank Ltd. Apart from this contention not having been raised before, involving as it does a question of fact, we see nothing to warrant such an inference. There is no assignment by the General Bank Ltd., of its rights under the promissory note to the plaintiff. He referred us to the ruling of a Division Bench to which one of us was a party in Srinivasa Pillai and Others Vs. Muthayya Pillai and Another, , but we find nothing in this case which is of assistance to him. The importance of the identity of the debt being maintained was emphasised in this decision as in every other decision bearing on the point. Vide page 322 (of Mad LJ): (at p. 367 of AIR), where the following sentence occurs:

"In our opinion the Explanation as it stands emphasises the identity of the debt. So long as the identity can be traced any change or alteration in the debtor or creditor would not take the case away from the Explanation."

7. In another place it is stated:

"In every case where with the consent of the creditor another debtor is substituted for the original debtor, there is in effect an assignment of liability. The new debtor would be an assign of the original debtor so long of course as the identity of the debt is maintained."

8. Applying the same principle to the creditor in the present case there is no substitution with the consent of the debtor for the original creditor, It cannot, therefore, be said that there has been an assignment by the bank of the debt due under the promissory note in favour of the plaintiff.

9. We, therefore, differ from the learned Judge and hold that the suit promissory note must be deemed to be a fresh one executed in favour of the plaintiff, Narayana Iyer, individually and not as a renewal of an earlier promissory note in favour of the General Bank Ltd. The defendant will not, therefore, be entitled to any relief u/s 8 read with Explanation III thereto of the Madras Act IV of 1938.

10. The appeal is allowed and there will be a decree for Rs. 10,600 with interest thereon at 6 1/4 per cent. per annum. The plaintiffs will be entitled to their costs of suit on the sum of Rs. 10,600; credit will be given to a sum of Rs. 2000 paid by the defendant on 30-11-1949. In the appeal the appellant will get the costs of the appeal from the defendant-respondent, calculated on the amount decreed.