

(1940) 08 MAD CK 0075
In the Madras High Court

P.S. Poovanalingam Pillai

APPELLANT

Vs

Nagaratnam Pillai

RESPONDENT

Date of Decision : 28-08-1940

Acts Referred:

Citation : AIR 1940 Mad 943 : (1940) 52 LW 518 : (1940) 2 MLJ 575

Hon'ble Judges : Wadsworth, J

Bench : Division Bench

Judgement

Wadsworth, J.—This revision petition arises out of an application under Sections 8 and 19 of Madras Act IV of 1938, to scale down the debt on a decree dated 29th August, 1936, in a promissory note suit. The present petitioner is the decree-holder. The original promissory note was executed on 23rd January, 1924, by the first defendant in favour of the second defendant. On 6th January, 1933, the second defendant endorsed the promissory note to the plaintiff, who sued upon it and got a decree both against the original promisor and the endorser. It was the second defendant (the endorser) who filed the application to scale down the decree.

2. The only question raised in revision is whether the debt, so far as the endorser is concerned, was incurred on 23rd January, 1924, the date of the original promissory note in his favour, or on 26th January, 1933, the date of his endorsement to the plaintiff. It is contended on behalf of the applicant (respondent here) that the principle of the decision in Perianna Goundan Vs. Sellappa Goundan and Others, must govern the case. That was a case in which a purchaser of the hypotheca was made a defendant in a suit on the mortgage and the learned judges decided that he was a person having a liability towards the mortgagee by reason of his purchase of the land, that the purchase was not the basis of any new liability and that the liability then sought to be enforced was the liability arising out of the mortgage itself. It seems to us that the reasoning of that decision is not applicable to the facts of the present case. We are not here concerned with a liability charged on land, which becomes the liability of the

purchaser of that land. Here, there is an original promissory note under which the applicant had no liability whatever. His liability was first incurred by reason of his endorsement of that promissory note and the date on which he incurred that liability is the date of his endorsement. It is true that the extent of his liability is measured by the extent of the liability of the original promisor. But, so far as the applicant is concerned, he incurred a liability for the first time on 26th January, 1933. That liability was a personal liability, the basis of which was his endorsement of the pre-existing promissory note. It is therefore a debt incurred after 1st October, 1932, and has to be scaled down u/s 9 of Madras Act IV of 1938.

3. The revision petition is therefore allowed and the application is remitted to the lower Court for fresh disposal in the light of this judgment. In the circumstances of the case, we make no order as to costs.