

(1971) 06 AP CK 0008

In the Andhra Pradesh High Court

Case No : Second Appeal No. 315 of 1970

Punam Chand Hastimal Co. and Others

APPELLANT

Vs

Sugavasi Venkataswamy

RESPONDENT

Date of Decision : 18-06-1971

Acts Referred:

Evidence Act, 1872 — Section 91
Limitation Act, 1963 — Section 18
Negotiable Instruments Act, 1881 (NI) — Section 4
Stamp Act, 1899 — Article 1, 35

Citation : AIR 1972 AP 282

Hon'ble Judges : Sambasiva Rao, J

Bench : Single Bench

Advocate : E. Subrahmanyam, for the Appellant; K. Parvatisam, for the Respondent

Judgement

1. Defendant No. 5, representing the D-1 firm, as concurrently found by the Courts below, took a handloan of Rs. 4,000/- from the plaintiff on 27-3-1962 promising to repay it within two days. He could not keep the promise and executed on 29-3-1962 Ex. A-4 in the form of a letter promising to pay the amount with interest at 9 %. This has all the trappings of a promissory note but was left unstamped. On 6-4-1962 payment of Rs. 2,500/- was made towards the debt and the same was endorsed on the letter. The endorsement is Ex. A-5. The defendants, however, did not pay the amount when demanded and the plaintiff consequently filed the suit on 6-4-1965. The suit is to recover the debt incurred on 27-3-1962 and is not rested on Ex. A-4. Though the defendants raised very many pleas like that the signature on Ex. A-4 was not that of D-5 etc., the Courts below rejected all those defences and passed a decree against the D-1 firm and its partners, defendants 2 and 4 to 6. The third defendant was exonerated as he was found to be not a partner. The said defendants have, therefore, preferred the second appeal.

2. Bound by the concurrent findings of fact, Sri Subrahmanyam, the learned

counsel for the appellants, canvassed two questions of law before me. One is that the Court below found that Ex. A-4 is inadmissible in evidence since it is unstamped. Then the bar against oral and other documentary evidence of the terms of the contract, which had been reduced to the form of a document, comes into play. Since the document itself is excluded and there is no permissible secondary evidence of its contents, the plaintiff's claim must fail for want of proof of the debt. Secondly, the claim is barred by limitation, since the suit was filed more than three years after the debt was incurred and the endorsement. Ex. A-5 cannot be looked into, because it is part of an unstamped document, is itself unstamped.

3. Taking these points in their order, the objection based on Section 91 of the Evidence Act is, in my opinion, misconceived. This contention forgets the fact that the suit was not on the foot of the letter. Ex. A-4 but was filed to recover the debt taken from the plaintiff not on 29-3-1962 but on 27-3-1962. The plaint clearly mentions all these facts. It clearly states in paragraph 4 that ----

"In case the Court holds that the said letter, is not valid, the final cause of action at first arose on 27-3-1962 when money was given as hand-loan. Therefore, the plaintiff is relying on the loan dated 27-3-1962. The defendants had executed and delivered the suit promissory note in favour of the plaintiff as "Security" for the loan dated 27-3-62.

In paragraph 3 showing the cause of action, it is once again stated that it arose on 27-3-1962. Thus, the suit is one to recover the debt and is not on the foot of the letter Ex. A-4. As is claimed in the plaint, the letter was obviously taken as a collateral security. The lending and borrowing was not simultaneous with the execution of the letter. In fact, Ex. A-4 itself states that the pucca date for the borrowing is 27-3-1962. It cannot, therefore, be doubted that the actual borrowing was on 27-3-1962 and the letter was taken two days later as a collateral security, since the defendants had failed to repay the debt within two days as they originally promised. Further, the letter, Ex. A-4 does not appear to contain all the terms of the contract between the parties. It says that the amount borrowed in cash that day was Rs. 4,000/-. In matter of fact however, the borrowing was two days earlier. It also does not disclose the fact that the borrowers had promised to return the money within two days but failed to do so. Furthermore, the pucca date was given as 27-3-1962 in the promissory note itself. From all this, it is manifest that Ex. A-4 does not contain all the terms of the contract between the parties. When it does not so contain, Section 91 of the Evidence Act has no application and the plaintiff is not precluded to prove the terms of the contract by parole and other evidence. When Ex. A-4 does not embody all the terms of the contract, the true nature of the transaction can be proved by other evidence. Where an instrument has been given as a collateral security, a suit on the debt itself will lie. I am fully supported in this view by the Full Bench decisions in *Perumal Chettiar Vs. Kamakshi Ammal*, The plaintiff in this case is perfectly entitled to sue on the original debt and adduce evidence

in support thereof. The first point, put forward by the learned counsel for the appellants, therefore, fails.

4. On the question of limitation, the argument advanced is twofold. Firstly, Ex. A-5 is nothing but a part and parcel of the inadmissible instrument, Ex. A-4. Consequently, it is itself inadmissible. When the endorsement cannot be proved, the suit is obviously barred by limitation. Reliance is placed on *Penatapati Nageswara Rao Vs. Moka Narayanamurthi and Another*, and *Ramanatha Ayyar (Seshan Pattar's son) Vs. G.G. Narayanaswami Ayyar*. These rulings however, do not throw any light on the problem posed by the learned counsel, for they merely lay down that an improperly stamped promissory note is inadmissible even as an acknowledgment of prior instruments of debt. In other words, the cases deal with situations where a promissory note, when it is unstamped cannot be treated as an acknowledgment of the debt or as acknowledgment of the previous instruments in renewal of which it has itself been executed. In this case, the point urged by the leaner counsel is different. An endorsement of payment made on an inadmissible promissory note must also be excluded from evidence, because it forms part f the same instrument. He is, however, unable to place any authority in support of this proposition. Nor am I persuaded to accept the argument as tenable. There is no requirement that an endorsement of payment in order to be an Acknowledgement within the meaning of Section 18 of the Limitation Act, should be written on the same document. There is no bar against tits being written on a separate paper. What all Section 18 requires is that before the expiration of the prescribed period for a suit in respect of the right in regard to debt. an acknowledgment of liability in respect of such right has been made in writing signed by the party against whom such right is claimed. In other words, he requirement is only that acknowledgment should be I writing signed by the party against whom the debt is claimed. Therefor, it is not necessary for an endorsement of payment, in order to accept this as an Acknowledgement of the debt, to be written on the instrument evidencing the debt. If it could be separately written and signed it s an independent document, in the sense that it constitutes an Acknowledgement of the debt and does not merge with the document evidencing the debt. Therefore, it cannot be said that an endorsement of payment is a part of the promissory note and should be excluded from evidence, if the main promissory note itself is inadmissible in evidence for want of stamp.

5. The other ground on which the contention in regard to limitation is founded is that all acknowledgments of debts are required to be stamped under Art. 1 of Schedule 1 of the Stamp Act. Therefore, even if Ex. A-5 is to be treated as an independent document, it is nothing but an acknowledgment o the debt owing to the plaintiff. Since it is not stamped, the argument in this behalf runs, it is inadmissible in evidence. when once the Acknowledgement was absent, the suit was barred by time.

6. There is a basic fallacy in this argument It confuses the Acknowledgement of a

liability in respect of a right contemplated by Section 18 of the Limitation Act with the acknowledgment of a debt referred to in Art. 1 of Schedule 1 of the Stamp act. The two are distinct and separate. The Acknowledgement under the Limitation Act is merely that of a liability in respect of any property or right. That pre-supposes the pre-existence of the property or right. That I why sub-section (1) of Section 18 says that from the date of the said Acknowledgement, a fresh period of limitation starts to run, as distinct from the original period of limitation arising from the pre-existing property or right. The acknowledgment contemplated by the Stamp Act is, however of a debt arising under the instrument itself which is required to be stamped. That Acknowledgement is for the purpose of supplying evidence of a debt in any book or on a separate piece of paper, when such book or paper is left in the creditor's possession. While the former Acknowledgement under the Limitation Act is only an Acknowledgement of the liability in respect of a preexisting right. the Acknowledgement under the Stamp Act is an evidence of the debt itself. When a liability is incurred for the first time, it is natural and logical that the document evidencing it should be stamped as per the provisions of the Stamp Act. If, however, it is merely a payment on a pre-existing debt or an acknowledgment that it existed, it need not be stamped because there is no fresh contract in respect of a debt or a right. that is why Section 18(1) requires that the recognition of a liability, in order to be treated as an Acknowledgement within the meaning of Section 18 should be before the expiration of the prescribed period for a suit or application in respect of any property or right. If, such recognition or Acknowledgement is made after the expiration of the prescribed period, then it is no Acknowledgement at all. There is no such inhibition in regard to time as far as the Acknowledgement under the Stamp Act is concerned. Thus, in my view, there is a clear distinction between the two acknowledgments. One should not be carried away by the similarity in the names.

7. It may, however, be possible in some cases to find out whether the acknowledgment is one under the Limitation act or one under the Stamp Act. When any such difficulty is felt, that has to be resolved by getting at the intention of the parties. Their real intention in having the acknowledgment made should be found out from the language employed in the Acknowledgement and also from the surrounding circumstance. If the intention of the parties is to acknowledge a preexisting debt within the period of limitation, it is then an acknowledgment under the Limitation Act. If, on the other hand, it is an Acknowledgement for the purpose of supplying evidence for a debt, then it is one under the Stamp Act. If, any Acknowledgement belongs to the latter category and is unstamped, it no doubt comes within the mischief of Section 35 of the Stamp Act, and is inadmissible. If, it belongs to the former class there is no such bar.

8. I am fortified in this view by a long catena of cases, though no case of this Court has been brought to my notice. In Chokkalingam v. Annamalai, AIR 1917 Mad 460 a Division Bench of the Madras High Court held that payments in

discharge of a debt, evidenced by an unstamped and, therefore inadmissible promote, are payments against or acknowledgments of the original debt and noon the account of the promissory note. Those endorsements though unstamped, save the limitation of the debt.

9. Madhavan Nair, J., in Vakkalanka Kondamma Vs. Kasaneedi Venkatarayadu and Others, held that the plaintiffs claim under the previous note was not barred on the date of the suit as the endorsement on the insufficiently stamped note acknowledged the liability on the previous note and could be relied on for saving limitation.

10. It is, however, urged that the rule laid down in the above two cases is no more good law in view of the pronouncement of the Privy Council in AIR 1946 51 (Privy Council) There is nothing in that decision which is against the view of the Madras High Court, which I have already referred to. It related to an unstamped partition document. What all it said was that an unstamped partition deed cannot be use to corroborate the oral evidence for the purpose of determining even the factum of partition as distinct from its terms. That is with reference to the unstamped document itself. The question of requirement as to stamp on endorsements of payments and acknowledgments of debts, and their admissibility did not arise in that case.

11. Again, even after the ruling of the Privy Council different High Courts in India continued the same line of thought as that of the Madras High Court in Vakkalanka Kondamma Vs. Kasaneedi Venkatarayadu and Others, Rajagopalan. J. once again reiterated the principle in Meenammal Vs. S.N. Oavai Reddiar and Another, . The leaned Judge held that when the promissory note, what was paid towards the debt evidenced by the promissory note and what was acknowledged successively in the endorsements on the promissory note was the substance of the deed itself, which, the parties then believed at the time, was evidenced by the promissory note in the sense that the note would be admissible in evidence to prove the existence of the debt itself and that the endorsements save the limitation. It has to be noted that the promissory note in that case was unstamped.

12. Then, the Bombay High Court in Govindram Mihamal Vs. Chetumal Villardas, had to deal with a case analogous to the present one. Deshmukh, J. pointed out the distinguishing features between acknowledgments under the Limitation Act and the Stamp Act. If it is an Acknowledgement which is not one under Art. 1 of schedule 1 of the Stamp Act but is otherwise an Acknowledgement for saving limitation u/s 19 of the Limitation, Act, 1908, the insufficiency or want of stamp on it is irrelevant and the document would be admissible for proving the Acknowledgement. In the Case before the learned Judge he Acknowledgement as unstamped.

13. In Meenammal Vs. S.N. Oavai Reddiar and Another, leered single Judge of the Mysore High Court held that if the debt is independent of the promissory

note, then even if the promissory note is not admissible in evidence because it is unstamped or insufficiently stamped, the acknowledgment or acknowledgments, could and should be regarded as instruments independent of the promissory note; the liability whereof to stamp duty should also be examined independently of the fact that they might be endorsed on the back of the promissory note.

14. Lastly a Bench of the Madras High Court again dealt with an analogous question in *Thenappa Chettiar Vs. Andiyappa Chettiar*, and expressed similar views.

15. From the foregoing, it follows that a suit can be laid on the debt itself though the promissory note in respect thereof is not stamped, if it has been taken merely as a collateral security. The endorsements of payments on the unstamped promissory note which acknowledge the pre-existing debt are acknowledgments within the meaning of Section 18 of the Limitation. There is a vital distinction between an Acknowledgement under the Limitation act and an Acknowledgement under Art. 1 of Schedule 1 of the Stamp act. The Acknowledgement under the Limitation Act need not be stamped under the Limitation Act need not be stamped and is not inadmissible evidence for want of stamp.

16. Now, coming to the facts of the present case, Ex. a-5 is clearly a recognition or acknowledgment of a pre-existing debt. It does not create a debt by itself. It clearly and specifically states that the amount paid thereunder was being paid towards the debt evidenced by the letter. It is thus clearly an Acknowledgement u/s 18 of the Limitation act only. By any stretch of imagination it cannot be treated as an Acknowledgement of a debt as contemplated by Art. 1 of the Schedule 1 of the Stamp Act. When such is the case it is undoubted that the endorsement which is an acknowledgment of the pre-existing debt, saves the suit from the bar of limitation. The plaintiff's suit was, therefore, certainly filed within time.

17. Thus, I find no substance in any of the arguments advanced for the appellants. The second appeal consequently fails and is dismissed with costs. No leave.

18. Appeal dismissed.