

(1898) 08 MAD CK 0006
In the Madras High Court

Rajah of Venkatagiri

APPELLANT

Vs

Sheik Bade Saheb and Another

RESPONDENT

Date of Decision : 03-08-1898

Acts Referred:

Limitation Act, 1963 — Section 19

Citation : (1898) 8 MLJ 219

Hon'ble Judges : Lord Denman, C.J;Wightman, J;Subrahmania Aiyar, J;Coleridge, J;Benson, J

Bench : Full Bench

Judgement

Subrahmania Aiyar, J.—This is a reference in a suit by the Raja of Vencatagiri against a ryot, holding certain lands in the Zamindari, for the

rent due for fasli 1304 ending with 30th June 1895. The rent was payable in instalments and admittedly they became due on the 15th August 1894,

30th October 1894 and 30th January 1895, respectively. The present suit was instituted on the 21st February 1898. The suit is clearly barred,

unless, as contended for the plaintiff, the muchilika, executed by the defendant to the plaintiff on the 25th June 1895 contains an acknowledgment

such as is required by Section 19 of the Limitation Act. The question for determination is whether it contains such an acknowledgment. It is to be

observed that the language employed in the muchilika amounts to more than a mere acknowledgment. There is a distinct promise to pay. But the

promise as such in the muchilika is obviously void on account of the inconsistency in its terms manifest in the very face of it. For the defendant

promised on the 25th June to pay rent on three dates which had already expired, viz. 15th August and 30th October 1894 and 30th January 1895.

Some observations, made by Lord Ellenborough, C. J., in Hall v. Cazenove (4

East 477) where a similar point arose, may be referred to here. In

that case a charter-party not executed until the 15th March contained a covenant by the owner that the ship should and would proceed from a

certain port, where she then lay on the 12th February preceding on her outward bound voyage. In dealing with this terra of the contract the Chief

Justice said: " But here when the deed was executed or concluded by the delivery, the stipulation, which was not impossible in its nature when the

deed was first framed, had become impossible as between these parties from the time having passed. The stipulation, therefore, had then become

wholly nugatory and cannot be understood as having formed any part of the contract between the parties without imputing to them the most

manifest absurdity"" (4 East at 482).

2. Now in construing written instruments, which admit of more than one interpretation, that interpretation which leads to an absurd result frustrating

the general intention of the parties must give way to an interpretation that would carry out that intention. The muchilika, so far as we are here

concerned, could be construed so as to avoid any absurd conclusion in one of two ways. The first is that suggested by the view taken by an

eminent Judge in *Doe Darlington v. Ulph* 13 Q. B. 204. There a lease for years to commence at Michaelmas 1845 which was, by a decree for

specific performance at the instance of the lessee, executed on the 12th January 1847 bearing date as of the 29th September 1845, contained a

covenant to insure the demised premises, and keep them insured during the term, and a power of re-entry on breach. The landlord brought an

action in ejectment and proved that the premises were not insured until the 18th February 1847.

Lord Denman, C. J., Coleridge and Wightman, J.J.

3. dealt with the case on the assumption that the covenant might be construed as a covenant to insure within a reasonable time only after the

execution of the deed. They did not, however, express any decided opinion on the question whether that assumption was correct. But Patterson,

J., went further and said, ""I cannot think that the defendant was bound by this covenant to keep the premises insured before the lease was actually

executed; for till then there was nothing to oblige him to do so. I think if he had insured the premises shortly after the execution, he would have

complied with his covenant. In all covenants to do an act in future the covenantor must have some time to perform it. It is impossible, for instance, for a man to insure the very next moment after he has entered into a covenant to do so; and if no time is expressed, he must have a reasonable time in which to do it." (Ib. 208) These observations would seem to warrant the promise in the present case to pay in the three dates before mentioned being treated as a promise to pay within a reasonable time from the date of the muchilika. This interpretation if admissible is less satisfactory than the second, and the only other interpretation which the language of the instrument is susceptible of, viz., that it amounts merely to an acknowledgment of liability. For according to the one construction certain material words found in the instrument have to be completely rejected on the ground that, in the circumstances, they are meaningless, while effect is given to those words by accepting the view that they refer to the dates when certain instalments were payable and treating the words of promise as, in effect, an admission of executant's liability in respect of those instalments. That this construction, suggested for the plaintiff, is the sounder appears also from two other equally important circumstances bearing on the matter. One is that muchilikas, such as the present, differ materially from contracts in the strict sense of the term, that is, engagements entered into by parties who are free to enter into them or not as they choose, inasmuch as, except where, by mutual consent an exchange of putta and muchilika is dispensed with, persons, in the position of the plaintiff and the defendant here, are under a legal duty to interchange such documents periodically--a duty enforceable specifically. The other circumstance is that although occasionally muchilikas like the present may contain terms truly contractual, as when in any respect the old terms of a tenancy are by the instrument altered or modified, yet in the large majority of instances this class of documents contains nothing more than admissions of liability on the part of ryots to deal with landholders during a specified period, in respect of the lands held by the former, to conform in the dealings to the terms and conditions settled by antecedent contract or established by long prevalent usage. On the whole, therefore, the construction urged for the plaintiff is, in my opinion, the better if not the only correct construction. It remains to add a word with reference to the allegation that prior to the execution of the muchilika the defendant had made

some payments on account of the instalments in question. If that allegation be found to be true that would of course pro tanto, be a defence on the merits. But such a circumstance could not in any way render the muchilika the less an acknowledgment for purposes of limitation.

Benson, J.

4. I agree with the conclusion arrived at by my learned colleague. In order to construe puttahs and muchilikas in a case like the present, we must

bear in mind the circumstances under which such documents are executed.

5. Their purpose is to satisfy the requirements of the Rent Recovery Act (Madras Act, VIII of 1865). Section 4 of that Act evidently contemplates

that they shall be exchanged at the beginning of each fasli or revenue year, but as a matter of convenience and of practice they are entered into at

any time during the year, and usually only a short time before its close, by which time both parties know what land has been cultivated by the tenant

and what rent is payable by him. The form and language of the documents are the same whether they are executed early or late in the year, and

without regard to the fact that at the time of execution some or all of the instalments of rent may have already become due, and may even have

been actually paid. The promise, therefore, in the muchilika to pay the rent due for the year by instalments on specified dates must be construed

with reference to these admitted facts. If any instalment is already overdue, the promise must be construed as an acknowledgment that the

instalment became payable on its due date, and as a promise to pay so much of it as has not, in fact, been already paid. This promise to pay must

be understood as a promise to pay within a reasonable time, the amount then actually due and not already paid. It would be manifestly absurd to

regard it as a promise to pay on a date already past and it would be unreasonable to regard it as a promise to pay over again a sum already paid.

In regard to instalments not due prior to the exchange of puttah and muchilika, the promise must be regarded as an acknowledgment that the

instalment will become payable on its due date, and as a promise to pay the same on such date. With regard then to instalments due before the

date of the muchilika, the document, must, I think, be construed as if it ran, "I admit that the instalments herein mentioned fell due on the date herein

stated, and I acknowledge my liability to pay such part of them as I have not

already paid and I promise to pay the same within a reasonable time.

Thus there was neither an acknowledgment of liability, nor a promise in regard to instalments already paid. If there was an arrear then due by the

tenant, the muchilika was such an acknowledgment of liability in regard thereto as is contemplated by Section 19 of the Indian Limitation Act.

There is nothing opposed to this conclusion in the remarks of this Court in the case reported in *Peria Venkan Udaya Tevar v. Subramanian Chetti*,

I. L. R., 20 M., 239 to which the District Munsif has referred, for the tenant must be held to have made the acknowledgment with reference to his

actual existing indebtedness, the fact of which was known to him at the time. The District Munsif must, therefore, ascertain, in the first instance,

whether any, and if so what sum was due by the tenant when he signed the muchilika. The acknowledgment in the muchilika will save the time-bar

in respect of any such sum. The practical result is that the muchilika is an acknowledgment of liability for the purpose of saving the bar by time, but

it is not an acknowledgment of liability for the purpose of binding the tenant to pay the sum acknowledged.