
(1905) 07 MAD CK 0008
In the Madras High Court

Ramakrishna Raju and Others		APPELLANT
	Vs	
Katta Venkataswamy and Others		RESPONDENT

Date of Decision : 27-07-1905

Acts Referred:

Citation : (1906) ILR (Mad) 87 : (1905) ILR (Mad) 87

Hon'ble Judges : Boddam, J

Bench : Single Bench

Judgement

Boddam, J.—On the 10th January 1901, the first defendant borrowed Rs. 20 from an undivided brother of the plaintiffs and the husband of

the second defendant the first defendant gave him an on demand promissory note for the Rs. 20 and interest at Re. 1-9-0, per annum. The payee

of the note died and behind the backs of the plaintiffs the second defendant got the first defendant to execute a fresh renewal note for Rs. 40, the

amount of principal and interest on the 17th April 1903 in the name of the third defendant her mother and she returned the original note to the first

defendant.

2. On the 24th June 1904 the plaintiffs sued all the defendants for the amount of the original loan and interest stating their claim as ""for Rs. 44 being

the amount due on a promissory note for Rs. 40 executed by the first defendant."" The first defendant admitted that he had to pay the plaintiffs and

that he was ready to do so. the second and third defendants raised several defences e.g., limitation, misjoinder, etc. The Munsif dismissed the

plaintiff's suit holding that the suit was not maintainable, was barred, and was bad for misjoinder.

3. The plaintiff's real claim was that the renewal note though in the name of the

third defendant was a renewal of the original note which was a note due and payable to an undivided member of the family and therefore due to them on his death. In obtaining the renewal in the name of the third defendant, the second defendant and the third defendant must, be taken to have become trustees for the plaintiffs and that the third defendant was only a benami payee for them and therefore they were entitled to sue. The plaintiffs were entitled to sue the first defendant and to claim that in giving the note in the name of the third defendant he, intended and in law did, in fact, renew the note to whoever was his creditor and that the third defendant's name was intended merely as the ostensible creditor and the alone was entitled to dispute the plaintiff's right to sue him upon it. The second and third defendants were properly joined in order that the plaintiffs might prove their case and that the decree might bind them. There was no misjoinder, nor was the action one that could not be sustained, nor was it barred. I set aside the decree of the District Munsif and remand the case for disposal according to law. Costs will abide and follow the event.