
(1936) 01 MAD CK 0003
In the Madras High Court

(Samanthan Karakkattitathil) Chandukutti Nambiyar	APPELLANT
Vs	
(Kaniyarakkal Thayikkandi) Moosan Kunhi Kalandan	RESPONDENT

Date of Decision : 10-01-1936

Acts Referred:

Limitation Act, 1963 — Section 20

Citation : AIR 1936 Mad 616 : 163 Ind. Cas. 803 : (1936) 43 LW 665

Hon'ble Judges : Venkataramana Rao, J

Bench : Division Bench

Judgement

Venkataramana Rao, J.—The plaintiff sued to recover a sum of Rs. 4,177-7-4, as being due under a promissory note dated 28th

November 1925, executed by one Rayarappa Nambiar and then karnavan of the defendant tarwad. This suit was instituted after the death of

Rayarappa Nambiar against the succeeding karnavan who also died during the pendency of this suit, and his legal representative is the appellant in

this second appeal. The defendant denied execution of the promissory note and also contended that there was no necessity to borrow the amount

under the note, that the suit was barred by limitation;" and in any event a decree could not be passed against the tarwad. Both the lower Courts

have found that the promissory note was genuine and there was necessity for the tarwad to borrow and the endorsement on the promissory note

saved the plaintiff's claim from being barred by limitation.

2. Four points have been raised before me by Mr. Govinda Menon on behalf of the appellant. The first point argued by him is that on the pronote

as it stands the suit could not be maintained because the karnavan does not purport to sign the note as karnavan. He relies on the Full Bench ruling

in Govinda Nair v. Nanu Menon 1915 27 MLJ 595. The said ruling no doubt supports him as the promissory note in this case does not purport to

be signed by Rayarappa Nambiar as the karnavan. The said Full Bench decision dealt with a case where the suit was laid solely on the note, but

the plaint in this case was based not only on the note but also alternatively upon consideration. As laid down by their Lordships of the Privy

Council in Sadasuk Janki Das v. Sri Kishen Pershad 1918 46 Cal 663 it is open to a party not only to sue on the note but alternatively on the

consideration. Therefore, as there was a claim on the consideration, the suit is maintainable according to the Full Bench ruling in Krishna Ayyar v.

Krishnasami Ayyar (1900) 23 Mad 597, and the Full Bench ruling in Govinda Nair v. Nanu Menon 1915 27 MLJ 595 clearly indicates that such

a suit is maintainable. The second point urged by Mr. Govinda Menon is that the suit is barred by limitation. The endorsement on the promissory

note on which reliance is placed by the lower Court runs thus:

Out of the amount due under the promissory note Rs. 1,000 was paid this day.

(Signed) Samanth Korakkat Edathil

Rayarappa Nambiar.

3. Mr. Govinda Menon's argument is that as the amount of Rs. 1,000 does not purport to be a payment towards interest as such, the endorsement

cannot be availed of for the purpose of saving limitation. He relied on the ruling in Damodar v. Jankibal (1903) 5 Bom LR 350 which seems to

support him. The said decision seems to imply that where there is a payment without indicating whether it is a payment towards interest or principal

such a payment cannot be taken as payment of interest as such within the meaning of Section 20, Limitation Act. But a different view was taken in

another case of the same High Court in Subraya v. Pakaya (1902) 4 Bom LR 231. This case has been followed in this High Court by Phillips, J. in

Ramakrishna Annavi v. Pichandi Chettiar 1923 MWN 564. Apart from the question whether said payment can be treated as interest as such,

there is a clear acknowledgment of liability which would be enough to save limitation. I accordingly overrule this contention. The next point urged is

that there was no necessity for the tarwad to borrow as it appears from the evidence that the tarwad has been in receipt of a very large annual

income. But the finding of the learned District Judge in this case is that the

amount was borrowed for the expenses of the litigation which concerned the tarwad that at the time the amount was borrowed the tarwad had no funds and therefore there was necessity to borrow the said amount. I accept the said finding and hold that there was necessity for the loan which will bind the tarwad. The cases relied on by Mr. Govinda Menon are distinguishable because there was no evidence in those cases that at the time when the amount was borrowed the tarwad was under necessity to borrow the amount. The last point urged by Mr. Govinda Menon is that there has been a material alteration of the note and the plaintiff must therefore be non-suited. The alteration complained of by him is an endorsement on the note which runs thus:

I have received to my satisfaction the amount due under this.

(Signed) Karakkat Edathil Othanan Nambiar.

4. It will be seen that the said endorsement purports to be a receipt of the amount paid under the promissory note by Othanan Nambiar, the senior

Anand-aravan. It has been found by both the lower Courts that the said endorsement is a forgery. The endorsement is outside the body of the note

and the signature. Prima facie it does not form part of the note. It would seem from *Ede v. Kanto Nath Shaw* (1877) 3 Cal 220 that "the alteration

must be something which appears to be attested by the signature" before it can be called a material alteration. As observed by the learned Judges

in *Gour Chandra Pas v. Prasanna Kumar Chandra* (1906) 33 Cal 812:

Any change in an instrument, which causes it to speak a different language in legal effect from that which it originally spoke, which changes the legal

identity or the character of the instrument either in its terms or the relation of the parties to it, is a material change, or technically, an alteration, and

such a change will invalidate the instrument against all parties not consenting to the change. * * * The test is not necessarily however, whether the

pecuniary liability of one of the parties has been increased by the change; it is of no consequence, whether the alteration would be beneficial or

detrimental to the party sought to be charged on the contract. The important question is whether the integrity and identity of the contract have been

changed.

5. In this case there is no alteration of the identity or the integrity of the contract. No doubt the addition of the words may in a sense alter the

identity of the instrument in the sense of physical appearance, but that is not enough, as observed by Brett, L.J. in *Suffell v. Bank of England*

(1882) 9 QBD 555. The endorsement purports to be only a receipt of consideration which might have been equally well secured by a

memorandum written on a separate piece of paper. The object no doubt is to furnish evidence against the members of the tarwad, but it does not

in any way alter the legal liability of the party to the document, and, as observed by Brett, L.J. in the said *Suffell v. Bank of England* (1882) 9 QBD

555 case,

Where an instrument contains only a contract, or can only be used as evidence of a contract, no alteration of such an instrument, which does not

alter or affect the contract, can be a material alteration.

6. In that sense it cannot be said that the endorsement in question will be a material alteration so as to vitiate the instrument. The two cases relied

on by Mr. Govinda Menon are distinguishable. The first case which he cited is *Knill v. Williams* (1809) 10 East 431. In that case the alteration to

the promissory note was the addition to "for value received" of the words "for the goodwill of the lease and trade of Mr. F. Knill, deceased." It

was held to be a material alteration because it

points out the goodwill and trade of Knill as the particular consideration for the note and put the holder upon inquiring whether the consideration

had passed.

7. As explained by Cotton, L.J. the ratio of that decision is that

the alteration must be such an alteration of the instrument as would make it substantially different, and which, although it would not affect the

contract, would affect the rights of the parties in other matters: *Suffell v. Bank of England* (1882) 9 QBD 555.

8. The rights of the parties are in no way affected in this case within the meaning of that decision. The other case relied on by him is *Warrington v.*

Early (1854) 23 LJQB 47. In that case, in the corner of the paper, the words "interest to be paid at 6 per cent" were added. Lord Campbell, C.J.

was inclined to consider that it was a material alteration and he observed:

We think this forms part of the contract. It would clearly have been so if it had been written in the body of the note, and we think a memorandum

of this kind written in the corner of the note is equally part of the contract, because the contract must be collected from the four corners of the document and no part of what appears there is to be excluded.

9. In the same case he pointed out that where there is merely a place of payment mentioned in the note, that would not affect the instrument

because it would not form part of the note. In the same way the receipt of consideration would not form the part of the note and the alteration does

not vary the contract and vitiate the note. In the result the second appeal fails and is dismissed with costs. (Leave refused).