

(1941) 08 MAD CK 0006
In the Madras High Court

Sayed Abdul Huq Sahib

APPELLANT

Vs

Usman Khan Sahib Kabuli (died) and Others

RESPONDENT

Date of Decision : 18-08-1941

Acts Referred:

Citation : AIR 1942 Mad 167 : (1941) 54 LW 591 : (1941) 2 MLJ 939

Hon'ble Judges : Chandrasekhara Ayyar, J; Chandrasekhara Aiyar, J

Bench : Division Bench

Judgement

Chandrasekhara Ayyar, J.—A point of limitation arises in this second appeal preferred by the plaintiffs. The facts are these. The plaintiff sold

certain immovable property to one Mohamed Ghouse on 15th January, 1920, for a sum of Rs. 1,750. A sum of Rs. 600 out of the sale price was

not paid by Mohamed Ghouse who therefore executed a promissory note in favour of the plaintiff for the said amount on the same date. Payments

were made towards the amount due under the promissory note and endorsements were made on the note evidencing those payments. On 15th

August, 1927, a sum of Rs. 187-7-0 remained due to the plaintiff under the note and he obtained a decree for the said amount in O.S. No. 302 of

1927. The present suit to enforce the vendor's lien was filed by the plaintiff against the defendant who purchased the properties in execution of a

mortgage decree for sale obtained by a Fund against the owner, Ghouse Sahib, for the recovery of the balance due to him; and plaintiff's case is

that he was not aware of the mortgage in favour of the Fund and that the defendant purchased the properties with notice of his charge or lien.

2. As the suit was filed by the plaintiff on 4th July, 1936, that is, more than 12 years after the date of the sale to Ghouse Sahib, both the lower

Courts held that it was barred by limitation under Article 132. The plaintiff tried to save himself from the bar of limitation by relying on the

endorsements on the promissory note, contending that they amounted to an acknowledgment of liability not merely in respect of the promissory

note, but as regards the statutory charge as well.

3. The same argument is now advanced for the appellant in the second appeal by Mr. K.V. Sesha Aiyangar. He contended that the original debt

was one and the same and that acknowledgments of liability on the promissory note enured to keep the debt alive and that the statutory charge

was consequently not barred. He also pointed out that the decision relied on by the lower Courts reported in *Authinarayana Aiyar v.*

Krishnaswami Aiyar 1924 M.W.N. 755 was reversed in L. P. A. No. 150 of 1924. The decision of Mr. Justice Devadoss in the Weekly Notes

Case has little to do with the point now under consideration. His Lord-ship took the extreme view that as the charge was a statutory one, the time

limited for its enforcement by statute could never be extended by agreement of parties and that even though the sale deed gave a particular period

for payment of the price, still the charge would be extinguished on the expiry of 12 years from the date of the sale deed. This view was over-ruled

as incorrect by *Wallace and Madhavan Nair, JJ.*, in the Letters Patent Appeal.

4. We have to consider whether acknowledgments of liability evidenced by endorsements on the promissory note can be treated as

acknowledgments of liability in respect of the vendor's lien. Three cases were cited in support of this position, namely, *Raman v. Vairavan* I.L.R.

(1883) Mad. 392 *Chokkalingam. Chetty v. Annamalai Chetty* (1915) 34 I.C. 417 (1898) L.R. 25 I.A. 95 (Privy Council) . But in all the three

cases, not merely was the debt the same but the remedies were identical also. In *Raman v. Vairavan* I.L.R.(1883) Mad. 392 the point was

whether the acknowledgment of liability in respect of a hundi on Penang in favour of the plaintiff's agent for a debt due by the defendant to the

plaintiff, requesting the drawee of the hundi to pay the amount to the plaintiff still due on the hundi constituted a sufficient acknowledgment of the

debt due in respect of which the hundi was drawn. In *Chokkalingam Chetty alias Peria Karuppan Chetty v. Annamalai Chetti* (1915) 34 I.C. 417

Coutts Trotter and Srinivasa Aiyangar, JJ., had to consider a payment endorsed

on a chit and purporting to be for the chit. The chit was inadmissible as a promissory note and their Lordships held that the acknowledgments on the chit were nevertheless available as an acknowledgment of the liability of the original debt. In (1898) L.R. 25 I.A. 95 (Privy Council) the Privy Council held that a petition by three co-owners giving direction to the manager to pay the surplus income towards the payment of certain debts due by them specified in the petition amounted not merely to an acknowledgment of joint liability in favour of the creditor who had obtained decrees for arrears of rent, but also amounted to an acknowledgment of liability inter se as between the co-owners themselves for any claim or contribution that might arise. Their Lordships say at page 851 that it was not necessary that the defendants should admit liability to the plaintiff nor promise to pay him anything. They observe:

It is not required that an acknowledgment within the statute shall specify every legal consequence of the thing acknowledged. The defendant acknowledged a joint debt. From that follow the legal incidents of her position as joint debtor with the plaintiff, one of which is that he may sue her for contribution.

5. The case before us is in my opinion different from the cases cited for the appellant. Though the debt is identical, two distinct remedies became available for its recovery, one by way of enforcement of the personal liability under the promissory note, and the second by way of enforcement of the statutory charge by sale of Immovable properties. Where the note is executed by the vendee to the vendor, as in this case, there is no extinguishment of the lien or the charge; but there may be cases where such extinguishment takes place and some of them have been dealt with in *Swaminatha Odayar Vs. Subbarama Aiyar and Another*, by Ramesam and Reilly, JJ. The remedies in respect of the statutory charge and the promissory note are certainly not similar or co-extensive. In the one, we are concerned with the Immovable properties and in the other with the personal liability of the executor of the note. The periods of limitation are different for the two causes of action.

6. If the promissory note had been taken in the name of a third party instead of by the plaintiff it could not at all be said that payments made by the

vendee towards the amount due under the note can be treated as acknowledgments of liability in respect of the statutory charge. A similar difficulty would arise in the case of negotiation of the promissory note by the payee under the Law Merchant. Could it be contended that an

acknowledgment of liability on the promissory note would serve as a good acknowledgment to extend the period of limitation for the enforcement of the charge, when the charge-holder had assigned it to a third party?

7. These considerations show that in the case where two remedies flow either by operation of law or by agreement between the parties out of one

and the same transaction and the remedies are separate and distinct in their scope and in their essential features, anything said or done to save one

of the remedies from the bar of limitation cannot operate by itself to save the other also. As has already been pointed out, the three cases cited for

the appellant are all cases of a single debt and a single remedy for the debt.

8. Holding for the reasons given above that the lower Courts have taken the correct view on the point as to limitation, I dismiss this second appeal

with costs.

9. As the question involved is of some importance I grant leave to prefer an appeal.