

(1936) 11 MAD CK 0042
In the Madras High Court

Seshan Pattar's Son Ramanadha Aiyar	APPELLANT
Vs	
G.G. Narayanaswamy Aiyar	RESPONDENT

Date of Decision : 16-11-1936

Acts Referred:

Stamp Act, 1899 — Section 35

Citation : (1937) 45 LW 609 : (1937) 1 MLJ 163

Hon'ble Judges : Horace Owen Compton Beasley, J

Bench : Division Bench

Judgement

Horace Owen Compton Beasley, Kt., C.J.—In my view, this Civil Revision Petition must be dismissed with costs although that result is

reached by coming to a different decision upon the point of limitation to that reached by the learned Subordinate Judge. It seems to have been

conceded in the lower Court that the promissory note Ex. B was insufficiently stamped and the suit was not brought upon the promissory note at

all. The only use to which it was put at the trial was as an acknowledgment of his debt to remove the bar of limitation which otherwise was

obviously in the way of the claim, the amount sued for having been due on the 30th November, 1929, and the suit filed on the 10th March, 1934.

The learned trial Judge held that although the note could not be used as a promissory note it could nevertheless be used as an acknowledgment of

the defendant's liability for the debt sued upon and he relied upon the decisions in In Re: Bhogole China Somayya and Others, and V.R.

Rakkappan Ambalam Vs. C. Suppiah Ambalam, . The learned Subordinate Judge had not got before him the unreported decision of a Bench of

this Court to which I myself was a party in K.M. Subbayyar and Sons v. P.N. Lakshmana Aiyar and Ors. S.A. No. 124 of 1930 in which

judgment was given on 6th September, 1934. There the Bench took a view contrary to that expressed in the two decisions of Krishnan Pandalai,

J., sitting alone to which I have just made reference. It was held that a promissory note which was insufficiently stamped could not be used for the

purpose of proving an acknowledgment by the maker of it of his indebtedness. That decision is not only binding upon me but I think is a correct

one as well. The learned Subordinate Judge has quite rightly taken this to be a document which comes within Section 35 of the Stamp Act. It is

true that it is a promise to pay at a future date instead of on demand but it is nevertheless a promise to pay and is in my opinion clearly provided for

by Section 35 of the Stamp Act. Therefore the learned Subordinate Judge should have held that the suit was barred by limitation as an insufficiently

stamped note could not be used in evidence for any purpose and it is not necessary for me to deal with the other questions raised before him. But I

think it necessary to say this that the suit was brought by the assignee from the receiver appointed in a partition suit in the stake-holder's family

which at the time of the starting of the kuri or chit was an undivided family. This was an auction chit and there were to be 14 auctions. There were

15 subscribers each of them subscribing Rs. 500 for 15 instalments. Except with regard to the 2nd instalment out of which the suit arose, the same

procedure was adopted with regard to the others. The 15 subscribers subscribed each Rs. 500 making a total of Rs. 7,500. This sum of money

was immediately put up in auction and sold to the subscriber or bidder who was prepared to give the largest discount. He then got the sum of

money less the discount offered by himself. This discount at the 1st auction was divided up amongst all the subscribers except the successful

bidder. The 2nd instalment differed considerably from all the others in that the whole of the subscriptions of the 15 subscribers amounting to Rs.

7,500 went to the stake-holder. It was in fact his prize and thereafter at all the other auctions the discount offered by the successful bidder was

divided up amongst those subscribers who had not been successful at the previous auctions and excluding the stake-holder. The defendant paid his

subscription in respect of the first instalment and also the third and the fourth when my information, which I got from Mr. K. Rajah Aiyar, is that the

chit stopped. The whole of the trouble arises in this case in respect of the second instalment. The defendant did not subscribe his Rs. 500 as he

ought to have done. Instead a promissory note payable in three years" time was taken from him and, as he did not pay the amount, the suit was

filed against him as I have already stated not on the promissory note because it was not sufficiently stamped but upon the original debt, viz., Rs.

500. The learned trial Judge having found in favour of the plaintiff on the point of limitation then proceeded to deal with the claim upon the original

debt. He dismissed the suit because he held that it was really a suit claiming specific performance of a contract to lend. This means that he regarded

the stake-holder as the borrower and the subscriber as the lender and the suit against the latter as being one to enforce a contract entered into by

him to lend Rs. 500 to the stake-holder on the date of the second instalment. It is very difficult to see how this can possibly be a contract whereby

the subscriber is to lend a certain sum of money to the stake-holder. It has been held, in a case of a similar auction chit where it was contended that

the chit subscriber was a borrower from the fund, that he was not a borrower but he was merely the purchaser of a sum of money. Vide Raghavan

Pattar v. Arumugham (1934) 68 M.L.J. 283. In the present case the lower Court reverses the position unsuccessfully put forward in that case and

treats the subscriber as the lender and the stake-holder as the borrower. I do not agree as I quite fail to see how it can possibly be said that this is

in any sense a contract entered into by a subscriber to lend money to the stake-holder. It seems to me to be more in the nature of a contract on the

part of the subscriber to pay a certain sum of money to the stake-holder under the rules of the chit fund and when he has broken his contract there

is nothing at all to prevent the stake-holder from suing him for the money which he has contracted to pay. However, I have not heard any argument

from Mr. Rajah Aiyar on behalf of the respondent on this point and I therefore do not decide it. I merely express the opinion I have come to

without hearing any such argument. The result is that the suit must fail on the question of limitation and this Civil Revision Petition dismissed with

costs.