

(1924) 11 MAD CK 0088
In the Madras High Court

S.N.S. Satheppa Chettiar

APPELLANT

Vs

K. Muthusami Pillai

RESPONDENT

Date of Decision : 28-11-1924

Acts Referred:

Citation : AIR 1926 Mad 537

Judgement

1. This is an appeal against an order of remand by the lower appellate Court in a promissory note suit. The plaintiff sued the defendant in the District Munsif's Court on an on-demand promissory note for Rs. 700. The defendant admitted execution and the receipt of the money, but pleaded that the promissory note was taken by the plaintiff as a sort of guarantee that the plaintiff would not resale from his bargain to empower the defendant to manage his lands and get possession of them for him by criminal proceedings, that the plaintiff promised to pay him Rs. 200 a month for his services and a bonus of Rs. 500 if the criminal proceedings turned out successful, that he thus got the Rs. 700 as a sort of advance of his pay and bonus which were going to fall due to him, and that this advance was to be discharged as and when that pay and bonus became due and that the plaintiff agreed to this course being adopted ; the defendant further pleaded that pay to the extent of Rs. 200 and more and the bonus of Rs. 500 had actually fallen due to him before the date of suit and that, therefore, the promissory note had been fully discharged.

2. The District Munsif held that the defendant could not put forward the above agreement in defence in a promissory-note suit as such an agreement contravened the provisions of Section 92 of the Indian Evidence Act. The lower appellate Court held that the agreement could be proved and remanded the suit for evidence, and against this order the present appeal is filed.

3. Neither of the lower Courts has, we think, quite clearly understood the nature of the case. The defendant's written statement is not as clear as it might be, but we think that his plea really amounts to a contention that the promissory-note sum was paid to him as an advance of pay and bonus, that advance to be paid

off as. and when that pay and bonus fell due Now, if this is a plea that the promissory-note was not payable on demand and was not enforceable until the pay and bonus became due i.e., was not enforceable until it was charged and was, therefore, never really enforceable at all, that would be a plea of a condition in defeasance of the on-demand contract and the District Munsif's view would be perfectly correct. But it is not that, and the defendant himself admits so much. His plea is rather an admission that if the plaintiff chooses to sue before the pay and bonus were due then he cannot resist the demand, but if the plaintiff chooses to delay his suit until the pay and bonus had fallen due, then the promissory-note is in fact discharged because the plaintiff agreed to allow that pay and bonus to be credited towards the promissory-note debt. That that was the case between the parties from the first is clear from the fact that the first issue in the case was "whether the discharge pleaded is true, the defence being treated not as plea of non-enforceability of the note, but as a plea of discharge, and it was until another District Munsif took up the case that the third issue was framed, namely, whether the written statement discloses any valid defence Now, as the plaintiff has on the defendant's case deferred his suit until the pay and bonus were due from him to the defendant, we can see no bar u/s 92 of the Indian Evidence Act against the proof of this agreement. It is not in any sense an alteration of the original terms of the contract. It is for the purposes of the present defence a mere agreement as to the method of payment proveable and enforceable when a state of affairs is reached where it does not conflict with the on-demand condition in the promissory-note. The note is still, and has always been payable on demand; but when in answer to the demand the defendant is in a position to say that he has already discharged the note according to the method agreed upon between the plaintiff and himself, there can be no bar u/s 92 to prevent proof of that agreement.

4. In this view, no question of legal or equitable set off will arise. If it is proved that there was an agreement that the note should be discharged in that way, then the note is either discharged or it is not, and the correct issue for decision in the case is Issue-T-- Whether the discharge pleaded is true ?

5. The defendant has also put forward a plea of general set off against the plaintiff that the plaintiff owed him various sums of money amounting to much more than the promissory-note amount and that, therefore, the promissory note amounted is not owing. But he did not in the first Court pay any fee on the amount claimed by him as a set off and the District Munsif, therefore, refused to entertain that plea. The defendant did not appeal on that ground and he never urged that ground before the lower appellate Court. We are not prepared, therefore, to allow him to take the point here in appeal, nor need we deal also with the further ground put forward by him that this promissory note was merely an item in a series of running accounts that being a point which he also never put forward before the "lower appellate Court. We are here concerned only with the question whether the lower appellate Court's order of remand is a, proper one. We are of opinion for the reasons given above that it was and that the suit

after remand should be dealt with by the first Court on the lines that we have indicated above. We, therefore, dismiss this appeal with costs.