

(1913) 11 MAD CK 0031
In the Madras High Court

Sornalinga Mudali

APPELLANT

Vs

Pachai Naickan alias Pachaiyappa Naicken and Others

RESPONDENT

Date of Decision : 20-11-1913

Acts Referred:

Citation : AIR 1914 Mad 41 : (1915) ILR (Mad) 680

Hon'ble Judges : Spencer, J; Sadasiva Ayyar, J

Bench : Division Bench

Judgement

1. The District Munsif is in error in holding that, where several persons make a joint promise in consideration of money paid to some of them, the others are entitled to contend that, because no portion of the consideration was received by them, there was no legal consideration for their own joint promise. The consideration paid to any of the joint promisors, is legally sufficient to support the promise of all the joint promisors.

2. As regards V. Sesha Aiyar Vs. Bhavaji Mangal Doss Jee Varu and Another, the learned Judges seem to have held that the single executant of a promissory note could show that there was no consideration for the only promise relied on, namely, the promise by that single executant. If the learned Judges intended to decide that a person who has made himself liable, according to the tenor of the promissory note, could prove that he and the promisee agreed contemporaneously that he should not be held liable, I respectfully differ from that view, as it is opposed to Section 92 of the Evidence Act and to the Law merchant.

3. T.R. Narasimma Murthi Sastri brought in place of Ramasami Pillai Vs. A.T.V. Ramasami Chettiar and Another, shows that as against the holder, one of the joint executants cannot be permitted even to prove that he was a mere surety. The plaintiff's contention as to subsequent interest and costs must also be allowed.

4. In modification of the Lower Court's decree, a decree will issue in the

plaintiff's favour against all the five defendants for the sum decreed by the Lower Court with interest at 6 per cent, per annum from the date of suit and cost in the Lower Court. The costs of this Revision Petition will be paid by the fifth defendant to the plaintiff.

Spencer, J.

5. The respondent; (fifth defendant) in his written statement said he signed the plaint promissory note believing the plaintiff, who said That, if his name was on the note as that of a person jointly liable, the other defendants would take an interest in discharging the debt. From this it appears that he signed as a surety. The District Munsif seems to have thought that there was no consideration as between the plaintiff and the fifth defendant, but Section 127 of the Contract Act shows that the value received by the principal debtor is a sufficient consideration to bind the surety, and Section 128 makes his liability co-extensive with that of the principal debtor. He is clearly precluded by Section 92 of the Evidence Act from setting up a contemporaneous oral agreement that he should not be made liable on the promissory note-*vide* T.R. Narasimma Murthi Sastri brought in place of Ramasami Pillai Vs. A.T.V. Ramasami Chettiar and Another, No doubt a promissory note that is without consideration creates no obligation between the parties to the transaction Section 43 of the Negotiable Instruments Act), but here the District Munsif has made the other persons, defendants Nos. 1 to 4, who signed it liable. This is, therefore, not a case in which the negotiable instrument was made without consideration. The respondents' pleader relief on V. Sesha Aiyar Vs. Bhavaji Mangal Doss Jee Varu and Another, . This was not a case of several executants but of one executant. There was a finding that the promisor was a mere name-lender "for the real obligor, and therefore the learned Judges who decided that case held that there was no consideration by which the former could be bound.

6. I therefore agree in the order now pronounced by my learned brother.