
(1914) 12 MAD CK 0001
In the Madras High Court

Sundarammal alias Sowbhagiammal APPELLANT
Vs
V. Subramania Chettiar and Others RESPONDENT

Date of Decision : 15-12-1914

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 118

Citation : 30 Ind. Cas. 971

Hon'ble Judges : John Wallis, C.J.; Seshagiri Aiyar, J

Bench : Division Bench

Judgement

John Wallis, C.J.—This is an appeal from the decision of the Subordinate Judge of North Arcot giving judgment for the plaintiff in a suit on

three promissory notes, which were executed by the 1st defendant who died before the trial. The Subordinate Judge has written a very careful

judgment, and I do not find it necessary to dissent from any of the conclusions of fact at which he has arrived. He has decided the case on the

ground that under the Negotiable Instruments Act, the burden is on the representative of the 1st defendant to show failure of consideration in whole

or in part and he has observed in the course of his judgment that but for the burden of proof being this way he would probably, on account of the

suspicious circumstances of the various transactions to which he refers, have decided the suit against the plaintiff except to the extent of the

consideration admitted by the 1st defendant in his written statement. Farran, C.J., in *Moti Gulabchand v. Mahomed Tharia Topan* 20 B. 367 held

that the fact that the defendant in that case was a young man of extravagant habits who was kept cut of the enjoyment of his property which was in

the hands of a Receiver was sufficient to throw the burden on to the plaintiff. It appears to me that the facts of the present case are very much

stronger than the facts in Moti Gulabchand v. Mahomed Mehdi Tharia Topan 20 B. 367 and that they have that effect. The 1st defendant was a

young man of extravagant habits, who, though, as the Subordinate Judge finds, he was supplied by his family with abundant means for his

maintenance, borrowed in a very extravagant manner both from the present plaintiff and from others after he came of age, so that his elder brother

was obliged to sue for partition. All the transactions in this suit took place before the 1st defendant obtained his share of the property on partition.

The transactions with the present plaintiff fall under three heads. In the year 1906, the 1st defendant borrowed over Rs. 1,600 from the plaintiff

and afterwards denied receipt of consideration. This put a stop to the transactions between the parties for sometime. But in 1908 they were

resumed, and between March 1908 and May 1908 the 1st defendant is said to have borrowed from the plaintiff a sum of over Rs. 6,000 on

promissory notes which have been made the subject of separate suits. Lastly, we come to the plaint transactions, three promissory notes for Rs.

3,000, Rs. 3,400 and Rs. 3,000 which are said to have been borrowed in June, August and November 1908. So that between March and

November 1908, the 1st defendant is said to have borrowed more than Rs. 15,000 from the plaintiff.

2. The Subordinate Judge has enumerated the various suspicious circumstances which attended these transactions, and I think if only necessary to

refer to one or two of them as sufficient to shift the burden. The Subordinate Judge finds that the plaintiff has not means to make the advances

shown in his accounts & to the 1st defendant and his other clients. According to the plaintiff's own evidence his transactions with other clients were

on a very small scale. He says that their total indebtedness to him was Rs. 3,000, whereas he purports to have made advances of no less than Rs.

15,000 in the course of these few months to the 1st defendant. The Subordinate Judge finds, and I agree with him, that the plaintiff's accounts do

not show that he had enough money to make such advances. It is, of course, possible that these accounts may not fully represent his transactions

and may have been prepared for the purpose of deceiving the Income Tax authorities. In the course of cross-examination the plaintiff set up

various false cases as to how he got the money. One absurd story he told was that he had sold all his wife's jewels for the purpose of getting

money to make these advances to the 1st defendant. I think that is quite incredible. I do not believe the allegation of the 1st defendant in his written statement as to what he received on these promissory notes. On the other hand, I am equally far from believing that the plaintiff really advanced the whole of these amounts as he says. It seems to me that where the relation is such as that which existed between the plaintiff and the 1st defendant very little is needed to shift the burden.

3. The other evidence is fully dealt with by my learned brother in his written judgment, and it is sufficient for me to say the effect of that evidence is to shift the burden which was on the defendant to show that the full consideration of the promissory notes has not been paid, and that being so, judgment can only be given for the amounts which are admitted to have been received by the 1st defendant. The appeal must, therefore, be allowed and the decree will be modified accordingly with costs throughout.

Seshaqiri Aiyar, J.

4. I have come to the same conclusion. The plaintiff sues on three promissory notes, Exhibits A, A1, and A2 executed by the 1st defendant on the 4th June 1908, 20th August 1908 and 11th; November 1908 respectively. The 1st defendant pleaded that excepting small sums of money paid on the occasion of the registration of each of the three promissory notes, there was no consideration for them. He died pending the suit and before evidence was gone into. His widow has been brought on the record as his legal representative. The Subordinate Judge in a very careful judgment, in which he draws attention to all the salient features of the case, came to the conclusion that the burden of proof was upon the defendants and that it was never shifted on to the plaintiff, and upon that ground alone, although he was of opinion that there were many suspicious circumstances connected with the execution of the promissory notes, he gave a decree for the plaintiff as prayed for. The widow of the 1st defendant has appealed. I am unable to agree with the Subordinate Judge that in the circumstances of the case to which I shall presently refer the burden of proof was not shifted to the plaintiff.

5. The father of the 1st defendant died in 1900 leaving behind him the 1st defendant who was then a minor and another son, the step-brother of the 1st defendant. He died possessed of considerable property and on his death,

their management passed into the hands of the 1st defendant's step-brother who was older in years. While the step-brother was managing the 1st defendant Appava Chetty began to contract debts. The first transaction was about September 1906 when a promissory note was executed by Appavu for Rs. 2,000 in favour of the plaintiff in consideration of the latter transferring a deed of mortgage executed to him by a third party. No explanation has been given as to why Appavu was saddled with the collection of a mortgage-debt and why he gave a promissory note in exchange. The mortgage which was transferred was for Rs. 1,200, and it was suggested that at the time of the promissory note, probably the amount of the principal and interest due on the mortgage amounted to Rs. 2,000.

The deed itself has not been put in evidence. This is a very suspicious circumstance. The next promissory note was executed by Appavu to plaintiff on the 28th October 1906 for Rs. 476 carrying interest at 18 per cent. per annum. Three days later, on the 1st November 1906, a third promissory note for Rs. 200 was given. Eight days after, a fourth for Rs. 450, and after three weeks on the 2nd December 1906 a fifth promissory note for Rs. 500 was executed, all bearing interest at 18 per cent, per annum. On the 4th January 1907 Appavu sent a registered notice, Exhibit R, through his Vakil to the effect that full consideration was not paid in respect of the fourth and fifth promissory notes and that he would not be liable for their payment. To this, a reply, Exhibit R1, was given on the very next day, saying that the contents of the notice were "highly surprising, fraudulent and shocking." The notice went on to say: "Further, you should pay me within 31st January 1907, the amount of the principal and interest due on the above said (5) five promissory notes which you have executed in my favour, endorse payments on the respective bonds and obtain return of those. If you do not do so, suit will be filed at once in Civil Court and the amounts recovered with costs." In or about September 1907, the elder brother of Appavu filed a suit against the plaintiff for partition of the family properties, the apparent object being to relieve himself from liability for the debts which Appavu was recklessly contracting at this time. The suit itself terminated in a compromise, Exhibit IX, on the 10th October 1909. During the pendency of this suit, 1st defendant began to borrow further sums of money from the plaintiff. The borrowings are

preceded by an abject apology, Exhibit S dated the 14th March 1909, for having given the notice, Exhibit R. Then on that very day, a promissory note for Rs. 675 was executed by the 1st defendant to the plaintiff. Four days after, on the 11th March, a promissory note for Rs. 2,175 was executed. Twenty days after on the 10th April 1908, another for Rs. 2,000 was executed. Then we come to the suit promissory notes. The first of them was on the 4th June 1908 for Rs. 3,000, the second was on the 20th August 1908 for Rs. 3,400 and the third was on the 11th November 1908 for Rs. 3,000. These promissory notes following in quick succession naturally create a great deal of suspicion. It has to be remembered that, even according to the evidence of the plaintiff, 1st defendant Appavu was 21 years of age in 1908. When he began his borrowings in 1906 he had just emerged from his minority. He was a man of large expectations and was out of possession, because the management of the properties was in the hands of his brother. Those circumstances, in my opinion, shift the burden of proof on to the plaintiff and the facts that the executant is dead and that the plaintiff now seeks to recover the amount from a young woman, who admittedly has no knowledge of the circumstances under which the promissory notes were executed, make it more incumbent upon the plaintiff to prove that there was consideration for the promissory notes sued on. In *Moti Gulabchand v. Mahomed Mehdi Tharia Topan* 20 B. 367 Sir Charles Farran, Chief Justice, says: "The defendant, when he executed the notes sued upon, was a young man who had only attained his majority nine months previously. He appears to have been of an extravagant and reckless character. He was entitled to a large amount of property under the Will of his father, the late Sir Tharia Topan of Zanzibar, but had not come into possession of it, as on account of family disputes it was, in common with the rest of the family estate, in the hands of a Receiver appointed by this Court. The plaintiffs are a Marwadi firm who are by profession money-lenders. These facts being admitted (apart from the technical Rule laid down in Section 118 of the Negotiable Instruments Act), the ordinary presumption that a negotiable instrument has been executed for value is so much weakened, that the allegation of the young man that he has not received full consideration is sufficient to shift the burden of proof and to throw upon the money-lender the obligation of satisfying the Court that he has paid the consideration in full. This is, we

think, the practical effect of illustration (c) to Section 114 of the Evidence Act, and its Explanation."" In the present case also the plaintiff is a money-lender. It is also in evidence that Appavu was a man of reckless character and was leading a wasteful life. He denied consideration except to a small extent. Therefore the observations of the learned Chief Justice apply to the present case to their full extent. I think that the present case is even stronger than the case before the Bombay High Court. As I pointed out, the transactions began with a suspicious transfer of a mortgage document. Appavu was involved on litigation with his brother. On these additional reasons and having regard to the principles laid down by the learned Chief Justice, I have no hesitation in holding that the burden of proof is heavily on the plaintiff in this case to show that consideration passed for the plaint notes.