(1920) 01 MAD CK 0005

In the Madras High Court

S.V.R. Veerappa Chetty APPELLANT

Vs

I.N.K.R. Muthuraman Chetty and Others RESPONDENT

Date of Decision : 08-01-1920

Acts Referred:

Citation : 58 Ind. Cas. 508 : (1920) 12 LW 12

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

Bench : Division Bench

Judgement

Sadasiva Aiyar, J.—I think that the hundi sued on is illegal, as contravening Section 26 of the Indian Paper Currency Act Nachimuthu

Chetty v. Andiappa Pillai 42 Ind. Cas. 706 Spencer and Krishnar, JJ.. The Subordinate Judge''s view that a loan becomes a deposit with the

debtor ""after the loan become pay. able by the expiry of the time provided in the document of loan"" and if the debtor happened to be a banker, the

proviso to Section 26 of the Paper Currency Act will apply, cannot be accepted as sound.

2. The lower Appellate Court''s decree dismissing the suit must, therefore, be confirmed on the above ground which was the ground on which the

District Munsif properly dismissed it.

3. It is unnecessary, under these circumstances, to give a final opinion on the question whether the particular ground on which the lower Appellate

Court dismissed the suit, namely, that plaintiff could not sue on the hundi because he had entered the name of Periannan Chetty on it and had not

got Periannan Chetty to endorse it bask in plaintiff''s favour, whether this particular ground is also a good defense to the suit. I shall content myself

by saying that my present view is that a plaintiff who is suing only the drawer of a hundi and who is honestly in possession of that hundi which is

made payable to bearer (and the presumption is that every holder is an honest holder in due Course) is entitled to deal with the endorsements and

writings on the bank of the hundi in any manner he likes, provided that his so dealing does not subject the defendant (the drawer) to a greater

liability than he would be under, if there had been no endorsements at all and the hundi had been left in its original state. This principle had been

applied in the Muthar Sahib Maraikayar v. Kadir Sahib Maraikayar 28 M. 544 in favour of the plaintiff in that case, who was the bolder of a hundi

and who was also an indorser who got back the hundi, but I do not think that his having been an endorser also in that case has anything to do with

the customs and conveniences of Mercantile Law on which the governing principle of that decision rests. If the plaintiff in the case was entitled to

score out, and had soured out Periannan Chetty''s name, from the back of the hundi, the result would be the same as if Periannan had never been

its holder. Periannan could thereafter not sue on it and the plaintiff as bearer would be the only person entitled to sue thereon. Of course, even

though the names or endorsements on the back had not been actually dealt with by a plaintiff (including the souring out names on the back) in the

manner favourable to him, before he brought the suit, he could ask the Court to treat the hundi as if he had so dealt with them in any manner he

was entitled to deal with them. I have (it will be seen) dealt with a case in which the drawer alone is sought to be made liable. It goes without

saying that other considerations might arise, if an individual indorser is sought to be made liable as he will not be bound by alterations which would

prejudice his right to proceed against the previous endorsers or the drawer, etc.

4. In the result the Second appeal fails and is dismissed with costs.

Spencer, J.

5. In my opinion the District Munsif was right in holding that the suit was not maintainable on the hundi Exhibit A, on the ground that it contravened

Section 26 of the Paper Currency Act, and the Subordinate Judge was wrong in thinking that this was an exception to the prohibition contained in

that section. The Subordinate Judge gives three reasons for his opinion, and each of them on examination appears to be erroneous. First he says

that the words ''on demand'' do not appear on Exhibit A: but Section 26 does not require that those words should be expressed in the instrument.

No time for payment was specified and the hundi was made payable to the person presenting it. It was thus evidently a hundi payable to the bearer

on demand. Next the Subordinate Judge refers to the exception in Section 1 of the Negotiable Instruments Act in favour of instruments written in

an oriental language. This exception only provides against the provisions of that Act that override local usage in respect of instruments written in the

vernaculars. It does not prevent the operation of the provisions of the Paper Currency Act, which is quite a different Act., Lastly, the Subordinate

Judge tries to bring the case within the proviso to Section 26 by saying that though the amount was a loan in the first instance, it became a deposit

after the date of payment, It is clear from the evidence of Sathappa Chetty (plaintiff''s witness No. 1) that the gum of Rs. 1,000 in question

represented a debt due to 1st defendant by one Kassim and that no cash was deposited with the witness by lat defendant.

6. The proviso to Section 26 only applies to deposits of money in the hands of the bankers, shroffs or agents. This is not such a case. The suit

hundi, therefore, offends against Section 26 of the Paper Currency Act and following Chidambaram Chettiar v. Ayyasaami Thevan 36 Ind. Cas.

741 ; Arunachalam Chettiar v. Narayanan Chettiar 51 Ind. Cas. 300 and Nachimuthu Chetty v. Andiappa Pillai 42 Ind. Cas. 706 this suit, being

based on such a hundi, is not maintainable and the appeal must be dismissed with costs.

7. In this view it becomes unnecessary to decide the rather technical objection that plaintiff could not maintain the suit without; first obtaining an

indorsement from Periannan Chetty. The plaintiff is the holder of the negotiable instrument which, when drawn, was payable to bearer. He is not an

indorser as he did not sign the instrument (see Section 15 of the Negotiable Instruments Act) but he wrote an order to pay Periannan Chetty above

the signatures of 2 indorsers and thus u/s 49 he converted the indorsement which was in blank into an indorsement in full; u/s 46 the hundi become

negotiable by Periannan Chetty when it was indorsed, and delivered to him. When the instrument returned into the possession of the plaintiff, there

was nothing, so far as I can see, to prevent the plaintiff from canceling the indorsement which he had written in favour of Periannan Chetty and from recovering the amount due thereon.

8. If this negotiable instrument was not for other reasons bad, I should be inclined to allow the plaintiff to make the necessary: correction and to

proceed with this suit. But as he must fail on the other point, it becomes unnecessary to remand the suit for further trial.

