

(1917) 11 MAD CK 0042
In the Madras High Court

Tittu Gopalachariar and Others

APPELLANT

Vs

Maiyappa Chetty and Others

RESPONDENT

Date of Decision : 14-11-1917

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 19
Paper Currency Act, 1910 — Section 26

Citation : AIR 1918 Mad 317 : 45 Ind. Cas. 22 : (1918) 8 LW 501

Hon'ble Judges : Seshagiri Aiyar, J; Napier, J

Bench : Division Bench

Judgement

Seshagiri Aiyar, J.—The suit has been disposed of by the lower Courts on the pleadings and on the construction of the note annexed to the plaint. The learned District Judge says that as "it is a physical impossibility for it (the note) to have been paid on the day it was drawn," it was not a promissory note. The learned Vakil for the respondents said that he would not rest his case on this view of the District Judge. If I understand the learned Judge rightly, unless the payee and the drawer are face to face with each other, no promissory note can be made payable on demand. Whether it takes seven days to go to Penang or 24 hours from the place of execution to the place of payment, cannot matter if the view of the District Judge is correct that an "on demand" is payable co instant and should be paid the moment payment is claimed. No authority is cited by the learned Judge for this proposition and neither I nor the learned Vakils are able to find any.

2. The real question is, what is the nature of the document. The translation made by the interpreter shows that the note is payable to the bearer who brings it to the place of payment on the order of the payee. It is clear, therefore, that there must be an endorsement by the payee. If this is the correct view of the document, it does not offend against Section 26 of the Paper Currency Act. The principle underlying that section is that private persons should not be permitted to usurp the privileges of the Government. For they alone have the right to get a note negotiated by bare presentation. The language of an ordinary currency note

is what the Legislature intended should not be copied by private parties. In *Chidambaram Chettiaer v. Ayyasami Thevan* 36 Ind. Cas. 741: 4 L.W. 261 and in *Nachimuthu Chetty v. Andiappa Pillai* (1917) M.W.N. 778 : 6 L.W. 630 the language of the note was such that there was no necessity for an endorsement before payment can be demanded by the bearer of it, who is not the payee under it.

3. Mr. Gurusamy Ayyar then argued that the note postpones the payment of the amount due thereunder and is, therefore, obnoxious to Section 19 of the Negotiable Instruments Act. In the first place, I am unable to accept this construction of the note. What it provides for is, for postponing the date on which interest shall accrue due on the note. I am not prepared to say that even the payment of interest is put off. A comparison of the English Bill of Exchange Act, Section 10, with Section 19 of the Indian Act shows that a note which does not fix any date for payment is an "on demand" note. Also a note will be construed as an "on demand" note, if it is so expressed. This is the clear meaning of Section 10 of the English Act. Mr. Gurusamy Ayyar contended that even though a note may be made expressly payable on demand, if the time for the payment of interest or principal or both is put off, then the document is not a promissory note. The omission in the Indian Act to provide for cases of notes expressed to be payable on demand must be attributed not to any, intention to depart from the English rule of law but to the view that if the expression is there, the Legislature need not provide for it specially.

4. Looking at the document from any point of view, the conclusion of the Courts below is wrong and we must reverse the decree of both the Courts below and remand the suit for disposal on the merits. Costs will abide the result.

5. Napier, J.--The objection raised by the District Judge is absolutely without any foundation. A bill of exchange is nonetheless payable on demand for the fact that the demand cannot be made on the day when the bill is drawn. There has been some discussion on the meaning of the document. The District Munsif and the translation department translated it in a way which appellant's Vakil contended was not correct. It has now been translated by the principal interpreter and my learned brother is satisfied that the translation is accurate. On the words as we have them now, it is clear that the payment of the bill is not postponed to a future date and that it is not payable to any holder without endorsement. It, therefore, does not require an ad valorem stamp and does not offend against Section 26 of the Paper Currency Act, the effect of which is explained in *Chidambaram Chettiar v. Ayyasami Thevan* 36 Ind. Cas. 741; (1916) 2 M.W.N. 210 : 4 L.W. 261. The document is, therefore, both receivable in evidence and one made in accordance with law. The case will be remitted to the Court of the District Munsif for disposal. Costs will abide the result.