

(1955) 08 MAD CK 0025
In the Madras High Court
Case No : A.A.O. No. 228 of 1953

V. Kasinatha Mudaliar

APPELLANT

Vs

M.G. Vittal Rao
M. G. Vittal Rao Vs V. Kasinatha
Mudaliar

RESPONDENT

Date of Decision : 11-08-1955

Acts Referred:

Citation : (1955) 08 MAD CK 0025

Hon'ble Judges : Ramaswami, J

Bench : Single Bench

Advocate : E. A. Viswanathan, for the Appellant; P.M. Srinivasa Iyengar, for the Respondent

Final Decision : Dismissed

Judgement

Ramaswami, J.—This is a Civil Miscellaneous appeal which has been filed against the judgment and decree of the learned Subordinate Judge of Vellore in A. S. 37 of 1952 reversing the judgment and decree of the learned District Munsif, Tirupattur in O. S. 26 of 1950.

2. The relevant facts are: The plaintiff Vittal Rao is a general merchant carrying on business at Ambur. The defendant Kasinatha Mudaliar has been having transactions with him. These transactions from 7-7-1948 to 31-3-1949 showed that the defendant owed the plaintiff a sum of Rs. 1117-10-6 as on 31-3-1949. It is found that the defendant has executed a pro-note for a sum of Rs. 1,000 and has sent it to the plaintiff towards the amount due to him as per the transactions. On coming to Court the plaintiff was confronted by the defendant with the plea that he could not sue on original cause of action and that the claim had become merged in the promissory note, Ex. A-17.

This argument found acceptance at the hands of the learned District Munsif and he dismissed the suit. Thereupon in appeal, the learned Subordinate Judge held relying upon - "Dargavarapu Sarrapu v. Rampratapu", 25 Mad 580 (FB) (A); -

"Palaniappa Chetti v. Arunachalam Chettiar" 21 Mad LJ 432 (B) and - Punjab National Bank Vs. Tajammul Husain Bisheshar Nath and Others, that by mere passing of a promissory note the plaintiff could not be compelled to sue only on the pro-note and that the effect of the instrument was nothing more than a conditional satisfaction payment with recourse to the original debt and reversed the judgment and decree of the learned District Munsif. Hence this Civil Miscellaneous Appeal.

3. In appeal here, I am of the same opinion as of the learned Subordinate Judge for the following reasons. On facts this pro-note does not at all pretend to show on the face of it that it was in discharge of the entire transactions between the plaintiff and the defendant on the footing of which the suit has been filed.

On the other hand the pro-note had been worded as if loan has been taken from the plaintiff by the defendant on that date and this pro-note has been executed on that account. In other words this pro-note seems to have been nothing more than an instrument of conditional payment without barring recourse to the original debt. Secondly the defendant has not got into the witness box and told under what circumstances the pro-note has come to be executed though all manner of arguments have "been built from various cases to state that the original claim has got merged in this promissory note. Thirdly the account books of the plaintiff which have been filed clearly show that this pro-note does not find an entry there showing that it discharged the amount under these transactions and that therefore, the claim had become merged in that pro-note and that the plaintiff should look only to the pro-note for realising his dues.

4. The law has become clearly well settled and as pointed out by the learned Subordinate Judge the three decisions fully support this position. In 25 Mad 580 (FB) (A), the plaintiffs had sold and delivered opium to defendants on different occasions, taking a promissory note at each sale for the value of the parcel sold. These promissory notes had been signed by one of two partners they were made payable on demand to plaintiffs or their order and they had not been negotiated. Plaintiffs now sued all the partners for the amounts due, framing the suit as one for the price of goods sold and delivered and not basing it on the notes. The partner who had not signed the notes contended that the suit did not lie as framed and that it should have been brought on the notes, and not for the goods sold and delivered. Held that plaintiffs were entitled to sue for the price of the goods sold and delivered and that both of the partners were liable.

5. In 21 Mad LJ 432 (B), it has been held that the general presumption is that a bill of exchange or hundi given for a debt operates only as a conditional discharge of the debt. The execution of a formal receipt for the amount covered by the bill of exchange or hundi is not sufficient to rebut the presumption of conditional discharge. An endorsement of receipt on the pro-note is on no better footing. This decision relied upon an earlier decision of this Court reported in - "Jambu Chetty v. Palaniappa Chettiar", 26 Mad 526 (D).

6. In - The Imperial Bank of India Vs. V.P. Avanas Chettiar, it was held that the general presumption is that a promissory note or bill given for reducing a liability only operates as a conditional discharge until it is honoured. 26 Mad 526 (D) and 21 Mad LJ 432 (B), have been relied upon in this judgment.

7. In Punjab National Bank Vs. Tajammul Husain Bisheshar Nath and Others, the facts were that on 2-11-1921 two hundis were drawn by Tajammul Hussain Bisheshar Nath in favour of the Punjab National Bank, the drawees being the firm of Moti Lal Bisheshar Nath of Calcutta by which they were accepted. On 4-2-1922 these hundis were renewed by the same drawers but were not accepted by the drawees. It was held that this renewal did not absolve the drawees from their liability on the original hundis,

8. The result is that the learned Subordinate Judge has correctly decided the point in issue and there are no merits whatsoever to this Civil Miscellaneous Appeal. It is hereby dismissed with costs.