(1906) 01 MAD CK 0004

In the Madras High Court

Venkataramiah Pantulu APPELLANT

Vs

Ramakrishna Pantulu RESPONDENT

Date of Decision : 19-01-1906

Acts Referred:
Limitation Act, 1963 — Section 19

Citation : (1906) ILR (Mad) 205

Hon'ble Judges : Subrahmania Ayyar, J;Benson, J

Bench : Division Bench

Judgement

1. The question in this appeal is whether the plaintiff''s suit is sustainable. A promissory note was executed by the defendant to the plaintiff on the

28th November 1895. On the 2nd July 1898, exhibit A was executed by the defendant to the plaintiff. The present suit is based on a fresh contract

said to be evidenced by exhibit A, which it is urged, operated as a discharge of the obligation of the defendant under the promissory note. It is not

alleged in the plaint that the promissory note was cancelled or returned to the defendant. That the note remained with the plaintiff, uncancelled, was

expressly asserted, before the learned Judge, on behalf of the defendant and no attempt was made to refute the allegation. Even in the grounds of

appeal there is no reference to this matter. Though, therefore, in the course of the argument the appellant''s vakil stated that he was instructed to

say that the document had been returned to the defendant, we must proceed on the footing that this was not so. The question, then, is whether

exhibit A operated to extinguish the obligation under the promissory note and gave the plaintiff a fresh right of suit.

2. The case of Barker''s claim (1894) 3 Ch. D. 290, is an authority against this contention. No doubt there is this difference in regard to the facts in

the two cases, that the writing relied on in that case by the plaintiff was given on the same day on which the advance was made; whereas in this

case there was an interval, but we do not think that this affects the question. The Court of appe reversing the decision of North, J., was of opinion

that the provision in the letter that the defendant should pay the balance that might be due after deducting the sale-proceeds of the security, did not

imply an undertaking on the part of the plaintiff to forbear to sue, and was no more than an explicit statement of a liability to which the defendant

was already subject, and therefore gave no independent right of action to the plaintiff. The Court held that as the claim was not brought within the

period oil limitation calculated from the time of the advance, the plaintiff''s right was barrel.

3. It seems to us that similarly in the present case the obligation under the note was the only one on which the plaintiff was entitled to sue and that

the provision in exhibit A as to the realization of the decree debt and the payment of the balance, if any, did not affect the right of the plaintiff to sue

on the promissory note, or create an independent right of suit in favour of the plaintiff. It follows that as the present suit was brought after the expiry

of the period of limitation which would have governed the suit if brought upon the note, and taking account of the fact that exhibit A contains an

admission of liability within the meaning of Section 19 of the Limitation Act, we must hold that the decree of the learned Judge dismissing the suit is

right. In this view it is not necessary to go into the cross claim made by the defendant. We dismiss this appeal with costs.

