(1915) 12 MAD CK 0002

Madras High Court

Case No: None

Chokkalingam Chetty alias Periya Karuppan Chetty and Others		APPELLANT
	Vs	
Annamalai Chetty and Others		RESPONDENT

Date of Decision: Dec. 21, 1915

Citation: 34 Ind. Cas. 417

Hon'ble Judges: Srinivasa Aiyangar, J; Coutts Trotter, J

Bench: Division Bench

Judgement

Coutts Trotter, J.
The question that arises in this appeal is solely one of law as the facts are admitted. On the 10th August 1905, a pending

suit was settled by a compromise between the parties, who for practical purposes may be treated as the present plaintiffs and defendants. The

result of the compromise was that a sum of 15,000 dollars was found due from the defendants to the plaintiffs. After that figure had been settled

and admitted by the defendants, the. 1st defendant executed and handed over a document, which is Exhibit A in the case, which is called a chit and

which, whatever else it is, is a promise to pay the plaintiffs a sum of 10,400 dollars with interest. The balance of the 15,000 dollars was accounted

for in other ways. On the 14th May 1907, 2,000 dollars were paid off and a further payment of 1,000 dollars was made on the 30th August of the

same year. Both these payments were endorsed on the back of the chit. On the 8th of August 1910, the present suit was brought and ultimately the

only question for determination is, whether or not it is barred by limitation. The plaintiff sues on the chit which he describes as a bond and he also

sues on the original debt admitted to be existing on the 10th of August 1905. Both these causes of action are statute-barred, unless they can be

held to have been kept alive by the acknowledgments endorsed upon the chit.

2. The chit, Exhibit A, is unstamped. Accordingly if, on its true construction it is a promissory note, it is inadmissible in evidence and cannot be

sued upon. I have never had the slightest doubt that Exhibit A fulfilled the legal requirements of a promissory note and that matter appears to me

too clear for argument. That throws back the plaintiff upon the original cause of action, which in my opinion is set out sufficiently in the plaint to be

available to him if he can establish it. Two objections are urged against it: first, that the original debt was extinguished by the chit and secondly, that

the acknowledgments contained in the endorsements on the chit cannot be treated as acknowledgments of the original debt but only of the debt

created and evidenced by the chit.

3. I feel no difficulty whatever in deciding the first question as to whether the giving of the chit operated as a discharge of the original debt. The

doctrine of the extinction of one form of liability by the creation of another is a highly artificial legal technicality and any attempt to extend its

application is repugnant to common sense and the business spirit in commercial transactions. On the other hand, the law must guard against the

possibility of a creditor obtaining payment both on the original debt and on the instrument. I think the law has now been settled for a number of

years and I think it expresses the true business meaning of such a transaction. The giving of the security does not extinguish but merely suspends the

cause of action on the original debt, which revives if the security be not discharged at maturity. The same proposition may be put in another way by

saying that the giving of the instrument is a conditional discharge, which will cease to operate as such on dishonor of the instrument. If the

instrument can be regarded as a mere collateral security it will not operate even as a suspension of the original debt. These propositions are

fundamental and rudimentary and I do not think it necessary to refer to cases either English or Indian to support them. I, therefore, come to the

conclusion that on failure to discharge the chit on its due date the original debt revived and it was I open to the plaintiff to sue upon it.

4. The last argument of the respondent was this. The payments relied upon as acknowledgments of limitation were expressed to be payments fur

this chit,"" i.e., payments in discharge of the debt evidenced by the inadmissible promissory note. How can payments so described be held to be

payments against or acknowledgments of the original debt "? This Court in Raman v. Vairavan 7 M.P 392 : 8 Ind. Jur. 186 has decided that such

payments can be so treated, but it is contended for the respondents that the decision is contrary to principle and I, therefore, desire in the first

instance to consider the question of principle apart from authority. The giving of the instrument operated, as I have said, as a conditional discharge

of the original debt, which debt would again become enforceable on dishonor of the security. The chit was dated 10th August 1605 and was

expressed to be repayable in full at the expiration of 24 months. This brings us to the 10th August 1907. The last payment was made on the 30th

of August 1907, after the expiry of the date of maturity of the chit. I am not at all sure that that does not end the matter; for a payment made after

the instrument has ceased to be operative, can, of course, only be referable to the original debt. However, our attention was not drawn to the exact

dates which are given in the translated Exhibit by the Tamil month and year and it may be that the fact that the payment is again expressed to be to

this chit"", operated as an agreement to extend the date of maturity of the chit. I, therefore, act on the assumption that the payment is to be taken as

having been made during the currency of the chit. When the chit matured the original debt revived. What date and what amount? Not the original

amount but the original amount less 3,000 dollars. If one is asked why was the original debt reduced by 3,000 dollars, the only possible answer is

that 3,000 dollars had been paid in discharge of it. I see no escape from this reasoning and it follows necessarily that the acknowledgments on the

chit are equally available as acknowledgments of a reduction of and, therefore, of a liability upon, the original debt. I am, therefore, of opinion that

the decision in Ramany v. Vairavan 7 M.P 392 : 8 Ind. Jur. 186 is right and in accordance with principle. The decree will be altered in accordance

with the judgment about to; be delivered. The memorandum of objections i will be dismissed.

Srinivasa Aiyangar, J.

5. This is an appeal by the plaintiffs from a decree of the Sub-Judge of Ramnad, dismissing their suit to recover a certain sum of money from

defendants Nos. 1 to 3. The facts which gave rise to the action are scarcely in dispute. The father of the 1st plaintiff one Ramanathan Chetty had

from time to time deposited with defendants Nos. 1 and 3, who are brothers, certain sums of money. They and the 2nd defendant, the son of the

1st, were members of a joint Hindu family and were doing business as bankers in Saigon under their family vilasam or style of R.K.A.N. After the

death of Ramanathan Chetty, his widow the 5th plaintiff, on behalf of her son the 1st plaintiff, brought an action in Saigon against the firm of

defendants Nos. 1 to 3 to recover the moneys deposited by Ramanathan; while that suit was pending the 1st defendant acting for himself and

defendants Nos. 2 and 3, the other members of his family, settled with the 1st and 5th plaintiffs, the son and widow of Ramanatha, the amount due

to them in the presence of a mediator, and 15,000 dollars and odd was found due. This was on the 10th August 1905. After this settlement was

arrived at, but on the same day, the 1st defendant executed what is termed a chit for 10,400 dollars out of the 15,000 dollars and odd in the name

of the 6th plaintiff and the 4th defendant''s father, the maternal and paternal uncles of the 1st plaintiff. The 1st defendant signed the chit as

R.K.A.N. Annamalai Chetty Dllittoor. Two payments, one of 2,000 dollars and another of 1,000 dollars, were made in May and August 1907 by

the 3rd defendant on account of the chit and the payments were endorsed on the chit by the 3rd defendant himself. There is no doubt the payments

were made by him not only for himself, but also on behalf of the 1st defendant, and it is not disputed that he was authorized so to pay. The balance

of the amount due was not paid and this action was brought to recover it. The mother of the plaintiff, who was a party to the settlement, and the

persons in whose name the chit was executed or their representatives were made pro forma parties, but they claim no interest in the sums and

nothing more need be said of them. The chit was not stamped. Three questions were raised in the first Court and they are raised in the appeal.

They are: 1. Whether the chit in question was a promissory note as defined in the Stamp Act and was, therefore, inadmissible in evidence for any

purpose whatsoever. 2. Whether the plaintiffs had no cause of action other than on the note. 3. If they had, whether their action to recover the

original debt had become barred by limitation. The Subordinate Judge found the 1st and 3rd points in favour of the defendants and the 2nd in

favour of the plaintiffs and dismissed the suit.

6. On the 1st question I agree with the Subordinate Judge that the chit is a pro-note. It was said that the maker was not a definite person as the

addition of the word Ullittoor left the persons liable on the note vague and indefinite. It is reasonably clear that the subscription was made by the

1st defendant in the form he did and in the name of the family, in order to bind also the other members of the family Whether the other members of

the family are personally bound or not, is immaterial. So far as the 1st defendant is concerned, it was a note by him and he was personally liable.

The maker of the note was, therefore, certain. Calling the document a chit does not make it any the less a promissory note if the transaction falls

within the definition of a promissory note in the Stamp Act; the present document and oubtedly falls within the definition. The chit, therefore, is

inadmissible in evidence and cannot be looked at for any purpose.

7. The respondent challenged the finding of the lower Court on the 2nd point. It was not disputed that there are sufficient allegations in the plaint to

enable the plaintiffs to recover the debt on their original cause of action, if that was not discharged by the execution of the note. There was some

argument in the lower Court that the note was executed in favour of the 6th plaintiff and the 4th defendant''s father in discharge of the liability to the

1st plaintiff. The evidence of the 1st and 6th plaintiff is clear to the effect that the note was taken really for the benefit of the 1st plaintiff and the

Subordinate Judge so finds. In appeal there was scarcely any argument on this matter. If the note was a good one and the suit was on the note, it

may be that the 1st plaintiff could not sue without an endorsement from the 6th plaintiff and the 4th defendant; for the present purpose his position

cannot be worse than if the note was executed in his name.

8. The learned Pleader for the contesting respondent strenuously contended that the original debt was discharged as soon as the note was

executed, and cited a number of cases. As I do not propose to deal with them individually (for the decision depended on the facts proved in each

case), I shall state what I understand to be the law; rather what legal presumptions are to be made in the absence of an agreement, express or

implied, on the matter. If a bill or a note is given for a contmn poraneous debt, there is a difference of opinion, but the better opinion is that even in

such a case the bill merely suspends the remedy and does not operate as a discharge. II a bill or note is given for an antecedent debt or liability

(and it was in this case), there has never been any doubt in England or in this country that the bill or note, operates only as a conditional payment,

or suspension of the remedy; or as stated in an opinion of Justice Field in the Supreme Court of the United States [see Duncan x. Kimball 3

Wallace 37 : 70 U.S. 18 it only operates tot extend until maturity the period for the payment of the debt. [See Belshaw v. Bush (1851) 22

L.J.C.P. 24 : 11 C.B. 191 : 17 Jur. 67 : 138 E.R. 444 : 87 R.R. 639 So long, therefore, as the bill or note! is current, the creditor cannot sue for

the; debt unless the bill was given merely as a collateral security. [See Peacock v. Purcell (1863) 32 L.J.C.P. 266 : 135 R.R. 875 and Palmer v.

Bramley (1895) 2 Q.B. 405 When the bill on maturity is not paid, the creditor is entitled to sue on his original cause of action on returning the note

or bill or otherwise satisfactorily accounting for it at the trial. [See Bottomley v. Nuttall (1858) 28 L.T.C.P. 110 : 5 C.B. (N.S.) 122 : 5 Jur. (N.S.)

315 : 141 E.R. 48 : 116 R.R. 592 The decision of the Judicial Committee in Saminathan Chetty v. Palaniappa Chetty 26 Ind. Cas. 228 : 41 I.A.

142 : 18 C.W.N. 617 : (1914) A.C. 618 is, I think, conclusive against the respondent. The conclusion of the learned Subordinate Judge on this

point was, therefore, right.

9. The only other question is whether the suit is barred by limitation. The original cause of action to recover the debt arose on the settlement of the

accounts on the 10th August 1905; and unless the payments of 2,000 and 1,000 dollars were payments on account of the debt now sued for, the

action would obviously be barred by limitation. There was an argument at the Bar as to whether the payment was on account of the principal or

interest or for both. In this case it does not matter, what for the payments were made. The evidence is that the payments were made on account of

both interest and principal. The payments were made by the 3rd defendant and the fact of the payments appears in the handwriting of the person

making them, viz., the 3rd defendant. The payments, therefore, would be enough to give a fresh period of limitation [see Soumia Narayana v.

Alagirisawrny Iyenger 14 Ind. Cas. 580 : 11 M.L.T. 429 : (1912) M.W.N. 754, provided that the payments were made on account of the debt

sued for. The payments, as I have already stated, purport to have been made on account of the chit. The chit, of course, cannot be looked into for

any purpose, and no secondary evidence of its contents could be given. The original indebtedness can be proved aliunde [Brown v. Watts 1 Taunt

353 : 9 R.R. 793 : 127 E.R. 870 and in fact is admitted by the 1st defendant. He says that he owed a sum of 10,400 dollars to plaintiffs Nos. 1 to

5 on the 10th August 1905 on settlement of accounts. It is also proved and in fact admitted that the chit was given for it. When it is said that

payments were made on account of the chit, it means that payments'' were made on account of the debt evidenced by the note. It is settled law

that the identity of the debt acknowledged in writing may be proved by parol evidence. The only question, therefore, is whether the original debt

and the debt secured by the chit were one debt or two different debts. If they were different debts, acknowledgment of a particular debt, or

payment on account of a particular debt, however much the parties may be mistaken in thinking that that particular debt was due, cannot operate

as an acknowledgment or part-payment of another debt which may be really due. But when a bill or note is given there is only one debt, though

there may be different remedies or causes of action. [See Wegg Prosser v. Evans (1895) 1 Q.B. 108 : 64 L.J.Q.B. 1 and Sawminathan Chetty v.

Palaniappa Chetty 26 Ind. Cas. 228 : 41 I.A. 142 : 18 C.W.N. 617 : 17 New Law Reports 56 : (1914) A.C. 618, Drake v. Mitchell 3 East 252 :

102 E.R. 594 The payment of the bill or note operates to discharge the original debt, and if only a portion of the amount due on the bill is paid, it

pro tanto discharges the original debt. [See Clark v. Mundal 1 Salk. 124 : 91 E.R. 116 per Holt C.J.] This was the view taken in Human v.

Vairavan 7 M.P 392 : 8 Ind. Jur. 186 which is indistinguishable from this case. There a hundi was given for Rs. 3,500, being a portion of the sum

then due to the creditor. Rs. 1,140 was paid on account of the hundi, but the balance was not paid. The debtor wrote to his agent directing him to

pay the balance of the hundi which, however, was not paid. The creditor sued for the balance of the original debt and for other sums subsequently

lent, and relied on the acknowledgment of the hundi as an acknowledgment of the original debt though he did not sue on the hundi. It was held that

he was so entitled to rely. The decision in Cohen v. Hale 3 Q.B.D. 371 : 47 L.J.Q.B. 496 : 39 L.T. 35 : 25 W.R. 680, though not on the Statute

of Limitations, is based on the same principle. In Ex parte Bateson 1 Mont. D. & D 289 : 4 Jur. 994 (in Bankruptcy) there was a composition by a

debtor with his creditors. A part of the sum due on the composition was paid, but the balance was not and the composition fell through. The

creditor claimed to prove for the whole of the balance of his original debt after giving credit for the amount paid on the composition in the debtor''s

bankruptcy. The Statute of Limitations was set up as a bar. The payment made on account of the composition was held to be a payment on

account of the original debt. It must be remembered that in England a part-payment, to operate as a fresh start, must be made under circumstances

leading to an inference that more is due. A fortiori under the Indian Act and in this case the payments made give a fresh period and the suit is not

barred by limitation.

10. The plaintiffs and the 3rd defendant have compromised their disputes on the terms that their liability for half of the claim should be taken to

have been discharged. There will, therefore, be a decree in favour of the plaintiffs Nos. 1 to 4 against defendants Nos. 1 and 2 for half of the

amount sued for. Plaintiffs Nos. 1 to 4 will also get half their costs in this and in the lower Court.

11. The memorandum of objections is dismissed.