

## Chathukutty Vs Cheerutty

**Court:** High Court Of Kerala

**Date of Decision:** Jan. 7, 1963

**Citation:** (1963) KLJ 188

**Hon'ble Judges:** S. Velu Pillai, J

**Bench:** Single Bench

**Advocate:** K.N. Karunakaran, K.G. Devarajan and N.V. Leela, for the Appellant; A. Achuthan Nambiar and T.P. Kelu Nambiar, for the Respondent

### Judgement

@JUDGMENTTAG-ORDER

Velu Pillai, J

1. The plaintiff sued for the realization of a sum of Rs. 350/- which he had lent to the defendant with interest. A promissory note also was executed

by the defendant in favor of the plaintiff, but it was not sufficiently stamped. Therefore the suit was laid on the original cause of action. The

defendant contended that a promissory note having been executed, the suit as based on the original cause of action cannot lie. The court below

accepted this contention and dismissed the suit. The finding of the Munsiff is that "the promissory note is in consideration of the loan and so the

debt cannot be proved aliunde." The reason for this was stated to be, that "the lending of the money and the taking of the promissory note are one

and indivisible and the two cannot be separated as the plaintiff had attempted to do". What influenced the Munsiff was the circumstance, that the

promissory note was contemporaneous with the loan. The question whether when a promissory note is insufficiently stamped, a suit would lie on

the original cause of action has given rise to a conflict of judicial opinion in the several High Courts and as observed by a Division Bench of the

Rajasthan High Court in Chempalal v Saligram (A. I. R. 1961 Rajasthan 235) it will be a fruitless task to endeavor to reconcile them. The

Rajasthan High Court also observed thus:

...where a pronote has been executed simultaneously with a loan, we find a very large preponderance of opinion in favor of the liberal view that in

such cases also where the promissory note fails for want of proper stamp as the basis for the suit, a suit on the footing of the independent cause of

action constituted by the loan would still lie except in those cases where the promissory note was given in absolute discharge of the loan.

The learned authors Bhashyam and Adiga in their commentaries on the Negotiable Instruments Act, 1956 Edition, pages 600 and 601, have

formulated the three views held on the subject as follows:

The preponderance of the view is in favor of applying the presumption and principle of conditional payment not only to pre-existing debts but also

to those contemporaneous with the transaction; because in all cases of loans, there is generally a cause of action independent of the note or bill.

The other view is also held that in such cases there is no presumption either way and that each party has to prove his case like any other question

of fact, the contemporaneous nature of the loan with the note or bill, it is said, does not decide the question. The matter depends on whether all the

terms have been embodied in the writing or not. The third and extreme view is also to be found in the Lahore High Court, where the judges go so

far as to say that if a note is taken for a contemporaneous debt and it is inadmissible for insufficient stamp or for any other reason, the lender has no

cause of action independent of the note.

In view of the preponderance of judicial opinion, I take the view, that even if the promissory note is contemporaneous with the transaction, the

presumption is, that a cause of action exists independently. The Munsiff has not made a proper approach to the case and has not considered the

evidence from this point of view. In revision it is not proper to enter a finding based on appreciation of evidence. The case has therefore to go back

for determining whether in view of the above statement of the law, the suit as based on the original cause of action can be sustained or not.

2. Even on the above view, the plaintiff is not entitled, to a decree for interest, as no agreement as to the rate of interest was pleaded; apart from

what is contained in the promissory note. Champalal v Saligram is also authority for this view. The decree is set aside and the case sent back for

decision in the light of the observations made above. I do not order costs.