

(1997) 08 AP CK 0009

Andhra Pradesh High Court

Case No: Civil Revision Petition No. 3253 of 1996

Dokka Joganna

APPELLANT

Vs

Upadrasta Chayadevi

RESPONDENT

Date of Decision: Aug. 19, 1997**Acts Referred:**

- Negotiable Instruments Act, 1881 (NI) - Section 4
- Stamp Act, 1899 - Section 2(22), 35, 36, 61

Citation: (1997) 3 APLJ 191**Hon'ble Judges:** D. Reddeppa Reddi, J**Bench:** Single Bench**Advocate:** M.S.R. Subrahmanyam, M. Bala Subrahmanyam and M. Ram Mohan, for the Appellant; V.L.N.G.K. Murthy, for the Respondent**Final Decision:** Dismissed

Judgement

@JUDGMENTTAG-ORDER

D. Reddeppa Reddi, J.

The controversy in this revision petition is whether the suit documents dated 22-5-1985 and 9-9-1985 styled as letters that were not stamped at the time of their execution are promissory notes as defined u/s 4 of the Negotiable Instruments Act, 1881, and hence inadmissible in evidence by virtue of the provisions of Section 35 of the Indian Stamp Act, 1899. The facts that led to the controversy as set out in the impugned order are: The respondent/plaintiff filed OS.No. 17/88 against the petitioner/defendant on the file of the Subordinate Judge, Razole, for recovery of a sum of Rs. 1,53,477-69 on the foot of two documents dated 22-5-1985 and 9-9-1985 styled as letters addressed by the petitioner to the respondent acknowledging the receipt of Rs. 57,560/- and Rs. 56,540/- respectively and agreeing to repay the same on demand. The original documents were filed into the Court along with the plaint. On the objection raised by the office that they are liable to be stamped, the

respondent paid the requisite stamp duty and penalty. The petitioner, having received notice in the suit, filed a detailed written statement through his Counsel. In a political agitation that took place on 26-12-1988 the suit record and some other records of the Court were burnt by an unruly mob. However, the suit record was reconstructed. The suit was taken up for trial in the year 1996. When the Counsel for the respondent/plaintiff wanted to mark the photostat copies of the suit documents through P.W.I, the Counsel for the petitioner/defendant objected to their receipt and marking on the ground that they are promissory notes and hence inadmissible in evidence. The learned Subordinate Judge, having overruled the said objection, by order dated 14-8-96, held that they are admissible and can be received in evidence. Hence, this revision petition by the defendant, namely, Dokka Joganna.

2. The suit documents were written in Telugu. Their contents are almost identical except with regard to the date and the amount. It would be, therefore, enough to state the contents of one of the two documents. The translated version of document dated 22-5-1985 reads thus:

"Letter dated 22-5-1985 of Dokka Joganna S/o Satyanarayana Murthy, resident of Lankala Gannavaram village, Razole Taluk, addressed to Smt. Chaya Devi W/o Upadrasta Malleswarudu, resident of Munganda Village, Kothapeta Taluk.

To-day I have, out of necessity, obtained from you a sum of Rs. 57,560/- (Rs. Fifty seven thousand five hundred and sixty only) as a hand loan. I hereby acknowledge the receipt of the said sum and agree to repay the same on demand. Hence, I am giving this letter with free will of mine.

Scribe

Dokka Joganna

22-5-1985. "

Yours

(Sd.) Dokka Joganna,

3. Sri M.S.R.Subrahmanyam, learned Counsel for the petitioner submits that the suit documents that were unstamped at the time of their execution satisfy the essential requirements of a promissory note as defined u/s 4 of the Negotiable Instruments Act, 1881, and hence they are inadmissible in evidence by virtue of the embargo placed under proviso (a) to Section 35 of the Indian Stamp Act, 1899. His further submission is that the trial Court committed an illegality in basing its decision on the pleadings set out in the written statement filed by the petitioner. According to him, the Court should interpret the instrument only looking at the instrument itself and it should not act upon any other material to interpret the same. He also maintains that the Court has got a duty to refuse to admit an instrument not duly stamped whether or not the party or his Counsel objects to its admission. In opposition, it is contended by Sri V.LN.G.K. Murthy, learned Counsel for the respondents, that a promissory note besides fulfilling the requirements as laid down in Section 4 of the Negotiable Instruments Act must also be intended by the parties at the time of its execution to be a promissory note. On that score, he maintains that the trial Court is

well justified in referring to the pleadings as set out by the petitioner in his written statement. In view of these rival contentions, the point that emerges for consideration is whether the trial Court committed any illegality in holding that the suit documents are admissible in evidence, over-ruling the objection of the petitioner that they are promissory notes.

4. There is absolutely no dispute that proviso to Section 35 of the Indian Stamp Act, 1899 totally prohibits admission of an unstamped or insufficiently stamped promissory note in evidence even on payment of requisite duty together with penalty thereon. Section 36 of the said Act provides that:

"36. Admission of instruments, where not to be questioned:- Where an instrument has been admitted in evidence, such admission shall not, except as provided in Section 61, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped."

Dealing with the scope and ambit of this section, it has been held in a catena of decisions that once a document is admitted in evidence rightly or wrongly, with or without objection, it is not permissible for the Court including appellate or revisional Court to reject the same on the ground that it has not been duly stamped. (See [V.E.A. Annamalai Chettiar and Another Vs. S.V.V.S. Veerappa Chettiar and Others](#), ; Nalluru Basavaiah Naidu v. Takelia Venkatesivarlu, 1968 An.W.R. 211 and P. Rainana Reddi v. K. Rukminamma, 1956 An.W.R. 490 1956 ALT 22 : AIR 1957 A.P. 1022. In the light of the above settled proposition of law, the admissibility of the suit documents cannot be left open to be decided at a later stage, i.e., while rendering judgment taking into account other oral and documentary evidence that may be adduced by the parties to the suit. Thus, it has become imperative to decide their admissibility in evidence at this stage itself i.e., before they are marked and proved on behalf of the respondent/plaintiff.

5. As the core point for consideration is whether the suit documents are promissory notes or not, it would be useful to refer to the statutory provisions that define a promissory note. Section 4 of the Negotiable Instruments Act, 1881 defines a "promissory note" thus:

"4. Promissory note- A "promissory note" is an instrument in writing (not being a bank note or a currency note) containing an unconditional undertaking, signed by the maker to pay a certain sum of money only to, or to the order of a, certain person, or to the bearer of the instrument."

Section 2(22) of the Indian Stamp Act, 1899 defines "promissory note" as under:

"2 (22). Promissory note- "Promissory note" means a promissory note as defined by the Negotiable Instruments Act, 1881; It also includes a note promising the payment of any sum of money out of any particular fund which may or may not be available, or upon any condition or contingency which may or may not be performed or

happen."

According to the above definitions, the essential requisites of a promissory note may be stated thus :

1. It must contain an unconditional undertaking to pay or a promise to pay upon any condition or contingency, certain or not.
2. The undertaking must be to pay money only.
3. The money to be paid must be certain.
4. It must be payable to or to the order of a certain person or to bearer, and
5. The document must be signed by the maker.

There can be little doubt that the suit documents satisfy all the requisites of a promissory note excepting the one that the payment shall be made to the order of the promisee or to bearer.

6. In the matter of validation of a document dated 14-6-1947 executed by Kuppusami Chettiar in favour of Amnachala Chettiar, it was held by a Full Bench of Madras High Court that:

"mere omission of any such expression would render the document any the less a promissory note, if otherwise it fulfilled the terms of the definition. Actually a promissory note need not contain this expression. It is sufficient if there is an unconditional undertaking to pay a certain sum of money to a certain person."

This view was followed by a Division Bench of this Court in Ramana Reddy's case (3 supra). Thus, it may be taken that the suit documents satisfy all the attributes of a promissory note.

7. Learned Counsel for the petitioner places strong reliance on the decision of a Full Bench of Bombay High Court in [In the matter of validation of a document dated 14-6-1947 executed by Kuppusami Chettiar, in favour of Arunachala Chettiar](#), to drive home his point that the Court should interpret the instrument only looking at the instrument itself and it should not act upon any other material to interpret the same. No doubt, the said decision substantially supports his submission. But, the later decisions lay down that a promissory note besides fulfilling the requirements as laid down in Section 4 of the Negotiable Instruments Act must also be intended by the parties at the time of its execution to be a negotiable instrument.

8. In Lala Karam Chand v. Firm Mian Mir Ahmad, ILR 27 Bom 279 the point for consideration before the Privy Council was whether the documents in the following terms were promissory notes or not.

"Received from you this 5th day of Asuj, 1986, Sambat corresponding to 20th September, 1929, a cheque for Rs. 10,000 drawn by you on Messrs. Grindlay & Co.,

Ltd., Peshawar. The amount would be repaid with interest thereon at the rate of Rs. 11-4-0 p.c. Time ten months. The principal amount will be paid with interest after ten months from this date.

Received from you this 23rd of Asuj, 1986, Sambat corresponding to 8th October, 1929, cheque No. 50284 dated 8th October for Rs. 10,000 drawn on the Imperial Bank of India, Limited, Peshawar. The amount to be paid back with interest at the rate of Rs. 11-4-0 p.c. after ten months. This principal amount with interest thereon to be repaid after ten months from this date."

There can be little doubt that the above documents contained all the attributes of a promissory note. Yet, it was held that they were not promissory notes, for they were not intended by the parties to be negotiable instruments. Dealing with the nature of those documents, their Lordships observed:

"a decision of this Board, 63 IA 279, has made it clear that the shadow resting upon these exhibits throughout the case was unreal; that documents of this nature which were clearly never intended to be negotiable instruments at all are not promissory notes and are not therefore, for want of a stamp, inadmissible in evidence. If this decision had been before the learned Judicial Commissioners, their Lordships doubt if they would have come to the conclusion they did."

This decision was quoted with approval by a Full Bench of Rajasthan High Court comprising Sarjoo Prosad, C.J., D.M. Bhandari and C.B. Bhargava, JJ. in AIR 1938 121 (Privy Council) . C.B. Bhargava J, who prepared the main judgment, on an exhaustive survey of law on this subject, observed as under:

"a promissory note besides fulfilling the requirement, as laid down in Section 4 of the Negotiable Instruments Act must also be intended by the parties at the time of its execution to be a promissory note as understood by commercial persons in its popular sense which means that unless it falls within the exception provided in the wider definition of the Stamp Act, or is otherwise expressly or by implication made not transferable, it must be intended by the parties to be negotiable instrument. If the instrument does not fall within the above mentioned exceptions and does not stand the test of negotiability, it will not be a promissory note even though it contains an unconditional undertaking to pay money."

It is necessary to mention here that Sargoo Prosad, C.J., and D.M. Bhandari,J., by a separate judgment, fully agreed with this view of Justice Bhargava, though they disagreed with him on some other point, with which we are not concerned.

9. The same is the view of this Court in [Bahadurrinisa Begum Vs. Vasudev Naick and Others](#), . Therein, Gopal Rao Ekbote, J, as he then was, set out the ingredients of a promissory note as under:

"It can thus be broadly stated that in order that an instrument may fall within the definition of promissory note contained in Section 4 of the Act, it is necessary that

there should be

(1) unconditional undertaking to pay,

(2) the sum should be a sum of money and it should be certain,

(3) the payment should be or to order of, a person, who is certain, or to the bearer of the instrument, and

(4) the maker should sign it.

It is however, clear that apart from fulfilling the above said terms of definition of promissory note the instrument must further satisfy the following three tests:-

(1) The promise to pay must be the substance of the instrument,

(2) there must be nothing else inconsistent with the character of the instrument as substantially a promise to pay, and

(3) the instrument must be intended by the parties to be a promissory note."

10. It is clear from the above that the Court has to necessarily cull out the intention of the parties so as to decide whether a particular instrument is a promissory note or not. In this process, it cannot be denied that the Court will be free to refer to the pleadings set up by the parties. Viewed in this perspective, the submission of the learned Counsel for the petitioner that the learned Subordinate Judge committed an illegality in basing its decision on the pleadings set out in the written statement filed by the petitioner cannot be accepted.

11. Now, let us refer to the pleadings. It is not pleaded in the plaint that the suit documents are promissory notes. Likewise, nowhere in the written statement it is pleaded by the petitioner that they are promissory notes. On the other hand, it is his specific plea that they are not negotiable instruments. As discussed above, a promissory note which is not intended to be negotiable instrument cannot be construed as a promissory note even though it contains an unconditional undertaking to pay, unless it falls within the inclusive definition of Section 2(22) of the Stamp Act. Admittedly, the suit documents do not come under that category.

12. There is no dispute, as urged by the learned Counsel for the petitioner, about the proposition that a duty is cast on the Court to refuse to admit an instrument not duly stamped whether or not the party or his Counsel objects to its admission in the light of the following observation in Ramana Reddy's case (3 supra).

"Further, instruments chargeable with a duty of ten paise or less, or bill of exchange and promissory notes shall not be admitted in evidence at all, and the Court must reject such instrument if tendered, whether Counsel objects to it or not."

But this proposition has no application to the facts of the present case in view of my conclusion that the suit documents cannot be construed as promissory notes since

they were not intended to be negotiable instruments.

13. For the aforesaid reasons, I do not find any illegality or irregularity in the impugned order. Therefore, this revision petition must fail. It is, accordingly, dismissed. No costs.