
(2002) 10 MAD CK 0136

Madras High Court

Case No: Civil Revision Petition (PD) No"s. 896 and 897 of 2001

Pitchumani Thevar

APPELLANT

Vs

Subbu Thai

RESPONDENT

Date of Decision: Oct. 4, 2002

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 115

Citation: (2003) 2 LW 554

Hon'ble Judges: K. Gnanaprakasam, J

Bench: Single Bench

Advocate: Uma Ramanathan, for the Appellant; K. Srinivasan, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. The plaintiff in O.S.NO.723 of 1998 before the District Munsif Court, Tirunelveli is the petitioner in both the Revision Petitions.

2. The plaintiff filed a suit for recovery of the amount based upon a document dated 6.10.1996 treating it as a promissory note. The said document has been marked as Ex.A.1. That thereafter, the defendant has filed an application in I.A.No.1020/2000 to cancel the marking of the said document Ex.A.1 and the same was allowed by the trial Court by its order dated 14.11.2000. Aggrieved by the above said orders, the plaintiff has filed C.R.P.No.897 of 2001. The plaintiff filed an application to amend the plaint in I.A.No.1116 of 2000, and the same was dismissed by the order dated 14.11.2000. As against the same, the plaintiff has preferred C.R.P.No.896/2001.

3. From the averments made in the plaint, it is seen that the document dated 6.10.96 is in five Rupees non judicial stamp paper and the same is duly attested by witness and the recitals in it are as follows:

gpuhkprhp neh;

@ehsj 1172k; Mz;L g[ul;lhrp khjk; 20k; njjp, 1996 tUc&k; mf;nlhgh; khjk; 6Mk; njjp jpUbey;ntyp jhYfh nkyg;ghisak; fU";Fsk; ghftjh; bjUtpy; ,Uf;Fk; gukrptj;njth; mth;fs; Fkhuh; gpr;Rkzpnjth; mth;fSf;F i&a{h; i & bjUtpy; 41Mk; ek;gh; tP;l;oypUf;Fk; KUifa;ah njth; kidtp Rg;g[lj;jha; vGjpf;bfhLj;j gpuhkprhp nehl;L vd;dbtd;why;

vd; mtru epkpj;jk; vd; fzth; KUifa;ah njtUf;F cly;epiy rhpapy;yhky; ,Uf;fpwgoapdh; itj;jpa brytpw;Fk; lhf;lUf;F gzk; fl;l ntz;oapUg;gjhy; ehd; j";fsplk; buhf;ff; fldhf :U4000? k; bgw;Wf; bfhz;nld;. i & ehyhapuj;jf;Fk; khjk; 1f;F :U100-/ f;F tl;o :U:gha; xd;W tPjk; tl;o Tl;o Toa tl;oa[k; KjYk; xU tUc&j;jf;Fs; je;j ,e;j nehl;il kP;l;of; bfhs;ntdhft[k;@

4. The said document was also marked as Ex.A.1. The defendant has filed an application to cancel the said document on the ground that it is not a promissory note and hence it is inadmissible in evidence. Plaintiff also filed an application to amend the plaint, to treat the promissory note as bond.((yadast).

5. Now let us see the definition of a promissory note. Promissory Note is defined u/s 2(22) of the Indian Stamp Act which reads as under:

"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 many not be performed or happen;"

6. Section 4 of the Negotiable Instruments Act, 1881 defines the promissory note as under:

"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".

As per this Section, the promissory note must be in writing and there should be an unconditional undertaking to pay the amount to a certain person or to the order. But the definition u/s 2(22) of the Stamp Act is different, as condition or contingency could find a place in the promissory note. The definition of promissory note in the Stamp Act is wider than under Negotiable Instrument Act.

7. The trial Court marked the document as Ex.A.1.But, however, on an application of the defendant, the document was taken into consideration and the trial Court came to the conclusion that the document dated 6.10.96 does not fall within the definition of promissory note and the marking of the same is not proper and therefore, set aside the marking based upon the judgment of this Court in the case of BALAMANI VS. KAILASAM KONAR 2000 I L.W.476.

8. Learned advocate for the revision petitioner would submit that the said order passed by the trial Court based upon the judgment cited supra is not proper. He would also rely upon the Full Bench Judgment of this Court reported in 1955 Madras

Law Journal, 163. In that case, a case was referred to in the MATTER OF VALIDATION OF A DOCUMENT, DATED 14TH JUNE, 1947, EXECUTED BY KUPPUSWAMY CHETTIAR IN FAVOUR OF ARUNACHALA CHETTIAR. The said document was attested by one witness and also bears six annas revenue stamp. In that document also, it is stated as under:

"Promissory note executed on 14th June, 1947, in favour of Arunachala Chettiar, son of Kollakara Chettiar, residing at Palappudi village, hamlet of Satyamangalam, Gingi taluk, by Kuppuswami Chettiar, son of Venkatachala Chettiar, residing at the aforesaid village. In respect of the sum received from you at Tiruvannamalai by me in the year 1943 and given for opening a javuli shop by T.Arunachala Aiyar the sum found due to you is Rs.3000. As this sum of Rupees three thousand had to be paid to you, I shall pay the same together with interest at Rs.0-4-0 per month per Rs.100-in six equal instalments, and discharge the same. To this effect is the promissory note executed by me with my consent. "

9. The term "to the order of " which is one of the requirements u/s 4 of the Negotiable Instruments Act does not find place, But, however, it was held that 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. In our case also, it is made out that there is an undertaking to pay a certain amount to a certain person. In the judgment cited supra, the Full Bench ultimately held that:

" We are further of opinion that the document in question clearly falls within the definition of "bond" in Section 2(5)(b) of the Indian Stamp Act, namely, an instrument attested by a witness and not payable to order or bearer, whereby a person obliges himself to pay money to another."

10. The portion relied upon by the plaintiff in that case also would fall within the definition of Section 2(5) of the Stamp Act. Section 2(5) of the Stamp Act which defines the "bond".

" The bond includes (a) any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be;

(b) any instrument attested by a witness and not payable to order or bearer, whereby a person obliges himself to pay money to another; and

(c) any instrument so attested, whereby a person obliges himself to delivery grain or other agricultural produce to another;"

11. The document dated 6.10.96 relied upon by the plaintiff would fall within the definition of a bond u/s 2(5)(b) of the Indian Stamp Act. As such the document having been marked as an exhibit, the said document could be treated as a bond as defined under the Indian Stamp Act and the trial Court can dispose of the case treating the document as a "Bond".

12. The judgment relied upon by the trial Court reported in 2000 I L.W.476 is in respect of the document of an unregistered deed of partition marked without objection being raised. The finding of the Court in the said case is that the document was not only properly stamped but also it requires registration. In the said context, the Court gave a verdict that the document marked could be expunged.

13. The Supreme Court in the case of [Ram Rattan \(Dead\) by Lrs. Vs. Bajrang Lal and Others](#), has dealt with a case of a document which was not duly stamped and admitted in evidence subject to objection. The Supreme Court had taken the practical view of the matter and observed in para 6 as follows:

"When the document was tendered in evidence by the plaintiff while in witness box, objection having been raised by the defendants that the document was inadmissible in evidence as it was not duly stamped and for want of registration, it was obligatory upon the learned trial Judge to apply his mind to the objection raised and to decide the objection in accordance with law. Tendency sometimes is to postpone the decision to avoid interruption in the process of recording evidence and, therefore, a very convenient device is resorted to, of marking the document in evidence subject to objection. This, however, would not mean that the objection as to admissibility on the ground that the instrument is not duly stamped is judicially decided; it is merely postponed. In such a situation at a later stage before the suit is finally disposed of it would none-the-less be obligatory upon the court to decide the objection. If after applying mind to the rival contentions the trial Court admits a document in evidence. S. 36 of the Stamp Act would come into play and such admission cannot be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped. The Court, and of necessity it would be trial Court before which the objection is taken about admissibility of document on the ground that it is not duly stamped, has to judicially determine the matter as soon as the document is tendered in evidence and before it is marked as an exhibit in the case and where a document has been inadvertently admitted without the court applying the mind as to the question of admissibility, the instrument could not be said to have been admitted in evidence with a view to attracting S. 36 (See [Javer Chand and Others Vs. Pukhraj Surana](#),) The endorsement made by the learned trial Judge that "objected, allowed subject to objection", clearly indicates that when the objection was raised it was not judicially determined and the document was merely tentatively marked and in such a situation S. 36 would not be attracted."

14. The principles laid down by the Supreme Court in the case cited supra squarely applicable to the case on hand, and that therefore, the trial Court, shall treat the suit document as a "Bond" and proceed with the case and give its finding in the judgment, in accordance with law.

15. In view of the above finding, no separate order need be passed in Civil Revision Petition No.896 of 2001 and the plaintiff is at liberty to advance his arguments treating the suit document as a "Bond" and the trial Court shall dispose of the case

in the light of the observations made above.

16. In the result, the Civil Revision Petition No.897 of 2001 is allowed. Civil Revision Petition No.896 of 2001 is dismissed as unnecessary. No costs. Consequently,C.M.P.4840 of 2001 is also dismissed.