V.E.A. Annamalai Chettiar And Anr. vs S.V.V.S. Veerappa Chettiar And Ors. on 9 December, 1952

Equivalent citations: AIR1956SC12, AIR 1956 SUPREME COURT 12

JUDGMENT

Bhagwati, J.

1. This is an appeal from the decree of the High Court of Judicature at Madras confirming the decree passed by the Court of the Subordinate Judge of Devakottai allowing the plaintiffs' claim.

2. The plaintiff 1, the sister's son and the plaintiff 2, the step-brother of one Shanmugham filed the suit out of which this appeal arises against the defendants, the members of the junior branch of a family which in 1888 and until 1908 was a joint and undivided Hindu family and of which one Ramanatha was the karta and the managing member, for the recovery of the defendants' half share in the moneys deposited by the father of Shanmugham on 15-8-1888 with the joint family.

These moneys represented the Stridhanam money, 'Eadu pon Kalutturu' money and sundry jewels etc. money of Shanmugham's mother, and had aggregated to a sum of Rs. 1,310 inclusive of interest on 15-8-1888. Veerappa Chettiar, the father of Shanmugham was related to Ramanatha and. the joint family carried on business as Nattukottai Chettiars.

This sum of Rs. 1,310, was deposited by Veerappa Chettiar in the name of Shanmugham with the joint family and Ramanatha executed in favour of Shanmugham on 15-8-1888 a Kaiyeluthu letter agreeing to pay the said sum together with interest thereon at 19/32 per cent. per mensem calculated with 12 monthly rests. Shanmugham died in 1893 and Veerappa Chettiar died in 1905.

The plaintiffs 1 and 2 as the heirs and legal representatives of the deceased Shanmugham called upon Annamalai Chettiar, the karta of the senior branch of the joint family to render to them an account of the principal sum of the said deposit and the accretions thereto by way of interest. But Annamalai told them that at the time of the partition effected between the two branches of the joint family the said amount was divided into two equal shares and he expressed his willingness to make good a moiety thereof only and agreed to sell his lands in Burma in discharge of that liability. On 14-11-1941 he entered into an agreement with the plaintiffs in regard to the sum of Rs. 17,356-3-9 which was ascertained to be the liability of his branch and the demand of the plaintiffs on him was thus satisfied. The plaintiffs thereafter demanded from the defendants payment of the other moiety together with interest and on their failure to satisfy his demand sent a vakil's notice dated 13-10-1944 formally demanding payment of the amount.

The defendants denied their liability and the plaintiffs therefore filed the present suit against them claiming Rs. 31,427-1-9 being a moiety of the total sum of Rs. 62,854-3-6 which was shown as the amount due at the foot of the said deposit as of 12:11-1944.

3. The defendants denied the plaintiffs' claim. They contended that no moneys were deposited by Veerappa Chettiar with the joint family as alleged, that the cadjan voucher evidencing the deposit was inadmissible in evidence for want of stamp and that the plaintiffs' suit was barred by the Law of Limitation.

4. The learned Trial Judge admitted the cadjan voucher in evidence holding the same as proved, held that the plaintiffs' suit was within time and decreed the same. The defendants took an appeal to the High Court and the High Court dismissed the appeal confirming the decree passed by the Trial Court in favour of the plaintiffs. This appeal has been filed by the defendants against that decision of the High Court after obtaining the necessary certificate of fitness for appeal to this Court under Article 133 of the Constitution.

5. Three contentions were urged before us by Shri R. Kesavan Ayyangar appearing for the appellants:

> (1) That there was no evidence of the deposit.
>
> (2) That the cadjan voucher was a promissory note and therefore inadmissible in evidence for want of stamp, and (3) That the plaintiff's suit was barred by the Law of Limitation.

6. It was first contended that the cadjan voucher was not proved before the Trial Court and that P. W. 1 who deposed to the handwriting of Ramanatha was not competent to do so and his testimony in that behalf was unreliable. The Trial Court accepted the testimony of P. W. 1 and also brought to aid the presumption under Section 90; Evidence Act, held that the cadjan voucher was duly proved and admitted it as Ex. P. 8.

The High Court concurred in the same finding and there were thus concurrent findings of both the courts below in regard to the genuineness and validity of the document. It was however urged that the defendants represented the junior branch of the joint family and that they were not the representatives of Ramanatha who had executed the document in favour of Shanmugham.

This argument could not avail the appellants, Ramanatha was the karta and the managing member of the joint family and as such had the authority to execute the document evidencing the deposit and if he did so, his act was binding on all the members of the joint family. Neither the senior branch nor the junior branch of the joint family could be heard to say that they were not bound by the transaction and the defendants were liable to Shanmugham and the plaintiffs for the amount due at the foot of the deposit along with the other members constituting the senior branch of the family. This contention of the defendants is therefore unsound.

7. It was next contended that the cadjan voucher was a Promissory Note. Both the courts below came to the conclusion that the cadjan voucher was not a promissory note but was a receipt evidencing the deposit. The cadjan voucher was in the following terms:

> "Credit to Kandanur Veerappa Chetty, Shanmukham-Debit to VY. A. of the above place.
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> Your mother's Stridnanam money, 'Eadu pon Kalutturu' money and sundry jewels, etc., money, inclusive of interest is Rs. 1,310. We shall pay the said sum of rupees one thousand three hundred and ten together with interest thereon at 1/2 1/16 1/32 (19/32) per cent, per mensem, by calculating (and adding) interest once in 12 months. To this effect.
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> (Signed in Tamil) Ramanathan."

8. It was urged by Shri R. Kesavan Ayyangar that the transaction was a transaction of loan and not of deposit and that the relationship established by the document was as between creditor and debtor. He laid particular emphasis on the words "we shall pay the said sum", and urged that the document was a promissory note which required a stamp of one anna and not having been stamped accordingly was inadmissible in evidence by virtue of Section 35, Stamp Act.

Whether a transaction is a transaction of loan or deposit does not depend merely on the terms of the document but has got to be judged from the intention of the parties and all the circumstances of the case. The defendants' joint family was carrying on business as Nattukottai Chettiars. The moneys represented the Stridhanam money, "Eadu pon Kalutturu' money and sundry jewels, etc. money of the mother of Shanmugham.

The amount had aggregated to Rs. 1,310 inclusive of interest. It was this sum which was deposited by Veerappa Chettiar, whose sister was married to Ramanatha in the name of his minor son Shanmugham with the joint family, carrying on business as Nattukottai Chettiars. Under these circumstances it is clear that the transaction was a transaction of deposit and not of loan. The relations between the parties were those between depositor and depositee and were more analogous to those between a banker and customer than those between a debtor and creditor;

The investment of stridhanam money in the firm of Nattukottai Chettiars was treated as a deposit within the meaning of Article 60, Limitation Act in a decision of the Madras High Court reported in -- 'Subbiah Chetty v. Visalakshi Achi, AIR 1932 Mad 685 (A). We are of the opinion that the cadjan voucher executed by Ramanatha in favour of Shanmugham set out above was a receipt evidencing the deposit and was not a document recording a transaction of loan between the parties.

9. The words "we shall pay the said sum" did not make any difference to the position. Even though the transaction was a transaction of deposit as above stated the deposit could be coupled with an agreement that it would be payable on demand. Such an agreement could be express or implied and if an express agreement in that behalf was recorded in the document in the terms above, the

transaction of deposit could not be thereby converted into a transaction of loan and the words "we shall pay the said sum" could not convert the document into a promissory note.

The promise to pay would be involved in a promissory note as well as in a deposit within the meaning of Article 60, Limitation Act and the court would have regard to the intention of the parties and the circumstances of the case in order to arrive at the conclusion whether the document was a promissory note. We are of the opinion that the conclusion reached by both the courts below in regard to the cadjan voucher was correct and the contention of the appellants to the contrary is untenable.

10. There is also a further difficulty in the way of the appellants and it is that the document haying been admitted in evidence such admission could not be called in question at any stage of the proceedings on the ground that it had not been duly stamped. The provisions of Section 36, Stamp Act preclude the appellants from raising any objection against the admission of the document at this stage and the appellants are not entitled now to urge this objection before us.

11. It was lastly contended that the plaintiffs' suit was barred by the Law of Limitation. The argument of the appellants in this behalf was twofold:

> (1) That the document being a promissory note the suit should have been filed within three years of the execution of the cadjan voucher i.e., on or before 15-8-1891, and (2) That the plaintiffs had made a demand for the deposit more than three years before the institution of the suit on 13-11-1944.

The first part of this argument cannot avail the plaintiffs in view of the finding recorded above that the cadjan voucher was a receipt evidencing the deposit and was not a promissory note. The second part of the argument was based on the construction which the plaintiffs put on the receipt dated 14-11-1941 Ex. P. 3 and the evidence of P. W. 1. The receipt, Ex. P. 3 was executed by the plaintiffs in favour of Annamalai and recited:

> "when we pursued and demanded you for the said sums as belonging to us, both of us agreed that your moiety of the same shall be paid, according to which the amount settled in full quit including interest upto date, as for your half share is Rs. 17,356-3-9."

P. W. 1 stated in his evidence that the negotiations between the parties went on for about 8 or 10 days before this settlement. Relying upon the above the appellants contended that the demand for the deposit was made by the plaintiffs in any event 8 or 10 days before 14-11-1941 and was therefore more than 3 years before the institution of the suit. This demand upon Annamalai however was not in his 'capacity as the karta and managing member of the whole joint and undivided Hindu family.

A severance of joint status had been effected long prior to 1941 and Annamalai did not represent the junior ' branch of the family when this demand was made upon him. He only represented the senior branch of the family and he agreed to satisfy the demand made upon him by the plaintiffs by

agreeing to pay a moiety of the liability of the joint family at the foot of the deposit. The demand which was made by the plaintiffs upon Annamalai was thus satisfied and no further demand upon Annamalai survived after this settlement.

The only demand made by the plaintiffs upon the defendants representing the junior branch of the family was in October 1942 and thereafter as alleged by the plaintiffs in their plaint. This allegation of the plaintiffs was however denied by the defendants and as the matters stood there was really no proof of any demand having been made by the plaintiffs upon the defendants for payment of their moiety of the deposit and the suit was filed by the plaintiffs against the defendants without any such demand having been made.

If that was so the period of limitation had not commenced to run against the defendants and the suit against them was well within time. With regard to this contention also there were concurrent findings of fact reached by the Trial Court as well as the High Court, viz. that no demand was made within the period prescribed under Article 60. If that was so, the suit was certainly not" barred by the Law of Limitation. This contention of the appellants also therefore fails.

12. In the result the appeal fails and must- stand dismissed with costs.