

APPELLATE CIVIL.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, and
Mr. Justice Wilkinson.

GOVINDASAMI (DEFENDANT NO. 1), APPELLANT,

1889.
Jan. 21, 29.

v.

KUPPUSAMI (PLAINTIFF), RESPONDENT.*

Alteration in bond sued on—Materiality of alteration—Fraud—Evidence.

Suit on a bond, the date of which had been altered from 11th September to 25th September, while it was in the possession of the plaintiff. Fraud was not proved, and the period of limitation reckoned from the 11th September had not expired :

Held, that the bond was void as such, and was not receivable in evidence to prove the debt. *Christacharu v. Karibasayya* (I.L.R., 9 Madras, 399) followed.

SECOND APPEAL against the decree of R. S. Benson, Acting District Judge of South Arcot, in appeal suit No. 253 of 1887, reversing the decree of V. Narayana Rau, District Munsif of Tirukovilur, in original suit No. 60 of 1887.

Suit to recover principal and interest due on a bond, dated 25th September 1882, and executed by defendant No. 1 to the plaintiff. Defendant No. 2 was joined as being an undivided member of the family of defendant No. 1, the bond having been executed by defendant No. 1 for family purposes.

The District Munsif found that the date of the bond had been altered from 11th September to 25th September and, holding that this was a material alteration which vitiated the instrument on the authority of *Gogun Chunder Ghose v. Dhuronidhur Mundul*(1), *Sitararam Krishna v. Daji Devaji*(2), *Paramma v. Ramachandra*(3), dismissed the suit.

On appeal the District Judge reversed the decree of the District Munsif observing "there is not a syllable of evidence to show that the alteration was fraudulent either in effect or intention. Nothing turned on the date and the cases quoted are therefore clearly irrelevant."

Defendant No. 1 preferred this second appeal.

* Second Appeal No. 1308 of 1888.
(1) I.L.R., 7 Bom., 418.

(1) I.L.R., 7 Cal., 616.
(3) I.L.R., 7 Mad., 302.

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Desikacharyar for appellant.

Rama Rau for respondent.

The Court (Collins, C.J., and Wilkinson, J.) delivered the following

JUDGMENT:—This was a suit to recover the principal and interest due on a simple bond executed by the defendant. Both the lower Courts have found that the bond was executed on the 11th September 1882 and that the date was subsequently altered, while the document was in the custody of the plaintiff, to the 25th September. The District Munsif held that the alteration was a material one and vitiated the instrument. The District Judge on appeal held that nothing turned on the date and that there was no evidence that the alteration was fraudulent. He decreed for plaintiff. The defendant appeals on the ground that the alteration of the date was an alteration of the document in a material part and that the document is therefore invalid. He relies on the Full Bench decision in *Christacharu v. Karibasayya*(1). The respondent argues (1) that the alteration is not a material alteration, because it affects no one, the defendant having made a part-payment within the statutory period, and (2) that, if it be held that it is a material alteration, the document is receivable as evidence of the debt in accordance with the decision in *Ramasamy Kon v. Chinna Bhavani Ayyar*(2) affirmed by the Full Bench decision in *Christacharu v. Karibasayya*(3).

In order to decide whether the alteration was material, it is necessary to consider whether the alteration affected the liability of either party. There can, it appears to us, be no doubt that the alteration of the date of the document from the 11th to the 25th September materially affected the liability of the defendant, for it extended the time within which the plaintiff was entitled to sue.

As to the part-payment on the 11th August 1885, which the District Judge has found to be genuine, we do not think that this part-payment is sufficient to render of no effect the alteration of the date. The contract between the parties having been reduced to writing and the only ground of action disclosed by the plaintiff being that which is founded upon the altered instrument, the plaintiff can only recover upon the writing. But it is undoubted

(1) I.L.R., 9 Mad., 399.

(2) 3 M.H.C.R., 247.

(3) I.L.R., 9 Mad., 399.

law that the plaintiff cannot recover upon the written contract, because it has been altered in a material part.

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Nor can the document be received in evidence of the debt. As remarked by Muttusami Ayyar, J., in the Full Bench case "In all the English cases in which there was judgment for the plaintiff upon the instrument in its original condition there was a separate count which did not refer to the instrument in its altered condition as the cause of the obligation which it was desired to enforce."

In the present case, the suit is not based on any antecedent transaction for which the instrument was given as security, nor did the execution of the instrument vest in the plaintiff any estate or right of the existence of which the deed would be evidence.

For these reasons, we are of opinion that the alteration of the document sued on, while it was in the custody of the plaintiff, vitiated the instrument, and we reverse the decree of the lower appellate Court and restore that of the District Munsif.

Respondent will pay appellant's costs in this and the lower appellate Court.

PRIVY COUNCIL.

SIVARAMAN CHETTI AND OTHERS (PLAINTIFFS)

and

MUTHAYA CHETTI, AND OTHERS (DEFENDANTS).

P.C.
1888.
Nov. 24.
Dec. 12.

[On appeal from the High Court at Madras.]

Village property—As to what was the common property of a village, viz., a tank—Inability of any of the co-proprietors to exclude the rest from contributing to repair it.

A village tank, on the site of an ancient one, was the common property of and used by, all the inhabitants, of whom one family on the ground of improvements and additions made by their ancestor with the general acquiescence of the village claimed, against the rest, the exclusive right of repairing the tank at their own cost. But no corresponding obligation on the plaintiffs to repair was shown; and from the evidence, including that afforded by a compromise made in 1842, it appeared that the repairs were to be effected by a common collection made through the person in management, who was to account for his receipts and expenses:

Held, that it was equally at the option of the rest of the villagers either to permit the repairs to be done by the plaintiffs, or to insist on the work being done

Present: Lord HOBHOUSE, Sir RICHARD COUCH, and Mr. STEPHEN WOLFE FLANAGAN.