

THE
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APPELLATE CIVIL—FULL BENCH.

*Before Mr. Justice Benson, Mr. Justice Bhashyam Ayyangar and
Mr. Justice Russell.*

BHARATA PISHARODI (PLAINTIFF), APPELLANT,

v.

VASUDEVAN NAMBUDERI AND OTHERS (DEFENDANTS),
RESPONDENTS.*

1903.
August 5.
October 16.

*Stamp Act—I of 1879, s. 34—Instrument admissible in evidence on payment
of duty and penalty—Promissory-note—Unconditional undertaking to pay
money.*

A letter was written in the following terms:—"In addition to Rs. 115 already received, Rs. 385 is also required. Please send it by the bearer Streenevasan. The amount will be returned with interest at 12 per cent. without delay":

Held, that there was no unconditional undertaking on the face of the document to pay the money; that the undertaking was conditional on the amount being remitted as requested; and that it was not a promissory-note within the meaning of that term as used in section 34 of the Stamp Act, 1879.

Channamma v. Ayyanna, (I.L.R., 16 Mad., 283), dissented from.

Narayanasami Mudaliar v. Lokambalammal, (I.L.R., 23 Mad., 156 (foot-note)), approved.

Surt for money. Plaintiff claimed Rs. 680 on two documents, the first of which was set out as follows in the District Munsif's judgment:—

"Appu must have told you that Rs. 500 is required to buy some land. Rs. 115 is required immediately. Please send that sum by the bearer Appu *alias* Streenevasan taking his acknowledgment underneath. The money will be returned with 12 per cent.

* Second Appeal No. 1383 of 1901, presented against the decree of T. Venkataramaia, Subordinate Judge of South Malabar at Palghat, in Appeal Suit No. 243 of 1901, presented against the decree of T. A. Ramakrishna Ayyar, District Munsif of Nedungganad, in Original Suit No. 360 of 1899.

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per annum interest or a proper document will be executed after receiving the remaining sum." The second was thus set out by the Munsif.—"In addition to Rs. 115 already received, Rs. 385 is required. Please send it by the bearer Streenivasan *alias* Appu, taking his acknowledgment below. The amount will be returned with interest 12 per cent. per annum without delay." The District Munsif held that the first document was an agreement because it contained a promise to execute a proper document afterwards, and he admitted it in evidence after levying stamp duty and penalty (it being unstamped). He, however, on the authority of *Channamma v. Ayyanna*(1), held that the second document was inadmissible in evidence as it was a promissory-note, and it was, accordingly not marked or placed on the record. He refused to act on the first document as it had not been written in plaintiff's presence, and as the second document was inadmissible in evidence the remainder of the claim also failed. He dismissed the suit, and his order of dismissal was upheld by the acting Subordinate Judge on appeal, who also relied on *Channamma v. Ayyanna*(1).

Plaintiff preferred this second appeal.

J. L. Rosario for appellant.

K. P. Govinda Menon for first respondent.

The case first came before Subrahmaniam Ayyar and Moore, JJ.

The Court made the following

ORDER OF REFERENCE TO A FULL BENCH.—At the hearing of this second appeal before us a question has been raised as to whether the following letter, dated the 6th November 1896, is a promissory-note or not.—“In addition to Rs. 115 already received Rs. 385 is also required. Please send it by the bearer Streenivasan *alias* Appu taking his acknowledgment below. The amount will be returned with interest at 12 per cent. without delay.” The District Munsif and the Subordinate Judge (on appeal) have, on the strength of the decision in *Channamma v. Ayyanna*(1), decided that this letter is a promissory-note. We dissent from this view and are in favour of the contrary opinion as expressed in the following cases where similar letters are dealt with,—*Narayanasami Mudaliar v. Lokambalammal*(2) and *Dhond Bhat Narhar Bhat v. Atmaram Moreshwar*(3).

(1) I.L.R., 16 Mad., 283.

(2) I.L.R., 23 Mad., 156 (foot-note).

(3) I.L.R., 13 Bom., 669.

As in our opinion the case of *Channamma v. Ayyanna*(1) was wrongly decided, we refer for the opinion of a Full Bench the question as to whether the letter set forth in this reference is a promissory-note, within the meaning of that term as used in section 34 of Act I of 1879.

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The case came on for hearing before the Full Bench, constituted as above, in due course.

J. L. Rosario for appellant.

K. P. Govinda Menon for first respondent

OPINION.—It is brought to our notice, that the words “taking his acknowledgment below” do not exist in the document which gave rise to the reference, and we deal with the question on the footing that these words are not in the document. There is no unconditional undertaking on the face of the document to pay the money. It is clear on the face of the document that the undertaking is conditional on the amount being remitted as requested. The document is, no doubt, similar to that in the case of *Channamma v. Ayyanna* (1), but we are unable to follow that decision. We think that the case of *Narayanasami Mudaliar v. Lokambalammal*(2) is correctly decided.

Following that decision and the decision of the Division Bench of three Judges in *Dhond Bhat Narhar Bhat v. Atmurram Moreswar*(3), we are of opinion that the document under reference is not a promissory-note within the meaning of that term as used in section 34, Act I of 1879.

The second appeal coming on for final hearing after the expression of opinion of the Full Bench, the Court delivered the following

JUDGMENT.—We set aside the decrees of both Courts and send back the suit to the District Munsif for trial on the merits in all the issues.

(1) I.L.R., 16 Mad., 283.

(2) I.L.R., 23 Mad., 156 (foot-note).

(3) I.L.R., 13 Bom., 669.