

APPELLATE CIVIL.

Before Mr. Justice Boddam and Mr. Justice Sankaran Nair.

YARLAGADDA VEERA RAGAVAYYA AND OTHERS (PLAINTIFFS),
APPELLANTS,

1905
April 17.

v.

GORANTLA RAMAYYA (DEFENDANT, RESPONDENT).*

Promissory Note—Promissory note on account of pre-existing loan—Action maintainable on original consideration, even if note unstamped and inadmissible.

Where a bill or note is not itself the original contract but is executed on account of a pre-existing independent obligation complete in itself, an action on the original obligation is maintainable without regard to such bill or note if it is not paid at maturity, provided the party taking the bill or note has done nothing with it which would render the debtor liable on it to third parties; and the inadmissibility in evidence from any cause of such bill or note will not affect the maintainability of the suit.

It will be otherwise if the original cause of action is the bill or note itself.

Sheikh Akbar v. Sheik Khan, (I.L.R., 7 Calc., 256), followed.

Pothi Reddi v. Velayudasivan, (I.L.R., 10 Mad., 94), distinguished.

SUIT by the plaintiffs to recover with interest money lent to the defendant. The plaintiffs alleged that the defendant came to them on a certain morning and borrowed Rs. 400, promising to execute a promissory note for the amount in the evening; that he came in the evening and executed an unstamped promissory note, representing that no stamp was available. The plaintiffs sued for the recovery with interest of this amount and the amount due on another promissory note executed by the defendant. The defendant denied the plaintiffs' claim.

The District Munsif passed a decree for the first loan of Rs. 400 with interest and disallowed the second item of the plaintiffs' claim.

On appeal by the defendant, the District Judge held that the case was on all fours with *Pothi Reddi v. Velayudasivan* (1) and dismissed the plaintiffs' suit.

* Second Appeal No. 445 of 1903, presented against the decree of J. H. Robertson, B-q., District Judge of Kistna, in Appeal Suit No. 559 of 1902, presented against the decree of M.R. Ry. V. Cooposwami Ayyar, District Munsif of Bapatla, in Original Suit No. 112 of 1901.

(1) I L. R., 10 Mad., 94.

YARLA-
GADDA
VEERA
RAGAYAYA
vs.
GORANTLA
RAMAYYA.

Plaintiffs preferred this second appeal.

K. Jagannadha Ayyar for *V. Krishnaswami Ayyar* and
K. Salamukunda Ayyar for appellants.

V. Visvanadha Sastri for respondent.

JUDGMENT.—The District Judge has not fully appreciated the law or the facts in this case.

The plaintiff sued on the original contract entered into between the plaintiff and the defendant alleging that the promissory note (which was not admissible in evidence for want of a stamp) did not constitute the contract between the parties.

The law is clearly laid down by Garth, C. J., in *Sheikh Akbar v. Sheikh Khan* (1) with which we entirely agree. He says at page 259 :— "When a cause of action for money has once complete in itself, whether for goods sold, or for money lent, or for any other claim, and the debtor then gives a bill or note to the creditor for payment of the money at a future time, the creditor, if the bill or note is not paid at maturity, may, always as a rule, sue for the original consideration, provided that he has not endorsed or lost or parted with the bill or note, under such circumstances as to make the debtor liable upon it to some third person. In such cases the bill or note is said to be taken by the creditor on account of the debt, and if it is not paid at maturity, the creditor may disregard the bill or note and sue for the original consideration . . . but when the original cause of action is the bill or note itself and does not exist independently of it . . . here there is no cause of action for money lent or otherwise than upon the note itself, because the deposit is made upon the terms contained in the note, and no other." In *Pothi Reddi v. Velayudasivan* (2), the plaintiff sought to prove the promise contained in the promissory note, viz., to pay at a subsequent named date, because if he had sued on the original consideration his suit would have been barred by the Statute of Limitation. He was therefore bound to rely upon the contract contained in the note and could sue on no other.

In this case the plaintiff's case is that there was a completed contract between himself and the defendant independent of the promissory note and that the unstamped note was not itself the contract but was merely received by him on account of the loan

(1) I.L.R., 7 Cal., 256.

(2) I.L.R., 10 Mad., 94.

made previously by the plaintiff to the defendant. This the District Munsif has found to be the fact but the District Judge has reversed the decree of the District Munsif without considering the facts on the ground that the case is on all fours with *Pothi Reddi v. Velayudasivan*(1).

YARLA-
GADDA
VERRA
RAGAVAYYA
v.
GORANTLA
RAMAYYA.

No facts are found which in our opinion make the case identical with *Pothi Reddi v. Velayudasivan*(1). We therefore set aside the decree of the District Judge and remand the appeal to the lower Appellate Court for disposal according to law.

Costs will abide and follow the event.

APPELLATE CIVIL.

*Before Sir S. Subrahminia Ayyar, Officiating Chief Justice,
and Mr. Justice Boddam.*

MANJAPPA ROI (FIFTH DEFENDANT), APPELLANT,

1905
July 24

v.

KRISHNAYYA (PLAINTIFF), RESPONDENT.*

Transfer of Property Act IV of 1922, s. 43—Mortgagor acquiring the mortgaged property cannot use the mortgage right as a shield against subsequent mortgages executed by himself.

The doctrine that a person paying off a mortgage or purchasing the mortgage property in execution of a decree on the mortgage can set up such mortgage as a shield against puisne incumbrancers will not, on the principle embodied in section 43 of the Transfer of Property Act, apply when the person so paying or purchasing is the mortgagor himself. The effect of the payment or purchase in such cases so far as the mortgagor and those claiming under him are concerned will be simply to extinguish the mortgage, and the rights of subsequent incumbrancers will be determined as if such prior mortgage never existed.

SUIT by the plaintiff to recover the amount due on a mortgage bond executed by the first defendant in 1882 and assigned to him by the mortgagee in 1893. Defendants Nos. 1 to 4 were undivided brothers and the first defendant was the manager. The

(1) I L.R., 10 Mad., 94.

* Second Appeal No. 508 of 1903, presented against the decree of L. G. Moore, Esq., District Judge of South Canara, in Appeal Suit No. 303 of 1901, presented against the decree of M.R.Ry. T. V. Anantan Nair, District Munsif of Mangalore in Original Suit No. 254 of 1900.