

APPELLATE CIVIL.

Before Mr. Justice Brown.

MAUNG KYAN NGA

v.

M.A.R.T.A.R. ARUNACHALAM PILLAY.*

1927

June 7.

Evidence Act (I of 1872), s. 92.—On demand promissory-note—Defence that it is a matter of partnership transaction and accounts when inadmissible—Unliquidated claim cannot be set off against claim on promissory-note.

Where the defendant pleaded that he had given the on-demand promissory-note in suit to the plaintiff not for a loan, but for an advance on account of a partnership to be accounted for when the partnership account was gone into, held, that such a defence cannot be allowed. This is not a defence of no consideration or a condition precedent to the attaching of an obligation, but an attempt to set-off an unliquidated claim against a claim on a promissory-note, which is not permissible.

J. M. Manekjee v. Maung Po Han, 2 Ran. 482—*distinguished*. *Vallamkoundu Subbiah v. Malupeddi Venkalarameiah*, 31 Mad. 342—*referred to*.

Ba Thein (1)—for Appellant.

Shammugam—for Respondent.

BROWN, J.—The respondent sued the appellant for money alleged to be due on a promissory-note. The execution of the note was admitted. The appellant pleaded that the rate of interest had been added subsequently to the execution of the note, but on that point, the trial Court has held against him and the correctness of this decision of the trial Court's decision is not now in dispute.

The sole question in dispute is whether the defendant could raise the other defence put forward in the suit. His case briefly was that the money was advanced to him for the purchase of paddy in pursuance of a partnership agreement and that there was really no loan at all. On the face of

* Civil Second Appeal No. 473 of 1926.

the document, there is a clear promise to pay the money due on demand, and, under the provisions of section 92 of the Indian Evidence Act, no evidence is admissible to vary the term of this contract.

In the case of *J. M. Maneckjee v. Maung Po Han* (1), it was held that, where a defendant had signed a promissory-note in favour of a plaintiff, it was open to him to bring oral evidence to show that there was an agreement that no obligation should attach to him except on the failure of another person (Po Nyein) to complete the contract. Oral evidence in that case was held to be admissible under proviso 3 to section 92. The conditions of the present case are, however, different. The written statement does not allege that there was a separate oral agreement substituting a condition precedent to the attachment of any obligation under the contract.

Paragraph 1 sets out that the contract was not a loan but an advance for the purchase of 20,000 baskets of paddy in pursuance of a partnership agreement. It thus sets forth the purpose for which the money was paid. But it does not go on to state that it was agreed between the parties that no liability under the contract should arise until something further had been done in connection with the partnership. It is, in effect, an allegation that the terms of the contract as set forth in the note are not correct and that the defendant never promised to pay on demand but that he received the money on account of the partnership to be accounted for when the partnership account was gone into.

In the case of *Vallamkonda Subbiah v. Malupeddi Venkataramiah* (2), the promissory-note had admittedly been executed by the defendants. The two defendants and the plaintiff were partners and it was

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contended on behalf of the defence that the promissory-note was given in repayment of an advance made by the plaintiff to the partnership with interest and that the money due could not be claimed without going into the general accounts of the partnership. It was held that this was not a good defence as it was not contended that the note was without consideration, or that the consideration had failed but that when the accounts were taken it might appear that there was nothing due to the plaintiff. That seems to me to be in fact the contention of the defendant here though the defence is not very clearly worded.

It was pointed out in *Vallamkondu Subbiah's* case that the defendants were not entitled to set-off an unliquidated claim against a claim on a promissory-note. On the face of the document the defendant is liable to pay the sum due on demand. He does not allege that there was no consideration for the promissory-note ; nor am I able to hold that he alleges that there was any condition precedent to the attaching of an obligation under the note. He cannot set up against the amount due on the promissory-note a sum which may become due to him on the partnership he alleges. Even if there is a partnership this loan must be looked upon as a separate transaction.

In my opinion the lower Courts have rightly held that defendant should not be allowed to adduce evidence of the facts alleged by him in the defence. I dismiss this appeal with costs.