A

DEO VERMA SINGH

v.

RAM SARUP

[SUPREME COURT, 1962 (Hammett P.J.), 27th April, 4th May]

B

Appellate Jurisdiction

Moneylending—memorandum of moneylending contract—promissory note given as security but countersigned by moneylender and containing all terms of contract a sufficient memorandum—loan not rendered irrecoverable by later cancellation of promissory note—Moneylenders Ordinance (Cap. 207) s.16(1) (4).

C

A promissory note, containing in the body thereof all the terms of the contract and countersigned by the lender, is a sufficient note or memorandum of a moneylending contract under section 16 (4) of the Moneylenders Ordinance.

The fact that at a later date the promissory note was cancelled when the parties purported to enter into a new loan transaction (which was not implemented) did not render the original loan unenforceable for want of a memorandum.

D

Appeal from a judgment of the Magistrate's Court.

S. M. Koya for the appellant.

E

K. A. Stuart for the respondent.

The facts sufficiently appear from the judgment of Hammett P.J.

HAMMETT P.J.: [4th May, 1962]—

F

This is an appeal from the decision of the Magistrate's Court sitting at Lautoka whereby the Plaintiff Respondent was given Judgment against the Defendant Appellant for £356.6.3. for money lent with costs.

There are four grounds of appeal namely —

G

1. The learned trial Magistrate erred in law in treating the loan of £200.0.0 made by the Respondent to the Appellant on the 22nd February, 1955 as a transaction separate and apart from the transaction covered by the Promissory Note made on the said occasion (Exhibit "A") and subsequently cancelled and discharged by the Respondent.

H

2. The learned trial Magistrate erred in law in holding that the Promissory Note (Exhibit "A") notwithstanding its cancellation and discharge constituted a Memorandum as required by Section 16 of the Moneylenders' Ordinance Cap. 207.

3. The learned Magistrate erred in law holding that the claim was not statute barred.

4. That inasmuch as the transaction was reduced to writing (namely Promissory Note marked Exhibit "A") and that such writing was required by law, the learned trial Magistrate misdirected himself in holding that the said Promissory Note was not the only evidence to show whether the money was owing or not.

The facts were not in dispute and are as follows.

The Respondent is a licensed Moneylender. On 22nd February, 1955 he lent the Appellant the sum of £200 at 12% interest on the security of a Promissory Note. No note or memorandum of the Contract was made at the time as is required by Section 16(1) of the Moneylenders Ordinance. There was, however, contained in the body of the Note all the terms of the Contract and it was countersigned by the lender. The Promissory Note was, therefore, itself a sufficient note or memorandum of the contract by virtue of the provisions of Subsection (4) of Section 16 of the Ordinance.

On 3rd May 1958 there was a total of £276 outstanding in respect of principal and interest on the loan and a memorandum of contract was that day signed by both the parties acknowledging that fact and in respect of a fresh loan for that sum. This money was not, however, actually paid at all and the Respondent did not rely on any contract other than the original loan. When the new Memorandum dated 3rd May, 1958 was signed, the original Promissory Note was endorsed "cancelled".

It was the contention of the Appellant at the trial and again on the hearing of this appeal that upon cancellation of the Promissory Note the original loan became irrecoverable and the Promissory Note ceased to be a sufficient note or memorandum of the original contract.

The Appellant does not dispute that he received the original loan of £200 or that he agreed to pay 12% interest thereon or that he has repaid no principal or interest save as to a payment of £30 which in his affidavit of defence he said he paid at some unknown date in 1956 or 1957. There was, however, no evidence in support of this alleged payment.

The first and fourth grounds of appeal were argued together. It is quite clear that the Respondent lent the Appellant £200 upon the security of the Promissory Note. The Promissory Note was not the "loan contract" itself but was security for the loan. The action was brought not upon the Promissory Note but upon the contract in respect of money lent. In my view there is no substance in either the first or the fourth grounds of appeal.

The second ground of appeal suggests that upon the later cancellation of the Promissory Note it ceased to be a sufficient note or memorandum of the Moneylending contract under the provisions of Subsection (4) of Section 16 of the Moneylenders Ordinance. No authority was cited to support such a proposition which does not appear to me to be either logical or sound.

The third ground of appeal concerns the suggestion that the claim was statute barred. This was not pleaded in the original defence. Not only was it not pleaded but facts were pleaded alleging part payment within 4 years of the date of the action was instituted which made it clear that the claim was not, in the defence view, statute barred. The contention that it was statute barred, made in the Appellant's Counsel's closing address at the trial, was in fact an attempt to contradict his own pleading. In my view the learned trial Senior Magistrate very properly rejected this contention. The claim, on the evidence, was clearly not statute barred having been acknowledged in writing, signed by the Appellant on 3rd May, 1958.

For these reasons the appeal is dismissed with costs.

Appeal dismissed.