

1942

Present : Soertsz and Keuneman JJ.

AIYAMPILLAI v. SORNAMMAH et al.

48—D. C. Jaffna, 13,483

*Promissory note—Claim for wages—Compromise—Valuable consideration.*

The compromise of a claim accepted by the party against whom it is made is a good consideration for a promissory note, if the party making it is acting in good faith.

**A**PPEAL from a judgment of the District Judge of Jaffna.

*H. V. Perera, K. C. (with him M. Rutnam), for defendants, appellants.*

*N. Nadarajah, for plaintiff, respondent.*

*Cur. adv. vult.*

February 11, 1942. KEUNEMAN J.—

The plaintiff sued the defendants for the sum of Rs. 1,250 with interest thereon due on promissory note P 1, dated August 13, 1933, signed by the defendants, and obtained judgment. The defendants now appeal.

The only point argued in appeal was that the said promissory note was not given for valuable consideration.

It was established in the evidence that plaintiff's daughter, Kadiramalai, had been employed as servant for a very long period of years under the 1st defendant's husband, Ponniah Aiyar, and for a part of that period had also been the mistress of Ponniah Aiyar. Ponniah Aiyar died in 1932 without any issue. It seems fairly clear that at an early stage Kadiramalai had claimed remuneration for her services, in respect of which it is admitted that no payment of wages was ever made. The claim for remuneration was accepted by the heirs of Ponniah Aiyar, including the two defendants, and in the testamentary proceedings in respect of the estate of Ponniah Aiyar, the inventory showed that a debt of Rs. 1,000 in favour of Kadiramalai was accepted. The precise date of the inventory has not been proved, but I think it has been established in the evidence that the inventory was filed before the date of the promissory note P 1.

Kadiramalai remained in the house of Ponniah Aiyar for about a year after his death, and it is in evidence that she refused to leave until some payment was made to her. Kadiramalai stated that on the date the promissory note was given to her, she had demanded wages, and also the return of certain moneys of hers in the hands of Ponniah Aiyar. This story has not been accepted by the learned District Judge. But I think the position is clarified by the evidence given by the 2nd defendant. "The promissory note was given for the Rs. 1,000 shown in the inventory as a debt. It was given on the understanding that no interest should be recovered and that the money should be claimed after the estate is closed." The promissory note was for Rs. 1,250 and interest and made in favour of plaintiff, Kadiramalai's father. The insertion of interest in the note destroys the allegation that there was an agreement that no interest should be recovered.

It has been argued that Kadiramalai had no claim for wages or remuneration, as no agreement has been proved to pay any wages. This, however, does not affect the question. On this point, *Byles on Bills* (18th Edition, page 128) says, on the authority of a number of cases, "The compromise of a claim, though really unfounded and believed to be so by the party against whom it is made may be a good consideration for a promissory note if the party making it is acting in good faith". This case goes further, for it is clear that the defendants recognised and accepted the claim of Kadiramalai and regarded it as a debt and there is little doubt that Kadiramalai believed in her claim.

The further point that the promissory note was given for an immoral consideration has been rightly rejected by the District Judge.

It is also clear from the 2nd defendant's evidence that the promissory note was given in return for an agreement by Kadiramalai that she would forbear to claim the amount until after the estate was closed. This forbearance, I think, would constitute valuable consideration, not only for the enhancement of the amount, but also for the whole promissory note.

The appeal is dismissed with costs.

SOERTSZ J.—I agree.

*Appeal dismissed.*

