

(1965) 08 AP CK 0004

In the Andhra Pradesh High Court

Case No : Civil Revision Petn No's. 1139 to 1155 of 1962

Achanta Subbaraju

APPELLANT

Vs

Cherukuri Suryanarayana Murthy and Others

RESPONDENT

Date of Decision : 20-08-1965

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 51
Transfer of Property Act, 1882 — Section 130

Citation : AIR 1967 AP 11

Hon'ble Judges : Gopalrao Ekbote, J

Bench : Single Bench

Advocate : C.V. Kanyaka Prasad, for the Appellant; P.P. Surya Rao, for the Respondent

Judgement

Gopalrao Ekbote, J.

(1) These seventeen revision petitions arise out of a common judgment given by the District Munsif, Razole on 30th January, 1962 whereby he dismissed seventeen suits filed by the plaintiff on the foot of promissory notes as holder in due course. The essential facts in order to appreciate the contentions raised before me may briefly be stated:

Sri Anantha Lakshmi Commercial Syndicate (hereinafter called the Syndicate) is a registered firm under the Indian Partnership Act. It was constituted solely for the purpose of running a chit fund business. There are two partners of the said firm. one S. Trimurthy and the other Bapanayya. It was alleged that on 8-11-58 the firm was dissolved. Bapanayya left the firm entrusting the whole business to S. Trimurthy. On that date he endorsed the suit promissory notes in favour of S. Trimurthy. S. Trimurthy thereafter endorsed all those promissory notes in favour of the plaintiff. The plaintiff therefore, styling himself as holder in due course instituted the present suits on the foot of those promissory notes against several defendants for recovery of the amount due on those promissory notes together with interest thereon.

(2) The written statement of all the defendants was that the endorsements made by Bapanayya in favour of S. Trimurty were not valid, that there was no dissolution of partnership and the endorsements made by S. Trimurty in favour of the plaintiff were also not valid, that the plaintiff is the co-son-in-law of S. Trimurty that the chit fund was abruptly stopped by the two partners and in collusion with each other the promissory notes were transferred ultimately to the plaintiff that the partnership firm was not entitled to the entire amount but only to a commission and that therefore, S. Trimurty could not have transferred the promissory notes in favour of the plaintiff.

(3) On these pleadings proper enquiry was made. The learned District Munsif dismissed all the suits holding that the endorsements made by Bapanayya in favour of S. Trimurty were invalid. He also held that the endorsements made by S. Trimurty in favour of the plaintiff were invalid. He found that the firm was only entitled to a commission and the entire amount was meant to be distributed amongst the subscribers of the chit fund. It was also held that the dissolution deed Ex. A-19, was brought up into existence subsequently in order to support the endorsements made by Bapanayya on 8-11-1958. It is this view of the learned District Munsif that is now disputed before me in these revision petitions.

(4) The first contention of the learned Counsel for the petitioner is that the endorsements made by Bapanayya were valid under the Negotiable Instruments Act. Bapanayya was one of the partners and he could make an endorsement in favour of S. Trimurty. It was also contended that S. Trimurty in any case could endorse and transfer the promissory notes as managing partner of the firm in favour of the plaintiff even if it is held that the firm was not dissolved and that Ex. A-19 was a subsequently got-up document. It was also argued that if the endorsements are not valid under the Negotiable Instruments Act, they can in any case be treated as transfers of actionable claims u/s 130 of the Transfer of Property Act and the plaintiff would thus get the right to sue for the debt for which promissory notes were taken.

(5) In order to appreciate these contentions it is necessary to refer to a few provisions of the Negotiable Instruments Act (hereinafter called Act). It is not in dispute that the promissory note is a negotiable document within the meaning of S. 13 of the Act. Section 14 relates to negotiation. According to that Section when a promissory note is transferred to any person so as to constitute that person the holder thereof the instrument would be said to have been negotiated. Section 8 defines "holder". According to that definition the holder of a promissory note means any person entitled in his own name to the possession thereof and to receive or recover the amount due thereon from the parties thereto. From a reading of Section 14 read with the said definition of "holder" in Section 8 it is abundantly plain that it is the Syndicate, the firm which was the holder of the suit promissory notes.

Section 15 enjoins that when the holder of a negotiable instrument signs the same for the purpose of negotiation, the person signing the endorsement would

be said to be the endorser and the endorsement would be said to have been complete for the purpose of that section. It is Section 51 which is more material for our purpose, according to which every payee of a negotiable instrument may endorse and negotiate the same. It is thus clear that in order to effect a valid endorsement of the suit notes the Syndicate, who was the holder, alone could have negotiated the suit promissory notes by way of endorsement. It is now a firmly settled rule of law that the endorsement in such cases must strictly follow the description given in the instruments. A promissory note payable to the Syndicate must be endorsed by the Syndicate as such.

It is however generally true that a partner of a firm can endorse a negotiable instrument drawn in favour of the firm by signing his name and adding to it the fact that he is a partner of the firm and his endorsing the promissory note in that capacity. It is clear that without such an addition the validity of the endorsement would certainly be brought in dispute. Now Section 27 of the Act deals with the authority or power of a person to contract on behalf of another so as to bind the other person. Under that section every person capable of binding himself or of being bound as mentioned in Section 26 may so bind himself or be bound by a duly authorised agent acting in his name. It is made plain in the section that a general authority to transact business and to receive and discharge debts does not confer upon an agent the power of accepting or endorsing bills of exchange so as to bind his principal. Similarly an authority to draw bills of exchange does not of itself import an authority to endorse. Viewed in the light of Section 27 unless a partner signs as such or the name of the firm appears on the face of the negotiable document the firm does not become liable.

It is true that the signature of the firm would be deemed to be the signature of all persons who are partners in the firm whether working, dormant or secret and also of those who, holding themselves out as partners, are liable as such to a third party. This rule obviously is based upon the well-recognised general principle that each partner is entrusted by his co-partners with a general authority to do any act necessary for or usually done in carrying on the business of such a partnership. These partnership firms are of two types, trading firms and non-trading firms. In the case of trading firms the law seems to be that it would generally be presumed that a partner has a general power to make or endorse a promissory note for the purpose of trading business. But in case of non-trading firm there is no such presumption and no implied authority can be attributed to the partner of a non-trading firm. A partner of a non-trading firm cannot bind the firm by either executing a promissory note or endorsing the same unless he has express authority to make or endorse the promissory note. I do not think it can be validly argued that the Syndicate is a trading firm as the said term is generally understood.

It is not denied that the firm was constituted for the sole purpose of running the business of chit fund and in order to conduct it was not necessary normally to borrow or lend money. The promissory notes which are executed in favour of the

firm were executed as stake holders or commission agents. It is admitted by S. Trimurthy that the firm was entitled only to a commission of 5 per cent on the transaction effected by the firm and the entire balance of the profit or money were to be distributed amongst the subscribers of the chit fund. It is nowhere asserted that apart from this the firm was doing any other business. When the firm was entitled only to a commission and was acting more or less as a commission agent for organising the chit fund business it is plain that the partnership was not doing any trade and was not therefore, a trading firm. It was clearly a non-trading firm. It was therefore, necessary for the plaintiff to expressly allege and prove that all the partners or any one of them had an express authority to make or endorse the promissory notes. It is thus clear that an authorised agent can endorse the promissory note on behalf of his principal.

Likewise in the cases of trading partnerships one of the partners can endorse the promissory note in the name of the firm, but he cannot do so in his own name. In cases of trading partnerships this capacity of the partner binds the others even after the firm is dissolved if the endorsement is for the purpose of winding up the partnership. But in case of a non-trading partnership a partner has prima facie no authority to render his co-partners liable by signing a promissory note or endorsing it in the partnership's name. Such an authority must expressly be conferred on him.

(6) This being the position of law if the present cases are examined in the light of this law, it would be clear that the first endorsement made by Bapanayya in his own name could not be said to be valid endorsement under the Act. According to the plaintiff on the date when these endorsements were made the firm was dissolved. If that is so, then Bapanayya was jointly entitled to the amount of the promissory note. If both the partners had effected the endorsements in favour of S. Trimurthy those endorsements could have been perfectly valid, but no single partner of a non-trading firm dissolved or even before dissolution, can by endorsement transfer the promissory note in favour of another partner unless specially authorised to so transfer and transferred as such. The holder of the promissory notes being the firm it is the firm which must transfer the promissory notes by endorsement. In this case the endorsements of Bapanayya do not disclose that he endorsed the promissory notes as a partner. After the dissolution of the firm he had an interest in the promissory notes which he could transfer not by way of endorsement but only as a transfer of an actionable claim. It is thus evident that Bapanayya could neither have transferred the promissory notes in favour of S. Trimurthy nor could he have transferred his own share in the promissory notes under the Act. The endorsements made by Bapanayya were therefore, correctly held to be invalid under the Act and S. Trimurthy does not become a valid endorsee. These endorsements do not bind the firm. Similar is the case with the endorsements made by S. Trimurthy in favour of the plaintiff.

From what is discussed above it is plain that assuming that the firm was not dissolved as is held by the Court below, S. Trimurthy could have transferred the

promissory notes by way of endorsement only in the capacity of a partner of a trading firm. He could have also transferred in the case of a non-trading firm by way of endorsement provided he had the requisite authority to make or transfer a negotiable document and transfers as a partner. No such assertion was made in the plaint. Nor it is contended even today. The endorsements made by S. Trimurthy do not disclose that he made the endorsements as a managing partner. It is important to note in this connection that the plaintiff had come to the Court alleging clearly that the firm was dissolved on 8-11-1958 and it is only after dissolution that Bapanayya had transferred his interest in the promissory notes in favour of S. Trimurthy and S. Trimurthy being the sole proprietor of the firm transferred the promissory notes in favour of the plaintiff. When once that fact has been found to be wrong S. Trimurthy could not be the sole proprietor, nor could he treat the promissory notes as his personal property and endorse the same in his individual capacity as he did in these cases. He was a partner of the firm which was not dissolved according to the findings of the Court below. He could have transferred those notes only if it had been alleged that S. Trimurthy had authority to endorse the promissory notes and that he did so in the capacity of a managing partner. That he did not do so is abundantly clear from the record. The irresistible conclusion therefore, is that S. Trimurthy could not have endorsed the promissory notes in his individual capacity. The endorsement made by him therefore, also was rightly held to be invalid under the Act.

(7) The next contention was that assuming that both the endorsements were invalid and cannot be given effect to under the Act they can be given effect to as transfers of actionable claims. It is not in doubt that both Bapanayya and S. Trimurthy could transfer their interests in the suit promissory notes as choses in action. They have of course not done so. For the purpose of effecting a transfer of an actionable claim it is necessary u/s 130 of the Transfer of Property Act to transfer the claim in writing. That such a writing requires necessary stamps, is not bear the necessary stamps is clear. Both these endorsements would require stamp if they are to be treated as transfers of choses in action. Those endorsements therefore, are inadmissible as transfers of actionable claims as they bear no stamp.

(8) It was however contended that these endorsements were admitted in evidence and were marked and the defendants therefore, were precluded from raising the question of admissibility of these endorsements on the ground that they did not bear proper stamp. What happened in this case was that originally these endorsements were relied upon by the plaintiff as endorsements under the Act. When he found his position untenable in law he sought to treat these endorsements as transfers of actionable claims both by Bapanayya and S. Trimurthy. In their counter the defendants expressly raised an objection that for that purpose these endorsements require stamps and are not therefore, admissible as they do not bear the proper stamp. The trial Court did not consider this objection before the documents were marked. It has now been fairly settled that when once the defendant raises an objection and that objection has not

been waived or withdrawn, it is the bounden duty of the Court to decide that question before the documents are received in evidence or marked. In the face of the objection all those documents are inadvertently marked and received in evidence. It can only mean that those documents were received in evidence and were marked tentatively and subject to the final disposal of the objection raised by the defendants. Viewed in that light merely because the documents were marked it does not absolve the Court of the responsibility of deciding the objection raised by the defendants. The trial Court therefore, rightly dealt with this objection at the time of deciding the cases and held that as the endorsements do not bear proper stamp they are inadmissible in evidence for the purpose of Section 130 of the Transfer of Property Act. I am fortified in my view by the following two decisions:

(a) Yerri Swami v. Chinna Vannurappa, 1948 2 Mad LJ 254: (AIR 1949 Mad 300)

(b) Veeramallu v. Komaraiah, 1964 2 Andh WR 468 .

When once these endorsements were held to be inadmissible in evidence then the plaintiff does not get any right to sue as there is no valid transfer of actionable claims in his favour. On that ground also the suits have been rightly dismissed. It has been found by the Court below that the plaintiff is not a holder in due course under the Act. It was also found that he got the endorsements made in his favour in collusion with S. Trimurthy and Bapanayya. It was also found that the firm was not entitled to anything except commission on the suit amounts and that the business of the chit fund was suddenly closed depriving the subscribers of the benefit of that scheme, as well as the amount which they had subscribed. In view of these findings also the plaintiff is not entitled to sue the defendants on the foot of these promissory notes. In my view it does not make much difference whether the promissory notes are executed in the name of the Syndicate simpliciter or with an added name of S. Trimurthy as the managing partner of the said firm. In both these cases the promissory notes would be deemed to have been executed in favour of the firm. It is also not of much significance if any promissory note is executed after the so-called dissolution of the firm, as that promissory note also was executed in the name of the firm. Since it is found that the firm was not dissolved. it would be deemed to have been continued. The promissory notes in favour of the firm therefore, could have been transferred only by the firm or a partner provided he is authorised to do so. Since that is not done in these cases and the transfers are not done in these cases and the transfers are invalid, the suits of the plaintiff have been rightly dismissed. These revision petitions therefore, are dismissed with costs, of the respondents, in revision petitions in which Mr. P. Surya Rao appears as Advocate of the defendants. There will be no order as to costs in the other revision petitions. In the revision petitions in which Mr. P. Surya Rao appears for the defendants, he would be entitled to Advocate's fee which is fixed at Rs. 100.

(9) Revision Dismissed