

(1944) 08 MAD CK 0005
In the Madras High Court

Bavani Ammal and Another	Vs	APPELLANT
Tholudur Nataraja Ayyar and Others		RESPONDENT

Date of Decision : 29-08-1944

Acts Referred:

Citation : AIR 1945 Mad 129 : (1945) 1 MLJ 165

Hon'ble Judges : Sommayya, J; Somayya, J

Bench : Division Bench

Judgement

Sommayya, J.—The suit out of which this second appeal arises was filed by two plaintiffs, mother and daughter, for a decree against the second defendant's share in the family properties. The second defendant is the younger brother of the first defendant and the suit was filed upon a promissory note executed by the first defendant, the elder brother and manager of the joint family consisting of himself and the second defendant. It was alleged in the plaint that the first defendant who was the manager of the family of the two defendants executed a promissory note in favour of the first plaintiff for Rs. 2,500. The first plaintiff endorsed the promissory note which was executed in her favour to the second plaintiff, her daughter for collection. The second plaintiff brought a suit on the promissory note in O.S. No. 1 of 1936 on the file of the Sub-Court, Tanjore and obtained a decree on the 18th February, 1936. To this suit, the first defendant was alone made a party. Subsequent to the decree, the first defendant was adjudicated insolvent in I.P. No. 9 of 1936, Sub-Court, Tiruvarur, and his share of the properties has vested in the Official Receiver who is the third defendant in the suit. The present suit was filed by both the plaintiffs, mother and daughter, for a decree against the

second defendant's share in the joint family properties. The suit was resisted by the second defendant on the ground that after the promissory note

was endorsed by the first plaintiff in favour of the second plaintiff the former could no longer sue upon the debt and seek to recover it from his

share in the family properties and that the second plaintiff cannot enforce his liability on the ground that an endorsee of a promissory note does not

get the right to proceed against the other members of the family and recover the amount due from these shares in the family properties.

2. That an endorsee of a promissory note executed by the manager cannot sue the other members on the debt and recover the debt from their

shares in the family properties has been held by a Full Bench of this Court in *Maruthamuthu Naicker v. Kadir Batcha Rowther* (1942) 22 M.L.J.

468 : L.R. 39 IndAp 68 : ILR 39 Cal. 527. It has been laid down that the endorsement of the promissory note does not carry with it the right to

recover the debt from the other members of the family and that unless there is a properly worded document transferring the right to recover the

debt from the other members of the family to the extent of their shares, in the family property, the endorsee can have his remedy only against the

maker of the promissory note. The second plaintiff could not therefore proceed against the second defendant and recover the amount from his

share of the family-property. It is admitted--and it cannot but be so--that if the second plaintiff re-transferred the promissory note in favour of the

original creditor, the suit could be filed by the original creditor against both the maker and the other members of the family to recover the debt from

the shares of all the members in the family properties. The reason why when a promissory note or bill of exchange is taken for a debt and the same

is transferred to a third party, a right of suit upon the original cause of action is denied to the original creditor is stated to be that the debtor ought

not to be exposed to the risk of being obliged to pay to two persons and is thus explained by Fletcher Moulton, L.J., (as he then was) in *In re a*

Debtor,¹

Mr. Hogg says the true effect of this principle is only to create a suspension of the rights of the creditor during the currency of the bill, and that

when the bill became overdue this suspension came to an end. That contention in my opinion is unsustainable. A parallel case where a bill is taken

in payment of a debt, say for instance in payment for goods sold, exactly illustrates what is the effect of taking a bill. It is perfectly true that it is only a conditional payment. It is a payment if the bill is paid, and if it is in your hands when it becomes due and is dishonoured the debt revives. But if you have availed yourself of the character of the bill as a negotiable instrument and have passed it out of your possession so that the right to proceed on that bill is vested in some one else and not in you at the date of the dishonour, the suspension of the debt continues just as much as if the bill was not overdue. A moment's consideration will show that the Courts would not be administering justice if they do not hold this to be the case, because otherwise you could sue for the price of the goods, while another man, through possession by your act of the negotiable instrument which had been given for the price, could make the debtor pay over again. Therefore I am satisfied that it is a fundamental principle applying to all cases, where bills are taken either in satisfaction of a debt or in suspension of the exercise of any legal rights, that the satisfaction or suspension lasts only so long as the bill is not overdue, unless you have parted with it so that another person is dominus of the bill, and then it lasts until you have got it back into your possession. When you have got it back you can wipe it out, and the debtor can no longer say, ""There is an outstanding bill which suspends your right."" The answer is " you cannot rely on a bill which you have failed to pay, and which bill is in my possession."

The reason of the rule thus explained is that when a third party has been clothed with the right of recovering the amount on the promissory note, the Court ought not to allow the original creditor to file a suit on the original cause of action. All the decisions recognise that if the promissory note is got back by a re-endorsement from the third party to whom it was endorsed, there is no objection to the creditor filing a suit on the original cause of action and, if that is so, there could possibly be no objection to his filing a suit against the other members of the family seeking to make their shares of the family property liable for the debt.

3. It is argued that the position is changed--and changed beyond redemption--once the transferee files a suit and obtains a decree on the promissory note. It is said that it is no longer possible for the promissory note or bill to be re-endorsed in favour of the original creditor and that

therefore the exception recognised in the case just cited cannot apply. But when once the principle of the creditor who gets back the bill into his possession being entitled to sue upon the original cause of action as being entitled to sue upon the original cause of action is conceded, I do not see any distinction between a case where the promissory note itself is re-endorsed to the original creditor and a case where after decree, the decree itself is transferred to the original creditor. In a case where it remains as a promissory note without a suit upon it, it is only a means to the recovery of the amount from the debtor. The super-imposition of a decree does not, in my opinion, make any difference. Even when the decree is obtained it is not satisfaction of the debt. The amount has not yet been recovered. The impediment in the way of the original creditor suing upon the debt or upon the original cause of action is that so long as it is in the power of a third party to enforce payment to him of the very same amount, the debt upon the original cause of action should not be recognised. But if that impediment is removed by either the promissory note being re-transferred or the decree being assigned, the impediment does not exist any longer and the original creditor must, in my opinion, be entitled to sue upon the original cause of action or proceed against the other members of the family and make their shares in the joint family property liable. In the present case, the plaintiffs expressly stated in the plaint that they were agreeable to any safeguards being made against the double payment to the plaintiff in respect of the amount due. That being stated in paragraph 9 of the plaint, the rights of the parties could well have been worked out and the debtor amply safeguarded by the second plaintiff who obtained the decree in O.S. No. 1 of 1936 being asked to assign the decree in favour of the first plaintiff.

4. Mr. Venkatarama Sastriar, learned Counsel for the appellants, expresses the readiness of the second plaintiff to assign the decree in favour of the first plaintiff. I hold that the suit is maintainable and reverse the decrees of both the lower Courts, remand the suit for trial to the trial Court, the Subordinate Judge of Kumbakonam. The suit will be restored to file and will proceed to trial. The second plaintiff will within two weeks from this day transfer the decree which she has obtained in O.S. No. 1 of 1936, to the first plaintiff and put the assignment deed into Court. The court-fee

paid on the memorandum of second appeal will be refunded and the other costs will abide and be provided for in the revised decree.

5. No leave.