

(1955) 12 MAD CK 0007

In the Madras High Court

Case No : O. P. No. 192 of 1947 and Application No. 629 of 1954

Brahmayya and Co.

APPELLANT

Vs

K.P. Thangavelu Nadar and others

RESPONDENT

Date of Decision : 13-12-1955

Acts Referred:

Contract Act, 1872 — Section 171

Transfer of Property Act, 1882 — Section 130

Citation : (1955) 12 MAD CK 0007

Hon'ble Judges : Balakrishna Ayyar, J

Bench : Single Bench

Advocate : S. Swaminathan, for the Appellant; K. Desikachan, K. Raman and K.S. Narasimhan, for the Respondent

Judgement

Balakrishna Ayyar, J.—This is an application by the Official Liquidators of the Hanuman Bank Ltd., for a direction to the respondents to

pay a sum of Rs. 3759-10-9 with interest thereon at six per cent per annum from 30-7-1949.

2. The case of the applicants is this. On 20-8-1946 Rathnaswami Nadar, since deceased, applied to the Kumbakonam branch of the Hanuman

Bank;

Ltd., for overdraft facilities to the extent of Rs. 15,000. Vide Ex. P. 1. As collateral security Rathnaswami Nadar deposited with the Hanuman

Bank Ltd., Fixed Deposit receipt No. 2 dated 15-6-1946 for a sum of Rs. 3,000 standing in the name of his son Shanmuga Nadar with a firm of

bankers called K.K. D. and V. B. K. and Co. Along with the receipt Shanmugha Nadar gave a letter to the Hanuman Bank authorising them to

collect on maturity the money covered by the fixed deposit receipt and to credit

the proceeds to the overdraft account. Vide Ex. P. 2. At the same time a letter Ex. P. 3, addressed by Shanmugha Nadar to the K. K. D. and V. B. K. and Co. was handed over, to the Hanuman Bank by Which the company was asked to pay the proceeds of the fixed deposit receipt with interest thereon to the Hanuman Bank Ltd. On 4-9-1946 the Kumbakonam branch of the Hanuman Bank Ltd. wrote to the K. K. D. and V. B. K. and company intimating them about the act of this pledge.

3. The fixed deposit matured on 15-6-1947. The following day P. W. 1 who was then the agent of the Kumbakonam branch, sent P. W. 2, an employee of the Hanuman Bank Ltd. to the K. K. D. and V. B. K. and Company with the receipt for payment. The agent of the K. K. D. and V.

B. K. and Company told him that payment would be made after hearing from the parties, but he did not commit himself to anything in writing.

On 17-6-1947, P. W. 2, went again and asked for payment. He was then told that the money payable on the fixed deposit receipt had been

adjusted towards sums which Shanmugha Nadar owed to the company. Subsequently notices passed between the parties and the Official

Liquidators filed a suit for that amount in the court of the Subordinate Judge of Kumbakonam.

4. In the suit the sons of Rathnaswami Nadar were impleaded as defendants 3 to 6. The K. K. D. and V. B. K. and company represented by its

partners were imp leaded as seventh defendant. Subsequently, by reason of the Banking Companies Act the proceedings were brought over to this court.

5. Respondents 1 to 6 filed a counter, but they did not appear at the subsequent stages of the proceedings. The real contest was by the K. K. D.

and V.B.K. and company, and, their case is this. Ratnaswami Nadar and his sons had dealings with their firm and large sums were due from them

to the firm.

Shanmugha Nadar had no doubt placed a sum of Rs. 3,000 in fixed deposit with them, but, in the usual course of business, that amount was

adjusted and set off against the amounts due by Rathnaswami Nadar and his sons. Even after the adjustment large amounts were due from the

family of Rathnaswami Nadar. and, to recover them a suit was filed by the firm and a decree was obtained for over Rs. 26,000.

It is not true to say that the K. K. D. and V. B. K. and company was informed that the fixed deposit receipt had been given to the Hanuman Bank

Ltd., by way of security or assignment. Only on the evening of 17-6-1947 did the company know that the Hanuman Bank Ltd., had any claim on

the money that had been placed in fixed deposit, when payment was demanded by one Kalyanam Aiyar, a godown keeper of Hanuman Bank Ltd.

Upto that moment the company had no intimation of the claims of the Hanuman Bank Ltd., and when the demand was made the Hanuman Bank

Ltd., was informed that the fixed deposit amount had been adjusted.

6. The oral evidence in this case may be briefly referred to. P. W. 1 Swaminath Aiyar was the agent of the Kumbakonam branch of the Hanuman

Bank from 1938 to 1947 when the bank suspended payment. He proved Ex. P. 1, the application of Rathnaswami Nadar for overdraft facilities

and Exs. P. 1 and P. 3 the letters which Shanmugha Nadar, the person who had made the deposit, gave to the Hanuman Bank Ltd.

He also deposed that on 4-9-1946 the Bank wrote to the company informing them about the pledge. There is an entry in the despatch register Ex.

P. 7 to this effect. The receipt was acknowledged by the company in the local tappal book, but that book is not now traceable.

On 16-6-1947 he sent P. W. 2 to the company to collect the amount on the fixed deposit receipt. The fixed deposit receipt was returned without

any endorsement and with the oral message that payment would be made in the evening. The fixed deposit receipt was presented again on 17-6-

1947 and on that day it was returned with an endorsement that the amount had been adjusted. Thereupon he wrote Ex. P. 6, to the company, and

then, the usual notices followed.

7. P. W. 2 was an accountant in the Kumbakonam branch of the Hanuman Bank Ltd., between 1938 and 1947, and, in general he corroborated

the evidence of P. W. 1.

8. I considered it necessary to have the evidence of Shanmugha Nadar, the person in whose name the fixed deposit receipt stood, and, he was

examined as C. W. 1. He testified that on 20-8-1946 his father Rathnaswami Nadar applied for overdraft facilities in the Hanuman Bank Ltd. He

had a fixed deposit of Rs. 3000 in the K, K. D. and V. B. K. and Company. He handed over that receipt to the Hanuman Bank Ltd., by way of

security.

He also passed a letter Ex. P. 2. A further letter referred to at the end of Ex. P. 2 was delivered by himself in person at the office of the K. K. D.

and V. B. K. and Company in the course of the same day. He and his father executed a security bond in favour of the K. K. D. and V. B. K. and

Company. But the fixed deposit was not shown as security in that document. The security bond executed in favour of the company covered only

immovable property.

9. R. W. 1 is one of the partners of the K. K. D. and V. B. K. and Company. His evidence is to the effect that in the beginning of 1943

Rathnaswami Nadar and his family owed the company about Rs. 25,000, in respect of previous dealings. On 15-6-1946 the Company gave fixed

deposit receipt for Rs. 3,000 in favour C. W. 1. At no time was he informed either by C. W. "1" or by his father that the receipt has been given as

security to the Hanuman Bank

Ltd.

They came to know that the Hanuman Bank Ltd., had a claim over the deposit only on the evening of 17-6-1947 and then the Bank was informed

that the money payable on the fixed deposit receipt had been adjusted. The Bank sent a formal demand claiming payment of the money to which

the company replied repudiating the bank's claim.

10. Mr. Srinivasa Aiyar, the learned advocate for the company, contended that a fixed deposit receipt is not a negotiable instrument, that title to it

cannot pass by mere endorsement, that there should be a proper instrument transferring the title to the money covered by the fixed deposit receipt,

that no such instrument exists in the case, and that the result is that the Hanuman Bank has no claim whatsoever to the money evidenced by the

fixed deposit receipt.

11. I am unable to accept this argument. In order to pass title to a fixed deposit receipt and the money represented by it, it is not necessary that an

instrument should be executed in any particular form or that the instrument should contain any particular words or formula.

It is sufficient if the intention to transfer the receipt and the money covered by it appears from the language used by the parties, whether the relevant

writing is made on the back of the receipt or on a separate piece of paper. It is observed at page 774 of the third edition of the Transfer of

Property Act by Mullah,

No particular form of words is necessary in order to effect an assignment if the intention is clear from the language used.

See "Rama Iyen v. Venkatachellam Patter", 30 Mad 75(A). The head-note of that case reads as follows: ""A direction in writing to pay the amount

due on an instrument endorsed on such instrument, by the payee thereof, coupled with the delivery of the instrument so endorsed to the person to

whom payment is directed is an assignment of such document within the meaning of S. 130 of the Transfer of Property Act.

12. In the present case Shanmugha Nadar, the depositor, very explicitly stated in Ex. P. 2, ""You may take the amount from the K. K. D. Bank on

maturity with interest and credit the same to the O. D. account when matured. To that effect I have also given a letter to the said Bankers and you

may also get an undertaking letter from them if need be."" These words, I think, clearly make manifest the intention of the parties and are sufficient

to effect an assignment of the receipt and the money it represented.

13. The next Question is, was the K. K. D. and V. B. K. and Company given information of the fact that there had been an assignment in favour of

the Hanuman Bank Ltd. of the fixed deposit receipt? Mr. Srinivasa Aiyar very strongly argued that no intimation had been given. But, the evidence

and the probabilities of the matter are both overwhelmingly against him.

There is the evidence of Shanmugha Nadar that on the very day he executed Ex. P. 2 he handed over the letter referred to at the end of Ex. P. 2 at

the office of the K. K. D. and V. B. K. and Company. In Ex. P. 6, a letter written on 20-6-1947 by the Hanuman Bank Ltd. to the company, they

state,

The fixed deposit receipt was pledged to us on 20-8-1946 by the depositor K. P. R. Shanmugam, & the right to the money had on & from that

day passed to us. The same has not only been intimated to you by the party Mr. K. P. R. Shanmugam. but also by the bank by its letter dated 4-

9-1946 which you have duly acknowledged.

It is no doubt true that Ex. P. 6 was written after the company had refused to pay the money on the fixed deposit receipt, but, I do not think that as

early as 26-6-1947 the agent of Bank would have falsely thought of saying that Shanmugha Nadar had given intimation to the company of the fact

of the pledge if it were not true. The statement of Shanmugha Nadar that he did deliver a letter is strengthened by the last sentence in Ex. P. 2

which reads.

To that effect I have also given a letter to the said hanks and you may also get an undertaking letter from them if need be.

No doubt, this letter must have been delivered to the Hanuman Bank before Shanmugha Nadar went to the office of the K. K. D. and V. B. K.

and Company. But it is evidence of an intention then present in the mind of Shanmugha Nadar to deliver the letter to the company.

14. The oral evidence of P. W. 1 is that on 4-9-1946. the bank wrote to the company giving the information that the fixed deposit receipt had

been pledged with the bank. His evidence is supported by Ex. P. 7 an entry in the book of the bank which specifically makes reference to this

fixed deposit receipt.

Mr. Srinivasa Aiyar made the comment that the entry must have been a subsequent interpolation because the last line of the entry lies between two

lines in that book. I do not consider this circumstance to be of any importance because there is space enough to make the entry regularly on the

ruled lines.

15. In Ex. P. 5, which Shanmugha Nadar wrote to the advocate for the company it is specifically mentioned.

The said receipt has been pledged by me to the Hanuman Bank Ltd., Kumbakonam, so early as August-September 1946 for an overdraft account

and your clients have duly been informed of the same both by me and the Hanuman Bank Ltd.

It is not therefore possible to say that the evidence of C. W. 1 is an afterthought. Mr. Srinivasa Aiyar pointed out that in the following paragraph in

Ex. P. 5 Shanmugha Nadar has stated that he had made the pledge only after having obtained the permission of the K. K. D. and V. B. K. and

Company and that this allegation is untrue and that in consequence his entire evidence must be discarded.

In my view the circumstance that Shanmugha Nadar made this further statement in Ex. P. 5 is not sufficient to throw doubts on his other statement

that he did inform the K. K. D. and V. B. K. and Company of the fact that the fixed deposit receipt had been dealt with in favour of the Hanuman

Bank Ltd.

We have further the oral evidence of P. Ws. 1 and 2 relating to the circumstances under which demand was made for payment of the fixed deposit

and the request of the K. K. D. and V. B. K. and Company to present the document on the following day. One would have thought that if the K

K. D- and V. B. K. and Company had not been notified they would have seized on that fact and mentioned it at once when they were looking out

for an excuse to avoid payment to Hanuman Bank Ltd so that they might adjust the money towards the amount due to them.

16. Ex. P. 4 a notice issued by the advocate of the K. K. D. and V. B. K. and Company contains the statement, ""The sum of Rs. 3120 (inclusive

of interest) due to you as per fixed deposit receipt No. 2 for Rs. 3000 is transferred to the other account owing by you to the Bank to the extent

specified in my notice dated 9-3-1947 in partial liquidation of the same."" Now, if this means anything at all it means that the transfer and adjustment

had been made on or before 9-3-1947, that is, even before the deposit matured. This is an unusual thing to do. In Ex. R. 1 a letter written by the

K. K- D. and V. B. K. and Company, to the Hanuman Bank Ltd. on 21-6-1947 it was stated that the amount relating to the fixed deposit receipt

was adjusted and set off in the usual course on 16-6-1947 and the fact intimated to the party.

The contradiction between Ex. R. 1 and Ex. P. 4 in respect of this point is Evidence of the fact that the K. K. D. and V. B. K. and Company was

not very particular as to whether the statements they made were true or not. That being so, I am not prepared to attach any value to the evidence

of R. W. 1 that the firm was not given information that its receipt had been pledged to the Hanuman Bank Ltd. Ex. P. 4 is revealing in another

respect.

The K. K. D. and V. B. K. and. Company could not possibly deny that the Hanuman Bank Ltd. had claimed payment of the money due on the m

fixed deposit receipt on 16-6-1947 and again on 17-8-1947. At that time they could not think of any valid reason for refusing to pay the money.

So, on 17-8-1947 when they sent Ex. P. 4 through an advocate, the company

wanted to make it appear that the money had been adjusted at an anterior date.

Even then they did not feel they could deny the fact that they were notified of the dealing of the fixed deposit receipt in favour of the Hanuman

Bank Ltd. Taking all the circumstances of the case into account, I am clear in my mind that immediately or shortly after the assignment of the

receipt in favour of the Hanuman Bank Ltd. intimation of the fact was given to the K.K.D. and V. B. K. and Company.

17. Mr. Srinivasa Aiyar, the learned advocate for the company raised another point based on S. 171 of the Indian Contract Act. Under that

section, bankers, amongst other classes of persons ""may in the absence of a contract to the contrary, retain, as a security for a general balance of

account, any goods bailed to them""; a right which is compendiously described as a banker's lien.

Now, it seems to me that it would not be strictly correct to treat the present transaction as one of lien. You can exercise a lien only over the

property of some one else; you cannot exercise a lien over your own property. When goods are deposited with or securities are placed in the

custody of a bank it would be correct to speak of the rights of the bank over the security or the goods as a lien because the ownership of the

goods or securities would continue to remain in the customer.

But, when moneys are deposited in a bank the ownership of the moneys passes to the bank and the right of the bank over the moneys lodged with

it would not be really a lien at all. It would be more correct to speak of it as a right of set off or adjustment.

18. This, however, is really a subsidiary point, and, the question is - whether you call it a lien or a right of set off - can the K. K. D. and V. B. K.

and Company lawfully claim to adjust the money covered by the fixed deposit receipt towards the money due to them in the circumstances of this

case?

Mr. Srinivasa Aiyar argued that a banker's right to set off cannot be taken away unless he has expressly concurred in the assignment of the fund in

his hands in favour of some one else. He thought that the decision in the Official Assignee Madras v. Ramaswami Chetty, AIR 1920 Mad. 664 (V

7) (B) supports his view. But I can see nothing in the judgment to support this

thought of his.

19. This contention of Mr. Srinivasa Aiyar also appears to me to be opposed to rule and principle. Under S. 130. Transfer of Property Act title

passes to and vests in the assignee or transferee on the execution of the transfer deed, and, no further action on his part such as sending a notice to

the debtor as under the English, law, Is necessary to complete his title. Vide N. Subramania Aiyar Vs. V.S.R.S. Ramasubba Aiyar and Others, .

I find it difficult to see how this rule of law can be reconciled with the contention of Mr. Srinivasa Aiyar that a banker can exercise his set off right

to set off unless he has concurred in the assignment.

20. Mr. Srinivasa Aiyar next said that as a banker has a lien over all properties in his hands he can exercise his right of set off whenever he thinks

fit to do so. He did not, however, cite any authority for this proposition. I agree that a banker has a right to set off, but, it seems to me that he

cannot exercise that right after the money in his hands has been validly assigned, or, in any case, after he has been notified of the fact that there has

been an assignment.

20a. The contention of Mr. Srinivasa Aiyar that the banker can exercise his right to set off whenever he pleases is opposed to authority. See in this

connection the case reported in Woodhams v. Anglo Australian etc., Assurance Co., (1861) 65 ER 397 (D). The judgment is short and is on

pages 402 and 403. The court observed,

A deposit note for money, like a deposit note for goods passes by delivery of the instrument, and requires no assignment. The plaintiff has proved

that he has received this note by a delivery which is unquestionably valid. It is a note which acknowledges that this company have had deposited

with them moneys to a certain amount. Notice of the right of the plaintiff, who was in possession of the note, was given on 10-5-1857. The fact of

the deposit of the money was then acknowledged, and there were subsequent transactions between the company and the original depositor. From

the time when the company had notice that the right was transferred to the plaintiff he had nothing to do with the subsequent transaction between

the company and the person who delivered the note to him.

21. Another case in point is P.W. Greenhalgh and Sons v. Union Bank of Manchester, 1924 2 KB 153 (E).

A Banker who has agreed with a customer to open two accounts in his name, and who holds bills which the customer has specifically appropriated

to one account, is not entitled without the customer's consent, to transfer the proceeds of such bill to the other account.

I recognize that the facts in that case and the facts before me are different. Nevertheless, this decision would show that the contention of Mr.

Srinivasa Aiyar that a banker can adjust or set off whenever he pleases any money in his hands is not correct.

22. Mr. Srinivasa Aiyar next observed that in the present case if the depositor had on 16-6-1947 asked the K.K.D. and V.B.K. and Company

for payment the company could have refused to pay him and told him that they had adjusted the money towards their claim. How then, asked Mr.

Srinivasa Aiyar, can the Hanuman Bank Ltd. which only derives title from Shanmugha Nadar, have a superior right? To this two answers are

possible. One is as explained in N. Subramania Aiyar Vs. V.S.R.S. Ramasubba Aiyar and Others, that the title of the Hanuman Bank became

complete the moment the fixed deposit receipt was assigned to it and its position on 16-6-1947 was not the same as the position of Shanmugha

Nadar on that date.

Moreover to the general rule that a person cannot give a better title than he himself has, there is the qualification in favour of a bona fide purchaser

for value without notice. In the present case, the Hanuman Bank took the receipt in the normal course of banking business, and, is in a position

analogous to that of a bona fide purchaser for value without notice. Mr. Srinivasa Aiyar said that it is not so and that there was an obligation on the

Hanuman Bank to enquire before it took the fixed deposit receipt in assignment whether the K.K.D. and V.B.K. and company had any claims on

that money.

I do not think that the Hanuman Bank Ltd. was under any such obligation. If the K.K.D. and V.B.K. and Company had intended to exercise any

claim in respect of that receipt it should have called back that receipt in order that it might not be assigned to the prejudice of innocent third

persons.

23. The defense set up by the K.K.D. and V.B.K. and Company must, it seems to me, fail for another reason also. I have found that at the time

the assignment was made, or shortly thereafter the K.K.D. and V.B.K. and Company was notified of this fact of assignment. They did nothing at

all then. They did not write to the Hanuman Bank telling it that they had claims against the money evidenced by the fixed deposit receipt. If they

had done that the Hanuman Bank Ltd. might have refused to make further advances or arranged to call in the advances that it had made.

Having by their silence and inactivity induced the Hanuman Bank to part with its money or to allow that money to remain outstanding, it seems to

me the K.K.D. and V.B.K. and Company are stopped from putting forward their present contentions. On page 783 of Mullah's Transfer at

Property Act, 3rd Edn. the learned author says,

The debtor may be estopped from asserting or enforcing an equity. If on receiving notice of the assignment, he sees that the assignee has been

deceived and yet stands and allows him to be defrauded, he will not be allowed to set up an equity which he has against the assignor.

The authority for this proposition is the decision in *Mangles v. Dixon*, (1852) 3 HLC 702 (F).

24. In the result, there will be a decree in favour of the liquidators for the amount claimed with interest and costs so far as the K.K.D. and V.B.K.

and Co. is concerned. The decree will be only for the amount due on the fixed deposit receipt, i.e., Rs. 3125 with interest thereon at six per cent

from 17-6-1947 and proportionate costs.

The K.K.D. and V.B.K. and Co., it is said has deducted the amount due on the fixed deposit receipt when it filed a suit against respondents 1 to 6

in the Sub-Court, Kumbakonam. The K.K.D. and V.B.K and Company will be entitled to proceed against respondents 1 to 6 for the amount so

deducted in the suit in the Kumbakonam Court.