
(1985) 02 AP CK 0005
In the Andhra Pradesh High Court
Case No : Appeal No. 678 of 1977

B.V. Narasimhulu Chetty

APPELLANT

Vs

Ratakonda Krishna Murthy and Others

RESPONDENT

Date of Decision : 13-02-1985

Acts Referred:

Partnership Act, 1932 — Section 19(2)

Citation : AIR 1986 AP 177

Hon'ble Judges : Jayachandra Reddy, J

Bench : Single Bench

Advocate : K.V. Reddy, for the Appellant; M.B. Ramasarma, for the Respondent

Judgement

1. The plaintiff is the appellant. He filed a suit for recovery of Rs. 21,852.35 ps., being the principal and interest due on a promissory note executed by defendants 1 and 2. The trial Court dismissed the suit, holding that the transfer of the suit promissory note in favour of the plaintiff is not valid and legal and not enforceable against the defendants 1 and 2.

2. The averments in the plaint are as follows : The plaintiff is a partner of the registered firm, Prakash Financiers. Defendants 1 and 2 borrowed from Prakash Financiers a sum of Rs. 15,000/- in cash agreeing to pay the same with interest at 18% per annum and executed the suit promissory note. The suit promissory note was transferred in the name of the plaintiff by the managing partner of Prakash Financeirs on 17-3-1973. Subsequent to this transfer, the plaintiff demanded defendants 1 and 2 to pay the amount, but they evaded. Therefore, the suit is filed against defendants 1 and 2 to pay the amount, but they evaded. Therefore, the suit is filed against defendants 1 and 2 and also against the 3rd defendant, a receiver who is managing the properties of the family of defendants 1 and 2.

3. Defendants 1 and 2 filed a written statement. They admitted the execution of the suit promissory note, but added that it was by way of renewal of an earlier

transaction. One of the plead taken in the written statement is that they are not award of the transfer of the suit promissory note in favour of the plaintiff and that the alleged transfer is not valid and legal and is not supported by consideration and that the plaintiff is not a bona fide holder-in-due course.

4. On the basis of the above pleadings, the necessary issue were framed. Issue No. 5 is, whether the plaintiff is a bona fide holder in due course. An additional issue were framed on 19-6-1977 and it is to be effect, whether the transfer of the suit promissory note in favour of the plaintiff is valid, legal and enforceable against defendants 1 and 2. On behalf of the plaintiff, P. Ws. 1 to 3 are examined and the plaintiff himself got examined as P. W. 1 Ex. A-1 is the suit promissory note and the endorsement of transfer on Ex. A-1 is marked as Ex. A-2. On behalf of defendants D. W. 1 is examined and Ex. B-1 notice issued on behalf of the defendants to the plaintiff's advocate is marked.

5. It was contended before the lower Court that the transfer of Ex. A-1 in favour of the plaintiff is not legal and valid and not binding on defendants 1 and 2 in view of S. 19(2)(c) of the Partnership Act. Reliance was also placed before the lower Court on a decision of this Court in B. Venkatapayya v. A. Venkata Ramanjaneyulu, (1967) 1 Andh LT 381. The trial Court relying upon S. 19(2)(c) and the decision of this Court held that the managing partner (P. W. 2) had no implied authority to transfer Ex. A-1 in favour of the plaintiff thereby relinquishing a portion of the claim by the firm and in that view it was held that the transfer is not valid and therefore the plaintiff is not entitled to any relief.

6. In this appeal, the learned counsel for the appellant submits that Ex. A-1 was transferred in favour of the plaintiff by the partners of the firm at the time of dissolution for a consideration of Rs. 15,000/- and therefore is bona fide holder-in-due-course and that the transfer is legal inasmuch as the consideration has been received by the firm and that subsequent to the transfer the suit promissory note has been treated as his personal property and therefore he is entitled to claim the same under the promissory note from the defendants, who are liable to pay. It is also his submission that the transfer was a matter between one partner and the other partner of the firm and that the defendants who are third parties have no right whatsoever to question such a transfer. The learned counsel for the respondents on the other hand, submitted that under S. 19(2)(c) of the partnership Act, the implied Authority of a partner does not empower him to compromise or relinquish any claim or a portion of a claim by the firm and that in the instant case the total amount due under Ex. A-1 is Rs. 21,852.35 but the transfer was effected only on receiving a consideration of Rs. 15,000/- and thus, the transfer resulted in relinquishing a portion of the claim by the firm and therefore such a transfer is invalid as decided by this Court in Venkappa's case (1967-1 Andh LT 381) (supra). The learned counsel for the respondents also submits that, though the defendants are third parties so far as the transfer is concerned, yet they can question the same as held by the Division Bench.

7. To appreciate the rival contentions, it is necessary to refer to the relevant

provisions of the Partnership Act, Part I of S. 19, to the extent it is relevant for the present purpose, reads thus :

"19. (1) Subject to the provisions of S. 22, the act of a partner which is done to carry on in the usual way, business of the kind carried on by the firm, binds the firm.

The authority of partner to bind the firm conferred by this section is called his "implied authority".

(2) In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to -

(a) to (b) xx xx xx xx xx xx xx xx xx

(c) Compromise or relinquish any claim or portion of a claim by the firm."

8. Section 47, which deals with continuing authority of partners for purposes of winding up, is the following terms :

"47. After the dissolution of a firm, the authority of each partner to bind the firm, and the other mutual rights and obligations of the partners, continue notwithstanding the dissolution , so far as may be necessary to wind up the affairs of the firm and to complete transactions begun but unfinished at the time of the dissolutions, but not otherwise.

Provided that the firm is in no case bound by the acts of a partner who has been adjudicated insolvent; but this proviso does not affect the liability of any person who has after the adjudication represented himself or knowingly permitted himself to be represented as a partner of the insolvent."

9. Now, I shall examine the decisions cited in support of the rival contentions. The earliest decision on this point is that of a Division Bench in *Mudenur Nagappa v. Bhagawanji Rasaji*, AIR 1936 Mad 593. That was a case where two of the partners of a firm put forward rival claims to the decree that was obtained by the firm as transferee-decree holders. The assignment in favour of one of them was for Rs. 1300/- and in favour of another, namely Nagappa, was for Rs. 1701/-. By the time the transaction took place the Partnership Act, was not enacted. The learned Judge therefore referred to S. 251 of the Contract Act, which was later incorporated in S. 19(2)(c) of the Partnership Act. It was held that as a general proposition, an authority to give discharge for a debt on payment does not include a power to compromise or settle it in any way a partner likes. This view of the Madras High Court is adopted by the Bombay High Court in *Krishanji Bharmalji & Co. V. Abdul Razak Ahmedbhoy*, AIR 1942 Bom 22, Kania, J., after referring to the scope of S. 19(2)(c) of the Partnership Act observed :

"But as a matter of policy, the Legislature has enacted that a partner has no implied authority to compromise or relinquish any claim or a portion of the claim by the firm. The effect of the assignment of 7th May, 1941, is that the claim of the plaintiffs against the defendants for Rupees 4519-9-0 is assigned to the

applicant for Rs. 2,000/-. It is true that the defendants continue to be liable for the full amount of the decree to the assignee under the assignment. The fact, however, remains that a portion of the claim of the plaintiff firm against the defendants viz., the difference between Rs. 4519-9-0 with interest and costs and Rs. 2000/- is relinquished by the plaintiff firm. To that extent the plaintiff firm has suffered a loss and it appears to me clear that having regard to the words used in S. 19(2)(C) a partner has no implied authority to do so. 59 Madras 1036 deals with this question amongst others. It is therefore pointed out that an assignment of this nature which involves the inclusion of a third party, does not alter the nature of the transaction, and it still continues to be a compromise or relinquishment of a portion of the claim by the assignor firm against the debtor."

10. In both these decisions, it is clearly held, as laid down in S. 19(2)(c) of the Partnership Act, that the implied authority of a partner does not extend to the extent of compromising or relinquishing any claim or portion of a claim by the firm. The question whether a third party can also assail such transfer has not been specifically considered. Then we come to a decision of a Division Bench of this Court in *Bellapu Venkatappayya v. Adusumilli Venkata Ramananeyulu* 1967 1 A P LT 381 (supra). The facts of the case are :

The defendant and three other persons were partners and one of them was the managing partner. Out of these three partners, one of them retired and in his place one person was taken as partner and the partnership continued. Later on, the defendant also retired and the remaining three constituted a new firm. Although the defendant ceased to be a partner and did not share the profits and losses in the partnership firm, the Banks were insisting on his signature. Consequently, the partners executed an indemnity letter under which any liability which the defendant may have to incur on behalf of the firm will be indemnified by the firm and the individual partners. The defendant was found owing to the partnership firm a sum of Rs. 6800/- of which Rs. 4800/- was paid by the defendant and for the balance of Rs. 2,000/- the defendant executed a promissory note to the Managing Committee. Several suits were filed against the partnership firm, in which the defendant was made a partner though he had already ceased to be a partner and subsequently the Board was dissolved and the suit for rendition for accounts was pending. During the pendency of the suit, the managing partner purported to transfer the promissory note. The suit was contested and was decreed by the Court of first instance holding that the plaintiff was a holder in due course. The appellate Court, however, held that the managing partner had transferred the promissory note without any consideration and that the endorsement being without consideration is invalid. In that view, it dismissed the suit. In the second appeal, the learned single Judge referred it to a Bench. The Division Bench, after examining the scope of S. 19(2)(c) read with S. 47 of the Act, held that a partner has authority only to wind up the affairs of the firm and that it was no part of the winding up of the firm to compromise or relinquish a claim without receiving consideration thereunder and he has no right to transfer an asset without consideration or gift it away or otherwise deal with it

to the detriment of the partners and that even in a case where there is no winding up of the affairs of the firm, a partner has no implied authority to transfer an asset or compromise or relinquish a claim or a part of the claim without the authority of the other partners. The Division Bench also observed that when once a partner has no implied authority to transfer a claim or relinquish or compromise it, he cannot say that it can later be ratified. On the question whether a third party who is a stranger can challenge the transfer, the learned Judges held :

"If the transfer is without consideration and made by a person who has no authority to endorse, the defendant will be liable and cannot plead discharge in the event of one of the partners filing a suit against him. It would not be a valid defence for the defendant in a suit of that nature to contend that he had paid the money to the transferee by one of the partners who has no authority to transfer."

The Division Bench has, therefore, categorically held that a third party can challenge the transfer of an asset which has resulted in compromise or relinquishment of a claim or part of the claim.

11. The learned counsel for the respondents strongly relying on the judgment of the Division Bench which has also been followed by the lower Court, submits that in the instant case the transfer of Ex. A-1 for a lesser amount in favour of the plaintiff by the Managing partner is opposed to S. 19(2)(c) of the Act and the question of post ratification does not arise and that at any rate, there is no ratification by all the parties in this case. In support of his submission, he relies on certain observations made by the Division Bench in *B. Venkatappaya v. A. V. Ramanjaneyulu* 1969-1 A P LT 381 (supra) wherein it was also held that the provisions of S. 19(2) of the said Act seems to have given a definiteness to this aspect while prior to it, there was some doubt in this regard. It is stated that the English Law, as interpreted by some Courts did infer an implied authority in a partner to give release. In England in some old cases, it has been held that a partner has an implied authority . on the other hand, S. 47, which is applicable only in case of dissolution of a firm, was enacted to continue the authority of a partner but for the limited purpose of "Winding up the affairs of the firm and to complete transactions begun but unfinished at the time of the dissolution but not otherwise". The words of the section qualified and authority of each party to bind the firm after the dissolution of the firm. The qualification is an important condition prerequisite to the continuing authority of a partner to bind a firm which governs the other mutual rights and obligations of the partners. It may not be out of place to say that after dissolution, a partnership subsists only for the purpose of winding up the affairs of the firm and that no new business can be done. On reading of S. 19(2) with S. 47 of the Act bereft of any authority, it is clear to our mind that a partner has authority only to wind up the affairs of the firm, and that it is not part of the winding up of the firm to compromise to relinquish a claim without receiving consideration thereunder. No partners has a right to transfer as asset without consideration or gift it a way of otherwise deal

with it to the detriment of the partners. We are not here concerned with those class of cases where for the purpose of completing unfinished business liabilities have been incurred but a transfer of a claim of this kind does not come within the category of unfinished business which form part of the winding of a partnership business. Even in a case where there is no winding up of the affairs of a firm, a partners has no implied authority to transfer an asset or compromise or relinquish a claim or a part of the claim without the authority of the other partners.

12. According to the learned counsel, only in case of winding up of the affairs of the firm, after dissolution with the authority of other partners, one of the partners can exercise his authority for completing transaction begun, but unfinished at the time of dissolution and that in the instant case the transfer of Ex. A-1 was at the time of dissolution and it is not part of completing the unfinished business and therefore the question of ratification by all the partners subsequently does not arise.

13. It may not be necessary for me to examine whether there was such ratification subsequently. However, the language of S. 19(2)(c) is clear in this regard and as also laid down by the Division Bench a partner has no implied authority to transfer an asset or relinquish a claim or part of the claim by the firm. At this juncture, it has to be noted that in the case before the Division Bench no consideration passed and there was nothing to suggest that the transfer was effected with the authority of the other partners, nor was it a case where the transfer of the asset in favour of the partner was such that it was allotted and understood to be a personal property of the partner to whom it was allotted during dissolution.

14. The learned counsel for the appellant submits that during dissolution if an asset is allotted to another partner with the authority of all the other partners such a transfer is valid and is not affected by S. 19(2)(c) of the Act. In support of his submission reliance is placed on a judgment of the Delhi High Court in *S.N. Soni Vs. Taufiq Farooki etc.*, . That is a case where three defendants executed a promissory note in favour of the Finance Company for a sum of Rs. 1000/- carrying interest at the rate of 12% per annum. A pronote was transferred by endorsement in favour of the plaintiff by Krishna Avtar, one of the partners of the company. The consideration for the assignment as evidenced by the endorsement was less and not the value of the promissory note. After obtaining the assignment, the plaintiff instituted a suit for recovery of the total amount. The suit was contested on various grounds, one of the grounds being that the assignment was unauthorised and invalid. Reliance was placed on S. 19(2)(c) of the Act. The learned Judge considered the decisions of the Madras High Court in *Mudenur Nagappa Vs. Firm of Bhagavanji Rasaji*, and the Bombay High Court in *Krishnaji Bharmalji & Co. V. Abdul Razak Ahmedbhoy* AIR 1942 Bom 22 (supra), and the Andhra Pradesh case in *Venkatappa's case* 1967 1 A P LT 381 (supra). The learned Judge in all respects agreed with the principles laid down in these

decisions. But, however, held that in the case of hand there is no such infirmity as was pointed out by the Andhra Pradesh High Court. The learned Judge observed in case that the firm has not only been dissolved, but the debt in dispute (along with some others) had been expressly allotted to Krishnan Avtar and he had been given the consent and authority of all the other partners to deal with the promissory note as his personal property and the surviving partners of the firm had disowned any interest or claim under the same. All the partners acted unanimously and they had ratified the casts of Krishna Avtar relating to the promissory note in dispute which had been done by him after the notice of retirement. The partners have, therefore, waived their objection, if any, to the assignment of the promissory note in dispute of Krishan Avtar for an amount lesser than its face value. This clearly amounted to giving authority to Krishna Avtar to deal with the promissory note including the assignment or relinquishment or compromise of the claim under it, as if it were his personal property".

15. Relying on these observations, the learned counsel for the appellant submits that, in the instant case also, there is material to show that all the partners agreed to transfer Ex. A-1 in favour of the plaintiff and, therefore, as observed by the Division Bench of this Court, as well as by the Delhi High Court such a transfer which is done with the authority of the other partners cannot be held to be invalid. A careful examination of the observations made by the Division Bench of our High Court in *B. Venkatappayya v. A. V. Ramanjaneyulu* 1967 1 A P LT 381 (supra) some of which are already extracted would go to show that a partner with the authority of the other partners can transfer an asset or compromise or relinquish a claim. Such an authority cannot be said to be an implied authority. As observed by the Delhi High Court, if an asset allotted to one of the partners during dissolution with the consent of all the other partners such an asset could be treated as the personal property of the transferee partner particularly when the other partners have disowned any interest or claim under the same. In such a case, the other partners who have disowned their claim for such an asset like a promote cannot file a suit against the promisor on the ground that the transfer in favour of one of the partners is invalid and therefore, the promisee is still liable to the firm. Where the Court is satisfied that there is such authority given by all the partners and that they have also disowned any interest or claim in such an asset then in my view the third party cannot still be heard to say such a transfer in favour of one of the partners is still invalid by virtue of S. 19(2)(c) of the Act.

16. In *B. Ventatappayya's* case (1967-1 Andh LT 381) (supra) it was specifically contended that a third party cannot challenge the endorsement by transferring the asset. But, the Division Bench repelled this contention holding that if the transfer is without consideration and made by a person who has no authority to endorse, the defendant would be liable and cannot plead discharge in the event of one of the partners filing a suit against him. In that view, the learned Judges have held that defendant though a stranger to the transfer, can question such a

transfer as he would otherwise be liable to answer claims of other partners. But in a case where the other partners have expressly authorised the transfer and have disowned the interest the position would be different and in such a case it cannot be said the debtor, namely, the promisee, who is a stranger to the transfer, can question the transfer. This aspect has not been considered by the Division bench and, therefore, it cannot be said that in all cases of transfer of an asset in favour of one partner the promisee or the debtor has a right or interest to question the transfer. He can only question such transfers which are opposed to S. 19(2)(c) of the Act and which are done without the authority of all the other parties as mentioned above. In the instant case, it cannot also be said that the transfer is opposed to public policy because an amount of Rs. 15000/- had been paid which was intended to be paid to the fixed deposit holders unlike the facts before the Division Bench where there was no consideration at all.

17. Now we shall have to examine whether the transfer of Ex. A-1 under Ex. A-2 in favour of the plaintiff was with the authority of the other partners. This is purely a question of fact and the evidence on record has to be examined. The execution of Ex. A-1 is not in dispute. Ex. A-2 is the endorsement made by the Managing partners P. W. 2, transferring Ex. A-1 in favour of the plaintiff. It is mentioned in Ex. A-2 that on 17th Mar. 1975, the managing partner of Prakash Finances. Ramayya Naidu made the transfer endorsement, in respect of Ex. A-1. It is also mentioned therein a cash of Rs. 15000/- has been received from the plaintiff and Ex. A-1 was transferred in favour of the plaintiff and that the plaintiff is entitled to realise the principal and interest fully that are due under Ex. A-1 as of right. Therefore, the endorsement makes it clear that the plaintiff was authorised, as per the transfer endorsement, to treat Ex. A-1 as his own personal property and realise the principal as well as the interest due thereunder. This transfer according to the plaintiff was during dissolution. If we examine the evidence on record, there cannot be any doubt about the same. P. W. 1 is no other than the plaintiff and, in his cross-examination, he asserted that the Corporation was dissolved, during the month of March, 1975. He further deposed that he paid consideration and the transfer was made in his favour P. W. 1 asserted that dissolution deeds were prepared and information as submitted to higher authorities and that the transfer in his favour was after dissolution. He also deposed that, at the time of transfer, other partners were present. These debts show that the transfer was made under the authority of all the other partners also. P. W. 2 is the managing partner, who made the transfer endorsement, Ex. A-2. He deposed that he received cash of Rs. 15000/- as managing partner of the firm and made Ex. A-2. In the Cross-examination, he affirmed that the contents of Ex. A-2 are true and that debt under Ex. A-1 was due to all the partners. He added that he utilised the sum of Rs. 15,000/- for the discharge of liability of the firm or payment to the fixed deposit holders. He has also deposed that, at the time of dissolution, the debt under Ex. A-1 was given to P. W. 1. The evidence of this witness coupled with the evidence of P. W. 1 and the recitals in Ex. A-2 go to show that the transfer of Ex. A-1 was effected, in favour

of the plaintiff, by the Managing partners P. W. 2 in the presence of all the other partners and therefore, it must be held that it was done with the authority of all the other partners. P. W. 3 is another partner of the firm. He also deposed that P. W. 1 the plaintiff paid an amount of Rs. 15,000/- in his presence as noted in Ex. A-2. But in the cross-examination it was elicited that before the dissolution of the firm, Ex. A-1 was transferred to P. W. 1 and he also stated that Ex. A-1 was not allotted to the share of P. W. 1. Relying on these two admissions, the learned counsel for the respondents submits that Ex. A-1 was not allotted to the share of P. W. 1. Therefore, it cannot be treated as persona property of the plaintiff, as observed by the Delhi High Court. It must be remembered in case before the Delhi High Court ultimately the question was whether the debt in dispute had been expressly allotted to Krishan Avtar and done with the consent and authority of all the other partners and whether the surviving partners disowned their interest. On the facts, it was held that all the partners acted unanimously. What we have to see here is whether the transfer of Ex. A-1 in favour of one of the partners was done, with the authority of all the other partners. As discussed above all the partners were present, when the transfer was made and, for this aspect, we have to rely only on the evidence of the P. Ws. 1 to 3, who are partners. Three of the partners have been examined in P. Ws. 1 to 3, and their evidence goes to show that all the partners were present.

18. The learned counsel for the respondents submits that all the partners have not come forward to give evidence and, therefore, at the most it can only be implied authority which was not permissible. I am unable to agree. When the Court is satisfied that all the partners were present when the transfer was effected, then the only inference that can be drawn is that the transfer was made with the authority of all the partners and such a transfer is valid as observed as the Division Bench of this Court in Venkatappayya's case (1967-1 Andh LT 381) (supra) as well as by the Delhi High Court in S.N. Soni Vs. Taufiq Farooki etc., . The lower Court, relying very much on the decisions of Division Bench of this Court in Venkatappay's case (supra) held that Ex. A-2 is not in accordance with the provisions of S. 19(2)(c) of the Act, on the grounds that the managing partner has no implied authority to relinquish a portion of the claim. But, the lower Court has not considered whether the transfer was effected with the authority of all the other partners. After a careful consideration of the entire evidence on record, I am satisfied that the transfer of Ex. A-1 as per Ex. A-2 was made during dissolution in favour of the plaintiff with the authority of all the other partners which authority was there at the inception itself. Therefore, there is no need to consider whether there was subsequent ratification and it cannot be said that subsequent ratification is needed when the ratification was there in the inception itself. Therefore, the question of subsequent ratification does not arise. The Delhi High Court no doubt held that such subsequent ratification also validates such a transfer. The view taken by our Division Bench is different. However, I need not go into this question as I have already held that the necessary authority was there at the inception itself.

19. In the result, for all the aforesaid reasons the appeal is allowed. The decree of the lower Court is set aside and the suit is decreed with costs throughout.

20. Appeal allowed.