
(1925) 01 BOM CK 0032
In the Bombay High Court

Champaklal Gopaldas and Others

APPELLANT

Vs

Keshrichand Maganlal and Others

RESPONDENT

Date of Decision : 05-01-1925

Acts Referred:

Paper Currency Act, 1910 — Section 26

Citation : AIR 1926 Bom 471

Hon'ble Judges : Mirza, J

Bench : Division Bench

Judgement

Mirza, J.—In this suit the plaintiffs claim the sum of Rs. 5,000 with interest at six per cent, from September 21, 1920. The claim is made on a hundi dated September 15, 1920. The suit was originally filed as a summary suit along with another suit for a like amount by the plaintiffs against another defendant along with Defendant No. 2. Defendant No. 1 obtained leave to defend the suit and was ordered to deposit the amount of the hundi in Court as a condition for the leave being granted.

2. By their written statement the defendant firm have put forward a misleading plea. In paragraph 5 they say:

These defendants were always ready and willing to pay the amount of the hundi to the lawful, holder in due course.

3. And in paragraph 6:

These defendants have always been and are still ready and willing to pay the amount of the said hundi to whosoever is the holder thereof in due course and they have deposited the amount of the hundi with the Prothonotary of this Honourable Court.

4. That would lead one to expect that the first defendant firm were adopting no contentious attitude but had brought the amount into Court under the provisions of Order 24, Rule 1, of the Civil P.C. which would entitle the plaintiffs to receive

the amount from the Court and thereafter the question to determine would be one of costs. In paragraph 8 of their written statement the first defendant firm further allege that one Askaran Ramlal and Gulabchand Keshrimal are necessary parties to this suit. They have taken no steps to add them as parties to the suit. Admittedly, so far as Defendant No. 1 are concerned, they have received consideration for the amount of the hundi in suit. The claim of the two individuals mentioned in paragraph 8 of the written statement which was put forward by Defendant No. 1 as an excuse for not honouring the hundi by payment is now long since time-barred. Defendant No. 1 have nowhere alleged or proved that they have paid off either of these two persona in respect of their alleged claim. Defendant No. 1 are only standing on their strict legal rights on the hundi.

5. In the first paragraph of the written statement Defendant No. 1 contend that the hundi in suit was payable to Gulabchand Keshrichand or their assigns. They deny that the said hundi was payable to Shah. Defendant No. 2 are insolvents. The plaintiffs now claim no relief against them. Hence their name has been struck out. The suit has been contested at great length between the plaintiffs on the one hand and Defendant No. 1 on the other. The hundi in suit has been put in as Exhibit A. The body of the hundi is as follows:

Calcutta by Keshrichand Naganmal (Defendant No. 1)...immediately on receipt be pleased to pay a Shah (the amount of) this one hundi in the Company's coins (viz.,) Rs. 5,000...the same having been here deposited by and received from Shah Gulabchandji Keshrichand...(September 15, 1920)

6. The indorsements which the hundi bears are as follows:

The token is that you should debit (the amount of this huudi) to your personal account.

The signature of Mangalchand.

7. The signature is made across a one anna postage stamp affixed to the hundi. This endorsement is made by somebody on behalf of the drawers of the hundi.

8. The second indorsement is written by Pary Fatechand Daulatchand (Defendant No. 2).

To wit. This hundi is sold to Pari Joitadas Sakalchand (the plaintiffs" Ahmedabad firm.)

9. The third indorsement is "written by Pari Joitadas Sakalchand:

To wit. Please pay the amount of the hundi to the firm of Pari Gopaldas Manilal (the plaintiffs.)

10. It is proved in this case that the original-plaintiff Gopaldas Manilal was the sole proprietor both of the Bombay firm, which he was carrying on personally in his own home and the Ahmedabad firm which was originally his joint family firm. Hence the suit was brought by him in his personal name and not in the name of

the firm of which he was the sole proprietor. No objection has been raised on that score and I mention this fact only in passing. On the back of the hundi appear the following indorsements. "Please make up and pay Rs. 5,000 (Presented on) 21-9-1920 Joharmal Samirmal".

11. The history of this hundi is that the first defendant firm, who are the drawers on receipt of consideration, delivered it to Gulabchandji Keshrichand. Gulabchandji Keshrichand's firm are piece-goods merchants carrying on business in Calcutta. They have for their Adatias in Ahmedabad the firm of Askaran Ramlal who, too, are piecegoods merchants and supply piecegoods to Gulabchandji Keshrichand at Calcutta as their Adatias. The hundi was "forwarded by Gulabchandji Keshrichand to Askaran Ramlal at Ahmedabad. There is no clear evidence as to how the hundi came to be delivered to Askaran Ramlal by hand or was forwarded by post. A servant of Askaran Ramlal named Chandulal Mayachand has given evidence here; but Chandulal Mayachand was not in the employment of Askaran Ramlal at the date when they must have received the hundi. The evidence he has given here of the hundi reaching the hands of his masters through a representative of Gulabchand is merely hearsay. Chandulal Mayachand is a partisan witness brought by Defendant No. 1.

12. He has come here without the one book of his masters which would have thrown some light on the transaction, viz., the ledger. He said that his masters did not keep any journal. He has admitted, in the course of his evidence, that at this date there was an account subsisting between his masters and Gulabchand Keshrichand and that Gulabchand Keshrichand purchased their goods at Ahmedabad only from and through Askaran Ramlal. So there would be a valid consideration for Gulabchand Keshrichand to transfer the hundi to Askaran Ramlal in the subsisting account. There is no indorsement on the hundi from Gulabchand in favour of Askaran Ramlal.

13. The evidence further proceeds that Askaran Ramlal delivered the hundi to Defendant No. 2 about the time they received it. At that date there was an account subsisting between Askaran Ramlal and Defendant No. 2 and in that account Askaran Ramlal owed Defendant No. 2 a sum of Rs. 4,000 and odd. A representative of Defendant No. 2 being Bhogilal Fatechand has given evidence on this point. Entries from, his firm's books, which are exhibited show that a sum of money was due at this date from Askaran Ramlal to Defendant No. 2. He says that Askaran Ramlal gave this firm the two hundis Exhibit A and Exhibit B, and instructed them to credit the sale proceeds to the account of Askaran Ramlal. This happened on September 18, 1923. The credit and debit items from the journal, ledger and cash-book corroborate this evidence. They are Exhibits F, G and H. Bhogilal Fatechand in his turn sold the hundis to the original plaintiff's Ahmedabad firm and received the sum of Rs. 10,000 in payment of the two hundis.

14. The question which I have to consider is : What is the nature of the hundi before me, whether it is an ordinary hundi payable to Gulabchand Keshrichand

and ordinarily requiring his endorsement before property in it could pass to anyone else, or whether it belongs to a peculiar class of hundies which require no indorsement for the passing of property in them, but which at any rate before acceptance, pass from hand to hand by mere delivery? The hundi clearly belongs to a class well known in this country as Shahjog or "Shahjogi." The Negotiable Instruments Act excludes from its operation certain classes of hundis in the vernacular language which form the Hindu Law Merchant. Section 1 provides:

Nothing herein contained...affects any local usage relating to any instrument in an Oriental language.

15. The instrument before me is in an Oriental language and clearly comprises those peculiarities which have been adjudicated upon in previous suits under the designation of Shahjog hundis. The leading case on the point, which defines the nature of these hundis, is the case of Davlatram Shriram v. Bulakidas Khemchand [1869] 6 B.H.C. 24 Sir Joseph Arnould in that case had to take evidence of custom relating to such hundis. At p. 27 he considers the meaning of the clause payable to Shah, which occurs in such hundis. He says:

Shah, means responsible and respectable person, a man of worth and substance known in the bazar. A hundi payable to Shah is paid on the responsibility of the Shah.

16. In the case before Sir Joseph Arnould the form of the hundi is set out at p. 26. The amount of the hundi is said to have been deposited at or paid into the drawer's firm by one Kunyalal Johari-malprasad. The hundi stated that it was payable to Shah. The indorsement on the hundi was to the effect : - "This hundi was sold by Kunyalal Joharimalprasad to Khemchand Mulchand, defendant's firm" (in that suit). The defendant's firm in that suit by virtue of this indorsement became the Shah to whom the hundi was payable. In that case the drawer's signature had been forged. Moneys stated to have been deposited with the drawers were never in fact deposited. The forgery was proved and the defendant was proved to be the bona fide indorsee for full value. The question which Sir Joseph Arnould had to consider was whether in such cases where the drawee had bona fide paid the amount to the Shah and the hundi turned out to be a forgery the Shah was not under a liability to refund the amount he had received from the drawee. At p. 29 of the report Sir Joseph Arnould says:

The drawee of the hundi, in accepting and paying it looks very mainly to the Shah as responsible in case of anything afterwards going wrong with the hundi; and that he relies on the solvency and respectability of the Shah as one of the principal grounds in inducing him to make payment without further inquiry.

17. At p. 25, as the result of the evidence of usage Sir Joseph Arnould comes to the conclusion that

such [shahjogi] hundis differ from bills of exchange in one very material circumstance,, amongst others that as a general rule the acceptance of the

drawee is not written across them...It may be added also, as a general rule, that hundis are very frequently not presented for acceptance, before they are presented for payment.

18. The Shah's name must always be indorsed on the hundi before it is presented.

19. From this judgment the scheme of "shahjog" hundis appears to be that the drawer and the drawee should be protected against the claims of genuine owners of the hundis who may have been deprived of their possession through any fraud, forgery, or theft. The hundi is made payable by the drawee only to a Shah—a man of substance and not of shadow—who could, if circumstances warranted, be called upon to reimburse the amount which he had received from the drawee. The English Law affords a similar protection as against the prior parties to the hundi in cases of offence or fraud but these prior parties may be mere men of straw or altogether fictitious, and the remedy of the drawee against them may be of no practical value.

Under the English Law, a holder who, on presenting an instrument, has been paid in good faith and has received payment in good faith, but whose title is derived through a forged indorsement, may be compelled to return the money paid : see *Imperial Bank of Canada v. Bank of Hamilton* [1903] A.C. 49. A forged indorsement passes no title whatever to the indorsee. The property in the bill remains in the person who was the holder at the time of the indorsement and he may compel the indorsee to deliver the bill to him : see *Arnold v. Cheque Bank* [1876] 1 C.P.D. 578 and *Hunsraj v. Ruttonji* [1900] 24 Bom. 65. A payment of the bill is invalid and the debtor will be obliged to pay over again to the rightful holder : see *Ogden v. Benas* [1874] 9 C.P. 513. The peculiarity of the "shajog" hundi is that it provides a respectable person, viz., the "Shah," who could be proceeded against immediately by the drawee in case either he or the parties through whom he claims has become the holder through any offence or fraud. I do not agree with Mr. Munshi's contention that a "shajog" hundi merely means that the moment it comes into the hands of a "Shah," the Shah as such is entitled to recover the amount of the hundi, if not from the drawee then from the drawer for, if the Shah has obtained the hundi by any fraud or offence, he would not be entitled to recover the amount from the drawee or the prior parties.

20. The further question remains whether these hundis are to be regarded as "bearer" hundis which pass from hand to hand by delivery, or as special hundis which pass only by indorsement. On this point there is an important decision of the Calcutta Appeal Court, namely, the case of *Goursimull v. Dhansuk Das* [1865] 7 B.L.R. 289 Note. I will set out the facts of that case in some detail as, to my mind, that case has an important bearing upon the case which I am called upon to decide. The facts of that case briefly were that the plaintiffs being holders of a hundi had sent the same to their koti in Calcutta without indorsement. The hundi was lost or stolen on the way, and came into the defendants' hands as indorsees, the indorsement of the plaintiffs having been

forged. The defendants without notice of the forgery, had paid full consideration for the hundi. In that case the drawer was one Gabind Das Raghunath Das of Bombay. The drawee was Lakhmichand Radhakrishna of Calcutta. The person who had purchased the hundi was Sewdas Damoni. The plaintiffs were indorsees in due course from Sewdas Damoni. The letter by which the hundi was despatched to Calcutta, from Jaipur was lost or stolen in the post. The plaintiffs' indorsement was forged and, by subsequent indorsements the hundi came to the defendants. The forger had indorsed the hundi to Debiprasad who had the hundi accepted by the drawee.

When the hundi was being indorsed to the defendants, the defendants had made enquiry at the drawee's pedhi and the drawee had said that the acceptance held good. When the time for payment came the acceptors had received notice from the plaintiffs that their indorsement had been forged and thereupon they refused to sign the hundi. The suit was brought for the recovery of the hundi or its amount. The defendants claimed to be indorsees for value-Morgan J., the trial Judge, went into the question of custom applicable to such hundis. He mentions in his judgment that usage had not been hinted at in the pleadings and that the evidence as to the usage was of the most discrepant kind-He says (p. 291n):

I have not been called upon to decide upon such a usage; but on a scrutiny of the evidence, it appears to me to be a highly inconvenient usage for a koti; these hundis are in form highly inconvenient to the rest of the world. . The case seems to me that, at the time when the hundi reached the defendants, the instrument did not pass by delivery from hand to hand as bank notes, &c, but by endorsement : no one could make a title to it if they were forgeries.

21. Morgan, J., held, on the evidence before him, that the plaintiffs were, entitled to recover possession of the hundi from the defendants without reference to anything as to the custom of merchants. At p. 291 in the foot-note the grounds which were urged in appeal are briefly set out. They are to this effect:

That according to the evidence, it appeared that the hundi was on a payable to such parson as presented the same to the drawee for acceptance, and that from, the time of such acceptance and not previously thereto, the said hundi became transferable by endorsement, and that in fact the endorsement, previous to such acceptance by the depositor of the money, or any taking through him, was a matter of no importance so far as the negotiability of the said hundi was concerned.

22. Sir Barnes Peacock, the Chief Justice, in delivering the judgment of the appeal Court, remarks as follows (p. 292):

It appears from the evidence that such a bill as this would, at any rate prior to acceptance, pass by delivery, and that the acceptor or drawee would not look to the genuineness of a note brought to him by a man of known respectability. Then it appears to have been the custom in such a note as this to make it payable to some particular parson.

23. The appeal Court held the defendants to be bona fide purchasers for value as deriving title from Debiprasad in whose favour the note had been accepted. Hence the decree was reversed and the suit dismissed.

24. From the internal evidence in the case it appears that the hundi before Sir Barnes Peacock was a Shahjog hundi. This case was referred to and relied upon in the case of Thakur Das v. Futteh Mull [1871] 7 B.L.R. 275. In that case the drawer was one Chattarbhuji Murlidhar. The drawee was one Kunjolal Byjnath of Calcutta. The depositor was one Duberam Amir Chand. The indorsements which the hundi contained were to this effect:

(1st line) : Hundi sold by Dubaram Amir Chand to Thakur Das.

(2nd line) : Hundi sent by Thakur Das to Urjun Das Hazarimull for realization.

(3rd line) : Urjun Das Hazarimull.

(4th line) : Accepted by Kunjolal Byjnath to Urjun Das Hazarimull.

(5th line) : Urjun Das Hazarimull.

(6th line) : Surajmull Sobajmull

(7th line) : To Sha Kunjo Lai Byjnath.

25. The hundi in suit was payable to a respectable holder there by making it clear that it was a shahjog hundi. It was purchased at Delhi and sent to Calcutta by the plaintiffs for realization. It was addressed to Ram Lai Badri Das. The name of Ram Lal Badri Das had been scored out from the hundi and that of Urjun Das Hazarimull substituted in its place. The suit was brought by the plaintiffs to recover the hundi or its value. Urjun Das Hazarimull alleged that his indorsement was forged. Paul, J., held that it was genuine and therefore the plaintiffs' claim failed. The appeal Court ultimately held that the indorsement was a forgery and thereupon decreed the plaintiffs' suit. At p. 281 Paul, J., says:

There is no doubt that hundi of this description passes from one holder to another according to the purport on the face of the hundi, and therefore every person who has possession of a hundi is at law, prima facie, entitled to ask for payment of it, provided, he answers the description of Shahjog.

26. The matter coming on before the Appeal Court the judgment was delivered by Phear, J. At p. 303 the learned Judge refers to the case before Sir Barnes Peacock. He states:

[There] is a decision of an appeal Bench in the case of Goursimull v. Dhanmk Das [1865] 7 B.L.R. 289 Note. According to that report, the Court certainly does : seem to have stated, as its opinion, that before acceptance at any fate, a hundi payable to Shahjog would pass by delivery merely, without regard to the authenticity or otherwise of any special endorsement which might be upon, it. It is not clear how this expression of opinion was pertinent to the case before the Court, because, as far as I can learn, the facts of that case did not exhibit any

bona fide taker of the hundi before acceptance, and I suppose,, the Court never meant to lay down, that, under Hindu Law, every one who took the hundi, even though he obtained it by fraud,, would be treated as a shajog. The facts of that case, upon which the decision of the Court" was really grounded, seem to have been simply these : One Debiprasad, having dishonestly obtained possession of a hundi before acceptances forged a special endorsement to himself, got it accepted in favour of himself, and then endorsed it to the defendant. The substance of the Court's decision was that it would not look behind the acceptance; and treating the acceptance as the, foundation of the defendant's right, his title; from that point was unimpeachable.

27. Some remarks of the learned Judge on the case in appeal before him are pertinent to the present inquiry. At pp. 302, 303 and 304 the learned Judge says:

According to English mercantile law, the property in a negotiable instrument payable to bearer passes to a bona fide purchaser for value, without notice, even though the vendor had no-title, just as is the case with the sale of goods in; market overt under similar circumstances. But, I need hardly say that this law of the market, overt, which gives the power of sale to a non-owner out of regard for the circumstances of the, innocent purchaser is founded upon very special principles of expediency, and among Hindus it appears to take a very peculiar shape : See Manu, Chapter VIII, 201, 202; Colebrook's Digest, Book 2, Chapter II, Section 2.... How far there may be a law of this nature operative between Hindus in regard to such a subject as an unendorsed hundi payable on the Shajog I will not now stay to enquire.... It is said, however, that the Hindu Law on this matter is widely different from the English, and that a hundi purporting to be payable to the Shajog, whatever may be the form of the endorsement it bears, passes by delivery to a purchaser for value who has no notice of the vendor's want of title. At the outset, I must say that this appears to be a remarkable proposition. "Joog" we are told, is nothing more than our word "payee," the person who has the right to be paid; and "sha" means respectable or honest. Then who answers to the term "Shajog" unless it be the person designated by real (not fictitious) endorsements?....

When a Hindu maker or rightful owner of a hundi payable in terms to the Shajog endorses it as sold or sent to A he obviously means to pass the right of dealing with the hundi to A alone. It may well be that, according to Hindu Customary Law, A can transfer his right to a third person B by word of mouth or mere delivery, notwithstanding that the special endorsement to himself is in writing; but there is no evidence before us to suggest that, after the special endorsement to A, the hundi can be validly transferred to B, otherwise than by A, or by A's authority. It seems to be only commonsense that the term Shajog should be subordinate to the directions of the successive owners, and should mean the "right men to be paid" according to the tenor of the document which must include both the endorsement and acceptance. I certainly am not aware of any rule of Hindu Law, customary or otherwise, which would have the effect of

making the word Shajog mean payable to bearer, quite independently of the endorsements. If there were such a rule in practice, endorsements would be useless and would, I suppose, very soon be dropped altogether. Also, I know of no principle of mercantile expediency, having the force of law or otherwise, which would be served by our disregarding the direction of the endorser, and treating a specially-endorsed and specially accepted hundi as if it were an English negotiable instrument made payable to bearer, and as such, part of the currency of the country. On the contrary, as it appears to me, expediency is all the other way.

28. The learned Judge held in the case before him that the line of title was broken by two forgeries and he allowed the appeal. The judgment of Sir Barnes Peacock is referred to by our appeal Court in the case of Ganesdas Ramnarayan v. Lachminarayan [1894] 18 Bom. 570. That was a reference made to the Divisional Bench by Mr. Chitty, the Chief Judge of the Court of Small Causes. In making the reference the remarks of the learned Judge appear at page 572. There he states:

I have no hesitation in adhering to my former finding that the old established custom still prevails, and that a defendant cannot avoid liability in respect of a Shajog hundi which he has paid, unless he can show that he has paid it to Shah. The only question is whether in the case the hundi being specially endorsed makes any difference. No doubt the effect of the endorsement would be to restrict payment to the indorsee or some one claiming through him but this cannot in my opinion, render the word "shajog" nugatory, and I think payment could only be made to such indorsee after due inquiry to see whether or not he was Shah.

29. At p. 578 of the report Bayley, Ag. C.J., refers to the judgment of Sir Barnes Peacock in the case I have already cited. He says:

It is difficult from the report to discover whether the hundi there was or was not a Shajog hundi. The word "shajog" or "Shah" do not occur anywhere in the report, and if the hundi in that case was not a shahjogi one the expression of opinion of Sir Barnes Peacock would be extra judicial and of no binding authority.

30. With great respect to the learned Judge it seems that the facts of that case, as narrated by Phear J., must have escaped his attention, for the remarks of Phear, J., in referring to that case, make it quite clear that the hundi with which Sir Barnes Peacock was dealing was a Shahjog hundi : Thakur Das v. Futteh Mull [1871] 7 B.L.R. 275.

31. The cases are reviewed by Stanley, J., in the case of Bhuputram v. Hari Prio Coach 5 C.W.N. 313 of the report the learned Judge says as follows:

If a shahjog hundi passes by delivery alone the plaintiffs were unquestionably the holders of the hundi and as such would be entitled to sue. The endorsement in their favour strengthens their position. The defendants have neglected the

directions in the hundi to pay to the Shahjog and have paid the amount of the hundi to a person who was not Shahjog and who had no authority whatever from the plaintiffs to receive payment. They...paid the hundi to him on the faith of the forged signature of the plaintiffs.

32. On p. 320 the learned Judge remarks : It appears to me impossible to hold that a hundi which is payable to the shahjogi is equivalent to a hundi payable to bearer. According to the tenor of the instrument such a hundi is only payable to the respectable holder.

33. As a result of these authorities the conclusion that I have come to with regard to Shajog hundis is as follows : That a Shajog hundi in its inception is a hundi which passes from hand to hand by delivery and requires no indorsement.

34. The name of the depositor is mentioned in the body of the hundi, but there is no direction in the hundi that the amount is to be paid either to the depositor or to his indorsee. Indeed, the body of the hundi requires that the amount be paid to a Shah. It contemplates the hundi passing from hand to hand until it reaches a Shah who, after making due enquiries to secure himself, would present it to the drawee for acceptance or for payment. The Shajog hundis which appear in the cases I have reviewed bear an indorsement to the effect that the depositor has sold the hundi to a person named therein, but it is significant that the indorsement does not bear the signature of the depositor nor does it give a direction to the drawee that the amount is to be paid to the order of anybody. It merely recites the fact that the depositor has sold the hundi. I am aware of no provision of the Hindu Law whereby any sale is to be evidenced by writing. The ancient systems of law lay stress upon delivery of possession rather than a writing as evidence of sale. Absence of an indorsement on the hundi would not, in my opinion, affect its validity if it is a Shajog hundi. But a Shajog hundi although in its inception is one which passes by delivery without any indorsement, yet it may at any moment be restricted by being specially indorsed. Where any such restriction appears on the face of the hundi then that restriction applies to it and it ceases to be a bearer hundi which can pass from hand to hand. Anybody taking it after such indorsement has to comply with the requisitions as they appear on the face of the hundi and has to examine the title of the holder in the light of such indorsements.

35. Further, the negotiability of the Shajog hundi as a bearer hundi comes to an end when it reaches the hands of the Shah who presents it for acceptance or for payment. If after acceptance the Shah were to endorse it to a person of straw, the drawee would be within his right to refuse to honour the hundi; for the one condition which applies to these hundis is that at the time of payment there should be an immediate relationship established between a Shah and the drawee. A drawee is entitled to have the immediate responsibility of the Shah established, between himself and the Shah.

36. The Negotiable Instruments Act defines a bill of exchange in Section 5, as

follows:

A bill of exchange is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument.

37. This definition makes it clear that bills and notes may be drawn payable to bearer, but bills and notes so drawn must be expressed to be payable at a certain period after date or after sight or after a certain event; for the privilege of issuing paper currency payable to bearer on demand is the monopoly of Government. Section 26 of the Paper Currency Act II of 1910 enacts that:

No person in British India shall draw, accept, make or issue any bill of exchange, hundi, promissory note or engagement for the payment of money, payable to bearer on demand; or borrow, owe or take up any sum or sums of money on the bills, hundis or notes payable to bearer on demand, of any such person;

Provided that cheques or drafts, payable to bearer on demand or otherwise, may be drawn on bankers, shroffs or agents by their customers or constituents in respect of deposits of money in the hands of those bankers, shroffs or agents and held by them at the credit and disposal of the persons drawing such cheques or drafts.

38. Section 27 imposes a penalty or fine upon any person contravening the provisions of Section 26, but the instrument is not declared to be void nor is its admission in evidence prohibited. The term "bearer" is not defined in the Negotiable Instruments Act but is defined in the Bills of Exchange Act of 1882 applicable to England. By Section 2 of that Act it is stated : "'Bearer" means the person in possession of a bill or note which is payable to bearer." A bill of exchange under the English Law is defined by Section 3 as follows:

A bill of exchange is an unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to or to the order of a specified person, or to bearer.

39. Section 8, Clause 3, of that Act provides that:

A bill is payable to bearer which is expressed, to be so payable, or on which the only or last indorsement is an indorsement in blank.

40. Clause 4 states;

A bill is payable to order which is expressed to be so payable, or which is expressed to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it should not be transferable.

41. Section 34, Clause 4, of the Bills of Exchange Act, states:

When a bill has been indorsed in blank, any holder may convert the blank indorsement into a special indorsement by writing above the indorsee's

signature a direction to pay the bill to or to the order of himself or some other person.

42. I hold, therefore, that on the finding of this hundi being a Shahjog hundi, the plaintiffs have established their claim. Supposing that this hundi were not a Shahjog hundi and were an ordinary hundi to which the Negotiable Instruments Act applied, even then I am Inclined to hold that the plaintiffs have established their claim. u/s 43 of the Negotiable Instruments Act it is provided that:

...If any such party has transferred the instrument with or without indorsement to a holder for consideration, such holder, and every subsequent holder deriving title from him, may recover the amount due on such instrument from the transferor for consideration or any prior party thereto.

43. The evidence before me has gone to prove that Gulabchandji, who originally paid the consideration to the drawer, delivered the hundi for consideration to Askaran Ramlal. Indeed, the very fact that the hundi in suit comes from the possession of the plaintiffs raises some presumption that it has come into their possession lawfully. It is nowhere contended by Defendant No. 1 that any fraud has been committed by which the plaintiffs have come into possession of the hundi. It is not open to them to rely upon Section 58 of the Negotiable Instruments Act; for that section provides that:

When a negotiable instrument has been lost or has been obtained from any maker, acceptor or holder thereof by means of an offence or fraud, or for an unlawful consideration, no possessor or indorsee who claims through the person who found or so obtained the instrument is entitled to receive the amount due thereon from such maker,...unless such possessor or indorsee is, or some person through whom he claims was, a holder thereof in due course.

44. The contention put forward by Defendant No. 1, to my mind, is both dishonest and disingenuous. The plaintiffs having given value for the hundi, and it not being shown that they have come into possession through any offence or fraud, they are entitled to recover the amount from the maker.

45. I find on the issues as follows:

(1) Whether the hundi in suit was payable to Shah.

Ans : The hundi in suit is what is technically known as Shahjog hundi and was payable to Shah only.

(2) Whether the said hundi was payable to Gulabchand Keshrichand and their assigns.

Ans : Finding not necessary; see judgment.

(3) Whether the plaintiff is a bona fide holder in due course of the said hundi.

Ans : In the affirmative.

(4) Whether any interest in the said hundi passed to the plaintiffs in the absence of indorsements by prior parties.

Ans : Finding unnecessary, see judgment.

(5) Whether the defendants were justified in refusing to pay the amount of the said hundi.

Answer in the negative.

(6) General issue.

46. The plaintiffs' claim as prayed is decreed with costs. Plaintiffs, or their attorneys on their behalf to withdraw the amount deposited with the Prothonotary by Defendant No. 1 on December 7, 1920, in part satisfaction of the decree in plaintiffs' favour.