
(1967) 11 MP CK 0019

In the Madhya Pradesh High Court

Case No : Second Appeal No. 381 of 1963

Champalal Gajanand

APPELLANT

Vs

Padam Chand Sheolal Jain and Others

RESPONDENT

Date of Decision : 14-11-1967

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10
Negotiable Instruments Act, 1881 (NI) — Section 78, 8
Transfer of Property Act, 1882 — Section 130

Citation : AIR 1971 MP 133 : (1969) J LJ 1005 : (1969) 14 MPLJ 918

Hon'ble Judges : K.L. Pandey, J

Bench : Single Bench

Advocate : R.L. Sharma, for the Appellant; S.C. Dube, for the Respondent

Final Decision : Allowed

Judgement

K.L. Pandey, J.

This is a defendant's further appeal against an affirming decree of the lower appeal Court for Rs. 1,200/- passed on the foot of a promissory note dated 14 September 1958 which he admittedly executed in favour of one Shivalal for Rs. 1,670/-.

It is common ground that Shivalal, a money-lender, had advanced money to the defendant and the latter executed a promissory note dated 7 October 1955 for Rs. 1,200/-. Subsequently, on 14th September 1958 to be more precise, accounts were made and Rs. 1,670/-, inclusive of interest, was found due from the defendant who then executed a fresh promissory note for Rs. 1,670/- and promised to repay that amount with interest at 1 per cent, per month. The creditor, Shivalal, died in February 1960 leaving behind him surviving three sons and two daughters, Premlata and Rajmati.

The three sons of Shivalal initiated the action, out of which this appeal arises, on the averment that, upon the death of Shivalal, Premlata and Rajmati had

transferred their interest in the money-lending business inherited by them along with their brothers to the latter. The plaintiff claimed Rs. 1,670/- as principal and Rs. 601-20 on account of interest.

The defendant resisted the claim on several grounds. He denied that the daughters of Shivlal had transferred their interest in their father's money-lending in the manner alleged and pleaded that the suit was not maintainable without impleading them as parties. He further pleaded that he had repaid Rs. 1,200/- towards the loan. According to him, even the earlier promissory note dated 2 October 1955 was executed for old debts consisting mostly of interest and that, since Shivlal was a money-lender and he had advanced the original loan in the course of his business, he was not entitled to any interest and costs of the suit, because he had failed to comply with the provisions of the Money-Lenders Act, 1934.

Both the Courts below held that Premlata and Rajmati were not necessary parties because they gave up their interest in favour of their brothers. They concurred in passing a decree for Rs. 1,200/- after disallowing all interest claimed subsequent to 7 October 1955 for the failure of Shivlal to comply with the provisions of the Money-lenders Act.

Having heard the counsel, I have formed the opinion that the appeal should be allowed. The rules of law contained in Sections 8 and 78 of the Negotiable Instruments Act are not applicable to cases where a promissory note, a bill of exchange or any other negotiable instrument devolves by operation of law or is transferred to another by assignment. So, Broomfield J, observed in *Shantaram Vithal Wakde Vs. Shantaram Bhagwan Sinkar*, :

"But if the holder is dead, his legal representatives must, I think, be entitled to sue.....In my opinion, there can be no doubt about it. There is nothing in the cases cited, nor in the Act itself, as far as I can see, which is inconsistent with it. The Act regulates the issue and negotiation of bills, notes and cheques, but does not provide for the transmission of rights in such Instruments by operation of law or by transfer."

(Page 452)

In *Zujya Pascol Damel Vs. Manmohandas Lallubhai Pratap*, , *Wassoodew J.*, observed :

"The Act does not expressly exclude the doctrine of representative action. If a holder named is dead, a person claiming representation to his estate can bring a suit to recover the debt upon a promissory note in the name of the deceased."

(Page 166)

In AIR 1932 23 (Nagpur) . Bose A. J. C. (as he then was) stated :

"What the Negotiable Instruments Act does is to prohibit negotiation except in the manner specified by it but not to prohibit assignment in any of the several

ways allowed by law." (Page 330) (of Nag LR) = (at p. 25 of AIR).

It is, therefore, clear, and is also not now disputed, that, upon the death of the holder Shivilal, his heirs became entitled to sue for recovery of loan evidenced by the promissory note dated 14 September 1958.

When the owner of a single right as the holder of a promissory note dies and his right passes by devolution to his heirs, all of them must join in a suit to enforce that entire right as a whole. If any of them refuses to join as plaintiff, he must be impleaded as a defendant. The reason is that joint promisees cannot divide the debt among themselves and sue severally for parts of the debt. It follows that a suit to enforce the right by one or some of the promisees is liable to be dismissed: *Kishan Lal v. Chendha*, AIR 1924 Nag 196; *Siluvaimuthu Mudaliar Vs. Muhammad Sahul and Others*, ; *Pir Bakhsh v. Kidar Nath*, AIR 1935 Lah 478; *Munshi Sahu and Another Vs. Bhupal Mahton and Others*, and *Shrikrishan Moolchand Vs. Deokinandan Sardharam and Others*, .

The three sons of Shivilal, who brought the suit out of which this appeal arises, belatedly realised that they alone could not maintain it without showing how the rights of their two sisters in the debt became vested in them and, therefore, they pleaded :

"2 (a) That in February 1960 at Itarsi the interest of all the daughters of the deceased Shivilal, if any, in the money-lending business was transferred to the plaintiffs out of love and affection and to maintain cordial relations between them and from that date the plaintiffs alone had interest in the claim in suit.

(b) That in the alternative it is submitted that all the daughters of Shivilal having been married thereby going out of the family previous to the date of the suit, they shall be deemed to have separated themselves from the coparcenary in accordance with Explanation 2 of Section 6 of the Hindu Succession Act, 1956, as such they have no right, title or interest in the claim in suit."

The plea that the daughters did not obtain any share in the debt because they must be deemed to have separated from the coparcenary by reason of their marriage is easily answered by the proviso to Section 6 of Hindu Succession Act, 1956. That proviso contemplates devolution of interest by intestate succession on certain females not because they are coparceners but on account of their relationship to the deceased either by affinity or by consanguinity. Since the point was not argued, it is unnecessary to pursue it further.

As already indicated, the Negotiable Instruments Act deals only with transfer by negotiation and leaves untouched the rules of general law which regulate the transmission of negotiable instruments by operation of law or by legal devolution or by assignment in writing u/s 130 of the Transfer of Property Act and their transfer as chose in action according to the general law. Having regard to the provisions of Sec. 137 of the Transfer of Property Act which excludes negotiable instruments from the purview of the provisions of that Act relating to transfer of

actionable claims, it has been argued on the one hand that no writing as contemplated by Section 130 of the Act is necessary at all and an oral transfer is possible and on the other that any assignment of such instruments is not possible at all. According to D. F. Mulia, neither view is correct. He observes in his treatise on the Transfer of Property Act, 4th Edition at page 739 as follows:

"If the promissory note is negotiable, some early cases supposed that the note could not be assigned as an actionable claim. But later cases have held that, even if the promissory note is negotiable, it may be assigned by instrument in writing although such an assignment renders the assignee u/s 132 subject to the equities to which the assignor was subject."

So, in *Muther Sahib Maraikar v. Kadir Sahib Maraikar*, (1905) ILR 28 Mad 544, Sir S. Subrahmania Ayyar, C. J., observed at page 546 :

"The fact that the note is negotiable does not make any difference except that it carries with it certain peculiar incidents attached to it by the law merchant. The rules in regard to these choses in action prior to the Act do not cease to be any the less applicable to them by the passing of the Act unless its provisions expressly or impliedly affect those rules. If we now turn to the Act. so far as one can see, no provisions there constrain one to come to any other conclusion."

In *Perumal Ammal by Mother and Next Friend, Krishnammal Vs. Perumal Naicker and Another*, , Wallis C. J. observed :

"The prevailing view of this Court is that negotiable instruments are action able claims assignable under this section....." (Page 203)

In this connection, I may mention two other cases of the Madras High Court, namely, (Munaluri) *Narayanamoorthi and Another Vs. (Dwadasi) Vumamaheswarm and Others*, and *C.R. Venkatarama Ayyar Vs. B.S. Krishnaswami Chettiar and Others*, . In the earlier of these two judgments, the difference of opinion between the earlier cases and the later cases was noticed. The latter view was accepted in *Surath Chandra Saha Vs. Kripanath Chowdhury and Others*, and *Ghanshyam Das v. Ragho Sahu*, AIR 1937 Pat 100 (FB). As shown earlier, the same view was taken in AIR 1932 23 (Nagpur) . In view of these authorities it should be held that Section 130 of the Transfer of Property Act applies to assignment of a promissory note as a chose in action.

Although it was pleaded that the two daughters of Shivilal verbally transferred their interest in the money-lending of their father, including the promissory note in this case. *Premlata P. W. 1 and Rajmati P. W. 2* stated that they relinquished their interest in the money-lending. Unlike a surrender by a Hindu widow which accelerated succession, this was in law a conveyance and was, as pleaded, intended to be such because only to that way could the brothers claim to be entitled to the entire right to the promissory note as whole. Since Section 130 of the Transfer of Property Act applies, it could not be effected by parol. That being so, the suit brought by only some of the heirs of Shivilal must fail.

In the view I have taken of this case, it is not necessary to consider other points raised in the grounds of appeal.

The appeal succeeds and is allowed. The lower appeal Court's decree is set aside and the suit is instead dismissed. However, in the special circumstances of this case, I direct the parties to bear their own costs throughout.