

(1910) 09 MAD CK 0022
In the Madras High Court

Chandana Venkatadri

APPELLANT

Vs

M. Lakshminarasimha Rao and Others

RESPONDENT

Date of Decision : 13-09-1910

Acts Referred:

Transfer of Property Act, 1882 — Section 130

Citation : (1911) 21 MLJ 80

Judgement

1. A negotiable promissory note executed in. favour of the 3rd defendant as manager of his family fell in a partition of the joint family property to the share of the 1st plaintiff and his son. There is no endorsement on the note, and it is, therefore, contended that the plaintiffs cannot sue on the note. Though there is no endorsement on the note it is clear that the note could be transferred otherwise than by endorsement - Muhammad Ummar Ali v. Ranga Rao ILR (1901) M. 652. It is contended, relying on Section 130 of the Transfer of Property Act, that the transfer must be evidenced by an assignment in writing. Section 130 of the Transfer of Property Act, however, does not, in our opinion, apply in view of Section 137 of the Act which declares that Section 130 among other sections does not apply to instruments which are for the time being, by law or custom, negotiable. At the time of the alleged transfer in this case the promissory note was certainly negotiable. It was no doubt held in Arunachala Reddi v. Subba Reddi (1907) 17 M.L.J. 393 that Section 130 of the Transfer of Property Act applies when the claim is made under an assignment and not by reason of an endorsement, the reason given being that when suing, the plaintiff cannot be regarded as suing on a negotiable instrument. Such a view would require the importation of words into Section 137 of the Transfer of Property Act which are not to be found in it. However this may be, there is a writing in the case, viz., a partition list, which is sufficient, if necessary, to satisfy the requirements of Section 130 of the Transfer of Property Act.

2. The second appeal is dismissed with costs of the plaintiff.