(1961) 09 AP CK 0005

In the Andhra Pradesh High Court

Case No : C.C.C. Appeal No. 8 of 1958

G.K. Naidu APPELLANT

Vs

C.K. Mouleswar, Official Receiver, Hyderabad RESPONDENT

Date of Decision : 05-09-1961

Acts Referred:

Citation : AIR 1962 AP 406

Hon'ble Judges : Manohar Pershad, J

Bench : Single Bench

Advocate : E. Venkatesam, for the Appellant; M.S. Ramakrishna Rao, for M. Krishna Rao, for the Respondent

Final Decision : Allowed

Judgement

Manohar Pershad, J.—C. C. C. A. 8 of 1958 arises out of O. S. 142/1 of 1956 filed in forma pauperis by the Official Receiver on behalf of the insolvent Lakhanlal. The plaint allegation was that the said Lakhanial was conducting a Chit Fund business at Sultan Bazar, Hyderabad City of which the defendant was a member and that in respect of 8 chits drawn by the defendant, the defendant fell due in various amounts as shown In Ex. P-1 for which he executed a promissory note as collateral security. The plaintiff therefore claimed Rs. 9100/- (O. S.) towards the principal plus Interest at 6% per annum, totalling Rs.10,100/- O.S. The defendant denied that Lakhanlal was an Insolvent and the Receiver had the right to bring a suit against him. He however admitted that Lakhanlal was conducting the Chit Fund business and he was also its member, but denied the correctness of the accounts and the amounts due as shown in Ex. P.-1. He further stated that Lakhanlal had misappropriated the chit fund amounts and there was no question of the liability of the defendant.

Legal objections were also raised that the other members of the Chit Fund were necessary parties to the suit, that the suit was barred by limitation, that it was bad for non-registration of the Chit and concern, that the suit promissory notes were inadmissible in evidence, that the suit was bad for mis-joinder of plea and parties and that Lakhanlal was a money lender, but he did not possess the required licence and did not comply with the provisions of the Hyderabad Money Lenders Act

2. As the written statement was found to be vague, the learned Judge examined him under 0.10, R. 1, C. P. C. wherein the defendant denied that he had drawn chits but admitted the execution of the promissory notes. He also denied the consideration in full. He admitted that ha bad no accounts to prove how much amount he has received under each of them. The plaintiff filed a rejoinder denying the allegations made in the written statement

3. On these averments in the pleading, 12 issues were framed. On behalf of the plaintiff, Lakhanlal, the insolvent, was examined. In rebuttal, the defendant gave his evidence. On the evidence, the learned trial Judge found that the defendant had drawn 8 chits amounting to O. S. Rs. 11,000/- between 1-6-1951 and 10-12-1951. He also found that defendant was liable to the plaintiff to the extent of O. S. Rs. 5200/-. As regards the other questions whether Lakhanlal misappropriated the chit fund, whether the other members of the Chit Fund were necessary parties, whether the suit was barred by limitation, whether the suit was bad for want of registration of the Chit Fund concern and whether Lakhanlal was a moneylender, the trial Court found that Lakhanlal did not misappropriate the chit fund amounts, that the other members of the Chit Fund were not necessary parties, that the suit was not barred by limitation, that there was no question of the registration of the Chit Fund concern and that Lakhanlal was not a moneylender. In the result, the trial Court decreed the suit to toe extent of O. S. 5200/- with costs-Hence this appeal on behalf of the defendant

4. In this appeal, the main contention advanced by Sri Venkatesham, the learned counsel for the appellant is that the Official Receiver could not file the suit for recovery of toe amount as the insolvent was only a stakeholder or manager, or organiser of the Chit Fund, who in law cannot be deemed to be the owner of the amount due from the bidder at the chit auction. The second contention advanced by toe learned counsel is that the Court below has erred in holding that the chit fund concern did not require any registration and that Lakhanlal was not a moneylender.

5. Before adverting to the argument I would like to state some admitted facts. It is common ground that Lakhanlal was conducting the Chit fund business as manager, i.e., a stake holder and used to get 2% commission on the business. It is also admitted that after the deduction of the amount of the commission whatever balance used to remain that was distributed among the members of the Chit Fund business, and the manager lad no share in it. The balance amount used to remain with the stake-holder. Thus it is clear that to the extent of the balance amounts in the hands of the manager, he would be a trustee. As a trustee he is of course entitled to enforce the security but he does not have any beneficial interest in that trust amount that being for the benefit of others. Vide Kudkanjee Timmarsa Pai Vs. Kanjarpane Subba Rao and Others, AIR 1934 683

(Lahore) and in the Matter of Varadalaca Charri, ILR 2 Mad 15.

6. The next question that has to be considered is whether toe property held by Lakhanlal as a stake-holder could be said to be his property.

7. Section 2(1)(d) of the Hyderabad insolvency Act defines ''property'' thus:

''Property'' includes any property over which or the profits of which any person has a disposing power which he may exercise for his own benefit

It is clear therefore from the above definition, that in order that the property should belong to Lakhanlal It Mast be shown that he had power to dispose of that property for his benefit In Halsbury''s Laws of England, Vol.II there is a reference to this point Vide para 860 at page 435:

The property of the bankrupt divisible among his creditors does not include the property held by the bankrupt on trust for any other person. The reason for this exclusion is that the property held by the bankrupt on trust for another person is not a beneficial interest of the bankrupt and is not, therefore, property which according to the general principles of the bankruptcy could be divisible among his creditors, (it follows) therefore that when a bankrupt holds property on trust for other persons and has no beneficial interest in it, he has only a legal estate which has none of the qualities of property divisible among the creditors.

In the instant case admittedly the trustee has neither interest in the suit claim nor has he any power of disposal over it. He holds it for the benefit of others. When the suit item was not the property of Lakhanlal, the Receiver could not take any action for the recovery of the same.

8. It is contended by the learned counsel for the respondent that since Lakhanlal was entitled to 2% commission on the business and there is no evidence that Lakhanlal had realised this commission he would be deemed to have some interest over the suit amount. I do not find any substance in this contention. Lakhanlal in his testimony has admitted that he used to deduct his commission from the amount paid by the highest bidder and distribute the balance amount among the members of the chit fund business. On the present amount claimed Lakhanlal has no claim for commission. The learned counsel also conceded this point

9. On this ground alone the present suit of the plaintiff is liable to be dismissed and I need not go into the other questions viz., whether Lakhanlal was a money lender or the Chit Fund concern required registration; but as the lower Court has considered those points and the learned counsel for the parties have also advanced arguments, I may just refer to them. I would first take up the question whether the Chit Fund concern requires registration. To constitute an Association within the meaning of Sec. 4 of the Companies Act, existence of a legal relationship between more than 20 persons giving rise to joint rights or obligations or mutual rights or duties is absolutely necessary. When more than 20 persons enter into an agreement by which a chit fund is created, parties to

such agreement do not form an association of which registration is necessary, because there is no existence of any legal relationship between them. I may in this connection refer to Neelamega Sastri V. Appiah Sastri, ILR 29 Mad 477. There is therefore no force in the contention that the Chit Fund concern requires registration.

10. There is equally no force in the argument which relates to the Hyderabad Money Lenders Act. The Hyderabad Money Lenders Act would become applicable if it is shown that the money now claimed was advanced as a loan as defined in Section 2(4) and that the claimant was a money lender as defined in Section 2(7) of the aforesaid Act

11. ''Loan'' has been defined thus:

''Loan'' means a loan secured or unsecured advanced on interest in cash or in kind and shall include, every transaction which is in substance a loan, but shall not include the following...

12. ''Money lender'' has been defined to mean a person including a pawn-broker, who within the meaning of the Act, only advances loan in the ordinary course of his business or does so along with other business and shall also include the legal representative of such person and the person claiming to be his representative on the ground of succession or assignment or otherwise.

13. In the light of these two definitions, if I were to refer to the allegations in the plaint, I do not find anything therein to indicate that the amounts now claimed were advanced by Lakhanlal as loan. It is not the case of the defendant also. The present claim arises out of the Chit Fund business. That Chit fund business is not a money lending business, has been held by this Court in the case of D. Narasimloo v. Y. Rajanna, 1958 2 AWR 5. This contention therefore fails.

14. In the view I am taking, I cannot uphold the Judgment of the Court below. The appeal is therefore allowed and the judgment and decree of the Court below are set aside and the plaintiff''s suit is dismissed. As the appellant had not raised this plea viz., that the official Receiver has no right to maintain the suit, I think he would not be entitled to costs of this Court and of the lower Court. Court-fee to be recovered from the plaintiff out of the assets of the insolvent.