

(2001) 10 MAD CK 0040
In the Madras High Court
Case No : Appeal Suit No. 783 of 1986

Govindammal and Another		APPELLANT
	Vs	
Bhuvaneswari Financing Corporation		RESPONDENT

Date of Decision : 19-10-2001

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 4

Citation : AIR 2002 Mad 296 : (2002) 3 CivCC 136

Hon'ble Judges : V. Kanagaraj, J

Bench : Single Bench

Advocate : M. Sathyanarayanan, for the Appellant;

Final Decision : Dismissed

Judgement

V. Kanagaraj, J.—This Appeal Suit is directed against the judgment and decree dated 29-7-1983 rendered in O. S. No. 167 of 1982 by

the Court of Subordinate Judge, Dindigul.

2. Tracing the history of the case, it comes to be known that the respondent herein filed the suit in O.S. No. 167 of 1982 before the lower Court

for recovery of a sum of Rs. 35,400/- with interest and costs on averments that the defendants /appellants are respectively the widow and daughter

of one P.C. Ethirajulu Naidu; that the said Ethirajulu Naidu was engaged in business in skins at Salem and he borrowed a sum of Rs. 30,000/-

from the respondent /plaintiff under a pronote dated 17-9-1979 for his business purposes agreeing to repay the same with interest at 11 paise per

day per hundred and since he failed to repay the said amount, the respondent / plaintiff issued a notice dated 19-5-1982 which was returned with

endorsement that the ""addressee died"" and hence the respondent/ plaintiff issued another notice on 5-8-1982 to the appellants/plaintiffs since they

succeeded to the estate of Ethirajulu Naidu but the said notices were returned as ""refused"" on 9-8-1982 and 12-8-1982 respectively and hence

the suit for recovery of the pronote amount with interest at 6% p.a.

3. The second defendant filed a written statement, which was adopted by the first defendant, wherein besides generally denying the allegations of

the plaintiff, they would submit that there was no necessity for the said Ethirajulu Naidu to borrow the said sum and the suit pronote was a fabricated

one and the signatures found therein are also forged. These defendants would further submit that they were not aware that the plaintiff issued a

notice on 19-5-1982 and the same was returned with an endorsement that the ""addressee died"" and would further submit that they did not refuse

any notice as alleged by the plaintiff and no notice was sent to the defendants prior to the suit, that in any event, they are entitled to the benefits of

Debt Relief Acts and would pray to dismiss the suit with costs.

4. Based on the above pleadings, the Court below would frame the following issues :

1. Whether the present plaintiff has authority to maintain the suit?
2. Whether the suit pronote is true, valid and supported by consideration?
3. Whether the defendants are entitled to the benefits of Debt relief Act?
4. To what relief is the plaintiff entitled?

Thereafter, the Court below would conduct the trial when on behalf of the plaintiff, one Giridharan, scribe of the suit pronote, was examined as

P.W. 1 for oral evidence and on behalf of the defendants, the first defendant would be examined as D. W. 1. For documentary evidence, on behalf

of the plaintiff, four documents would be marked as Exs. A1 to A4, Ex. A1 dated 17-9-1979 being the pronote for Rs. 30,000/-executed by

Ethirajulu Naidu in favour of the plaintiff, Ex. A2 dated 7-7-1978 is the acknowledgement of firm of the plaintiff, Ex. A3 dated 5-8-1982 is the

copy of the notice issued by the plaintiff's counsel to Ethirajulu Naidu and Ex. A4 dated 22-9-1982 are the two ""refused"" registered post covers in

the names of defendants. On behalf of the defendants, two documents would be marked as Exs. B.1 and B. 2. Ex. B. 1 dated 15-7-1983 being

the script written by P.W. 1 in open Court and Ex. B2. dated 1-3-1971 being the Dhana Settlement Deed.

5. Based on the above evidence placed on record and upon hearing [he learned counsel for both , the Court below would ultimately decree the suit with costs. Aggrieved, the defendants therein have come forward to prefer the above Appeal Suit on certain grounds as brought forth in the memorandum of grounds of appeal.

6. In consideration of the pleadings by parties, the judgment rendered by the trial Court and the arguments advanced on the part of the learned counsel for the appellants, the points that arise for consideration in this appeal suit are :

1. Whether it is true that the appellants have inherited the estate of late Ethirajulu Naidu and whether the same is proved on the part of the plaintiff so as to provide for the cause of action to arise for the suit to be filed against these appellants/defendants?

2. Whether the decree as passed by the lower court is sustainable in law ?

7. In consideration of the pleadings by parties, having regard to the materials placed on record and upon hearing the learned counsel for both what comes to be known is that the plaintiff filed the suit before the lower Court on averments that one P.C. Ethirajulu Naidu borrowed a sum of Rs.

30,000/- from the respondent/plaintiff partnership firm under the exhibit A1 pronote dated 17-9-1979 for his business purpose agreeing to repay

the same with interest at 11 paise per day per hundred and since he failed to repay the same, the appellants /defendants, since succeeded to the

estate of Ethirajulu Naidu. they become liable to repay the accrued sum on the Ex. A1 pronote and hence the suit for the recovery of a sum of Rs.

35,400./-.

8. Though the appellants /defendants have defended the suit on many grounds, in law and as per the pleadings, unless basically it is proved that

these appellants / defendants, though related to the late Ethirajulu Naidu. have inherited the estate of the Ethirajulu Naidu so as to become liable to

repay the debts, the respondent / plaintiff cannot maintain the suit as against the appellants /defendants. Unless this vital legal question is

determined, the Court cannot go into the next step whether such borrowing by Ethirajulu Naidu is true, so as to claim the same on proof of such

evidence from the defendants.

9. Nothing has been pleaded on the part of the plaintiff to the effect as to what

were the estates left by the deceased Ethirajulu Naidu and how these defendants and to what extent they inherited the estate left by Ethirajulu Naidu. Unless these aspects are pleaded and proved by the plaintiff with sufficient evidence, no cause of action would arise for the plaintiff to claim anything from the defendants since the defendants would not be liable to repay the debts of the deceased unless they have inherited the estate of the deceased worth the debts left by the deceased.

10. Nothing is pleaded regarding this vital aspect on the part of the plaintiff nor any issue framed to the said effect for determining this issue as a preliminary issue prior to settling the other issues nor had these suit been decided on the basis of this issue. In the absence of such pleadings and proof on the part of the plaintiff so as to establish that the deceased Ethirajulu Naidu left the estate and that estate, had been inherited by the defendants and therefore, the defendants who inherited the estates of the deceased would also become liable to clear the liabilities of the deceased, the other ques questions regarding which issues have been framed by the lower Court to the proof of the borrowing of Ethirajulu Naidu under Ex. Al pronote, would not arise. But the lower Court thoughtless of the fact that this vital aspect should be pleaded, proved and established on the part of the plaintiff prior to going into proof of the pronote and other aspects involved in the case, has erroneously decided the suit against the defendants under the wrong impression that they are liable to clear the debts of the deceased Ethirajulu Naidu which cannot be sustained in law and on facts.

11. It is hereby made clear that even if the plaintiff had proved that the defendants were related to the late Ethirajulu Naidu so as to become the heirs of the deceased, it would not be sufficient unless they were able to further prove that the said Ethirajulu Naidu left a valuable estate and that estate has been inherited by these defendants and that estate was worth the money that is sought to be recovered and only in proof of all these aspects, the next step of lodging the claim against these appellants/defendants would be arrived at. Since the plaintiff has miserably failed to prove this vital aspect which is quite legal and prerequisite condition, the other question of the borrowing of Ethirajulu Naidu is quite irrelevant to the issue with which the defendants have absolutely no nexus or bearing.

12. In the above circumstances, the lower Court is wrong in having not gone into this vital legal aspect that should have been fundamentally proved

on the part of the plaintiff in a case of such nature but barely on facts put forth by the plaintiff, it has passed the decree against the defendants

without showing any nexus for these defendants to have inherited the debts of the deceased Ethirajulu Naidu along with his estate worth effecting

payment of the debts and therefore, the judgment and decree passed by the lower Court becomes only liable to be dismissed and the same is

dismissed accordingly, both the points are answered accordingly in favour of the appellants.

In result.

(i) The above appeal suit succeeds and the same is allowed with costs throughout,

(ii) The judgment and decree dated 29-7-1983 rendered in O. S. No. 167 of 1982 by the Court of Subordinate Judge. Dindigul is hereby set

aside.

(iii) The suit in O.S. No. 167 of 1982 on the file of the Subordinate Judge, Dindigul stands dismissed.