(1942) 07 MAD CK 0011

In the Madras High Court

Govindaswami Achari and Others — APPELLANT

Vs

Kandaswami Achari and Others — RESPONDENT

Date of Decision : 30-07-1942

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 50

Citation : AIR 1942 Mad 742 : (1942) 55 LW 847 : (1942) 2 MLJ 468

Hon'ble Judges : Patanjali Sastri, J

Bench : Division Bench

Judgement

Patanjali Sastri, J.—This second appeal arises out of a suit brought by the appellants for recovery of the principal and interest due on a

promissory note executed by one Govinda Achari the 3rd respondent herein who is now dead, in favour of the mother of the appellants 2 to 4.

These appellants obtained a succession certificate in respect of the suit debt and endorsed the promissory note to their husband the 1st appellant

herein for collection of the amount due thereunder. The 1st appellant thereupon brought the suit and appellants 2-4 were subsequently joined as

co-plaintiffs therein.

2. The trial Court passed a decree against the deceased 3rd respondent personally and against the family properties in the hands of his sons the

respondents 1 and 2; but the lower appellate Court purporting to follow the decision of this Court in Rakapalli Vira Raghavulu Naidu Vs. Dhara

China Rajalingam and Others, . reversed the decree against respondents 1 and 2 and dismissed the suit as against them, holding that the suit having

been brought by the 1st appellant as endorsee of the note he was not entitled to ask for relief against any other persons on the basis of the debt evidenced by the note, the endorsee having obtained no other right under the endorsement apart from the property in the note. This proposition is

no doubt correct in the case of an ordinary endorsee and the decision referred to above was with reference to a suit by such an endorsee on the

endorsed note. No doubt in the course of the judgment the learned Judges observed that the plaintiff admitted in his plaint that the endorsement

had been made only for collection but they take care to point out that the endorsement was of the ordinary kind and their decision proceeded on

that basis. The case has therefore no application here as the endorsement itself purports to assign the note expressly for the purpose of collection

of the amount due on the note. Such an endorsement, according to Section 50 of the Negotiable Instruments Act has the effect merely of

constituting the endorsee an agent of the payee, and if the latter could have sued other persons on the debt there is no reason why the endorsee for

collection should be restricted only to the remedy on the note. The decision in Ponnayya v. Palaniappa Chetty (1909) 7 M.L.T. 271. shows that an

endorsee for collection is in no higher position than an agent and that the endorser can himself sue on the note without getting it re-endorsed in Ms

favour. I hold therefore that the respondents 1 and 2 can be properly made liable in the suit as on the debt and that the decree of the lower

appellate Court exonerating them was wrongly passed.

3. The appeal is accordingly allowed and the decree of the trial Court is restored with costs here and in the Court below.

4. Leave refused.