

(2004) 05 MAD CK 0002

In the Madras High Court

Case No : Civil Revision Petition (PD) No. 2903 of 2003 and C.M.P. No. 21718 of 2003

K. Natesan

APPELLANT

Vs

M.A. Srinivasan

RESPONDENT

Date of Decision : 17-05-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 37 Rule 1, Order 37 Rule 4

Citation : (2004) 05 MAD CK 0002

Hon'ble Judges : S. Sardar Zackria Hussain, J

Bench : Single Bench

Advocate : A. Seshan, for the Appellant; Sampathkumar and Associates, for the Respondent

Final Decision : Dismissed

Judgement

S. Sardar Zackria Hussain, J.—The plaintiff in under chapter suit O.S. No. 813 of 2003 on the file of the III Additional Judge, City Civil

Court, Chennai, is the revision petitioner. The revision is directed against the order in I.A. No. 7474 of 2003 dated 20.6.2003 allowing the

respondent/defendant leave to defend the suit filed under Order XXXVII, Rule 1 C.P.C.

2. The revision petitioner filed the suit O.S. No. 813 of 2003 under Order XXXVII, Rule 1 C.P.C. to recover the sum of Rs. 5,82,400/- due on

the suit promissory note dated 28.2.2001 for Rs. 5,00,000/- executed by the defendant in favour of the plaintiff and his paternal uncle N.R. Mani

Iyer, who died on 11.12.2001 issueless. The suit was filed on 7.2.2003. In the plaint it is averred that the suit promissory note was executed in

renewal of earlier promissory note promising to repay the sum of Rs. 5,00,000/-

together with interest at 14.4% which was borrowed to meet the cost of construction of the defendant's building and further stating that the defendant paid interest upto 15.12.2001.

3. The respondent/defendant filed I.A. No. 7474 of 2003 under Order XXXVII, Rule 4 C.P.C. seeking leave to defend the suit stating that he did not borrow any amount from the plaintiff and admitting that the plaintiff is the brother's son of late N.R.Mani Iyer, the first payee named in the suit promissory note and the plaintiff has no right in any of the properties of late N.R.Mani Iyer including the suit promissory note and the suit is bad for non-joinder of necessary parties, viz., the legal representatives of the deceased N.R.Mani Iyer. It is further stated that the suit promissory note dated 28.2.2001 is not supported by consideration and in any event, the plaintiff alone cannot maintain the suit, since the suit promissory note is a joint and several promissory note. It is also stated that the late N.R.Mani Iyer has taken in adoption one Mr. D. Sathyanarayanan, who has claimed the amount due on the suit promissory note through his counsel on 27.6.2002. Therefore, on this ground, the defendant has sought leave to defend the suit.

4. The above petition was opposed in the counter that on execution of the suit promissory note, the earlier promissory note was returned to the defendant and further claiming that the plaintiff is one of the promisees in the suit promissory note and as such, the plaintiff is entitled to recover the amount due on the suit promissory note, since the other promisee is not alive and there are no legal representatives. It is further stated that the petition is filed only to delay the proceedings. It is also stated that in the earlier correspondence, the defendant has admitted the borrowing.

Therefore, there are no triable issues, inasmuch as the amount borrowed under the suit promissory note and the execution of the same are admitted. In any event, a direction may be issued to the defendant to deposit the entire suit claim to the credit of the suit in a nationalised bank.

5. The trial Court, though stated that the defendant admitted the execution of the suit promissory note on receiving the amount from the plaintiff and from N.R.Mani Iyer, however, considering Ex.P-1, lawyer notice dated 21.2.2002, caused by one Sathyanarayanan to the plaintiff; Ex.P-2, lawyer notice dated 27.6.2002, caused by the said Sathyanarayanan to the

defendant and also Ex.P-3 reply notice dated 6.7.2002 of the

defendant and inasmuch as the said Sathyanarayanan, who claimed the amount due on the suit promissory note as the legal heir of the deceased

N.R.Mani Iyer, is not made as a party to the suit and in that context, only in the trial of the suit, the issue can be settled as to whether the plaintiff

alone is entitled to the suit claim, allowed the petition granting leave to defend the suit without imposing any condition and also absolutely observed

that the said Sathyanarayanan is to be made as a party to the suit. The order is challenged in this revision.

6. Heard the learned counsel for the revision petitioner and the learned counsel for the respondent.

7. Learned counsel for the revision petitioner argued that inasmuch as the execution of the suit promissory note after borrowing the amount from

the plaintiff and N.R.Mani Iyer has been admitted and since the other promisee N.R.Mani Iyer died on 11.12.2001 issueless, the

respondent/defendant is not entitled leave to defend the suit. The learned counsel further submitted by referring Ex.R-2 dated 8.3.2002, the letter

of the defendant to the counsel for Sathyanarayanan, copy of the same has been marked to the revision petitioner, the averment made in the order

of the trial Court to implead Sathyanarayanan as a party to the suit is improper. It is further argued that in the Will executed by the deceased

N.R.Mani Iyer, there is denial of adoption of Sathyanarayanan and hence, the leave granted by the trial Court to defend the suit is incorrect and

especially, without imposing any condition for depositing the suit claim, despite the fact, it is stated in Ex.R-2 that the defendant has decided to set

apart an investment with a nationalised bank an amount equivalent to his dues to late Mani Iyer. Therefore, according to the learned counsel for the

revision petitioner/plaintiff, the plaintiff, who is one of the promisees, is entitled to recover the suit claim. In support of this contention, the learned

counsel relied on the decision in Ammalammal and Others Vs. Gnanammal and Others, , wherein, following the earlier judgment of this Court in

Mannava Annapurnamma, legal representative of Mannava Chelamarazu (deceased) Vs. Uppala Akkayya and Others, , it is held by a Division

Bench of this Court thus:-

A payment to one of the payees under a promissory note will have the effect of

discharging the debtor from his liability under the promissory note, notwithstanding that one of the co-promisees had died.

The learned counsel also submitted that till date no suit has been filed by the said Sathyanarayanan claiming that he is also entitled to the amount due on the promissory note as the legal representative of the deceased N.R. Mani Iyer.

8. The learned counsel for the respondent/defendant strenuously argued that inasmuch as one Sathyanarayanan claiming that he is a legal representative of the deceased N.R. Mani Iyer, caused lawyer notice to the plaintiff as well as the defendant that he is also entitled to the amount due on the suit promissory note as the legal representative of one of the promisees N.R. Mani Iyer, the said Sathyanarayanan is necessary party to the suit and as such, the defendant has got valid defence in the suit and therefore, the order of the trial Court in granting leave to defend the suit without imposing conditions does not call for any interference.

9. During enquiry in I.A. No. 7474 of 2003 before the trial Court, Exs.P-1 to P-3 on the side of the defendant and Exs.R-1 and R-2 on the side of the plaintiff have been marked. In the lawyer notices Ex.P-1 dated 21.2.2002 and Ex.P-2 dated caused by one Sathyanarayanan, it is stated that as the adopted son of the deceased N.R. Mani Iyer, one of the two promisees under the suit promissory note, Sathyanarayanan is entitled to the amount due on the suit promissory note. Though in the said lawyer notice caused under Ex.P-2, it is stated that he has got sufficient documents in support of his claim, no suit has been filed to recover the amount due on the suit promissory note by the said Sathyanarayanan as an adopted son of the deceased N.R. Mani Iyer, who is one of the promisees under the suit promissory note. The defendant replied to the notice Ex.P-2 under Ex.P-3 dated 6.7.2002 informing the said Sathyanarayanan to obtain the original promissory note executed by the defendant in favour of the deceased N.R. Mani Iyer, duly discharged by all the legal heirs. In the said notice Ex.P-3, it is also mentioned that the plaintiff, one of the nephews of late Mani Iyer had obtained a Will dated 14.3.2001 in which the late Mani Iyer has largely dealt about the swekaram against the said Sathyanarayanan claiming himself as the adopted son of the said N.R. Mani Iyer. It is also stated in the said reply notice Ex.P-3 that the defendant

has earmarked the amount in a nationalised bank and he is prepared to settle the amount.

10. The plaintiff has marked the original suit promissory note Ex.R-1 dated 28.2.2001, as per which, it is seen that the defendant executed the suit

promissory note to the deceased N.R.Mani Iyer and to the plaintiff for Rs. 5,00,000/- agreeing to repay the same with interest at 14.4% per

annum and the amount was borrowed to meet out the cost of construction of the building of the defendant. Therefore, it is clear that the plaintiff

and also the deceased Mani Iyer are the promisees and as such, the plaintiff is also entitled to the amount advanced on the suit promissory note to

the defendant as one of the two promisees.

11. In the letter Ex.R-2 dated 8.3.2002, it is stated by the defendant that there is no denial of his liability to late N.R.Mani Iyer whereas he is facing

claim from Sathyanarayanan and also from nephew of late N.R.Mani Iyer, viz., the plaintiff herein and it is further stated that though the late Mani

Iyer only advanced him in 1998, for the reasons of convenience and period of limitations, as requested by late Mani Iyer, he executed the suit

promissory note on 28.2.2001 including the plaintiff as one of the promisees. It is also stated that there is a Will and the Will speaks only about

the denial of adoption of Sathyanarayanan by late N.R.Mani Iyer. The defendant has also requested the said Sathyanarayanan to furnish all the

records and succession certificate and further stated that he has decided to set apart an investment with the nationalised bank an amount equivalent

to his dues to late Mani Iyer and for payment of the same to the correct legal heir.

12. The plaintiff has produced and marked the suit promissory note as Ex.R-1. The execution of the suit promissory note by the defendant in

favour of N.R.Mani Iyer and also in favour of the plaintiff, though it is claimed that it was executed including the name of the plaintiff also at the

request of the late N.R. Mani Iyer, is not disputed. Therefore, it is clear that the plaintiff is entitled to recover the amount due on the suit promissory

note as one of promisee as held by a Division Bench of this Court in Ammalammal and Others Vs. Gnanammal and Others, . However, since it is

claimed that no amount was received by the defendant from the plaintiff and there is also another claim in respect of the amount due on the suit

promissory note by one Sathyanarayanan and inasmuch as the defendant has made his stand clearly that he has decided to set apart an investment

to the nationalised bank an amount equivalent to the dues payable by him as early as on 8.3.2002 under Ex.R-2, it will be just and proper, if the

defendant is granted leave to defend the suit by imposing conditions and to that extent the order of the trial Court is to be modified.

13. In the result, this Civil Revision Petition is partly allowed. No costs. The order dated 20.6.2003 in I.A. No. 7474 of 2003 in O.S. No. 813 of

2003 by the III Additional Judge, City Civil Court, Chennai, is modified permitting the defendant leave to defend the suit on his depositing the

entire suit claim in the III Additional Court, City Civil Court, Chennai, to the credit of the suit O.S. No. 813 of 2003 by June, 2005, failing which

the petition I.A. No. 7474 of 2003 shall stand dismissed automatically. Consequently, the petition C.M.P. No. 21718 of 2003 is closed.