

(1950) 12 MAD CK 0012

In the Madras High Court

Case No : Civil Revision Petition No. 1618 of 1949

Mariyala Sambayya

APPELLANT

Vs

Narala Bala Subba Reddi and Another

RESPONDENT

Date of Decision : 07-12-1950

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 88

Citation : AIR 1952 Mad 564 : (1951) 1 MLJ 353

Hon'ble Judges : Basheer Ahmed Sayeed, J

Bench : Single Bench

Advocate : N. Subramaniam, for the Appellant; W. Kothandaramayya, for the Respondent

Final Decision : Allowed

Judgement

Basheer Ahmed Sayeed, J.—The petitioner has preferred this revision petition against the order of the learned District Munsif overruling his

objection to the inter-pleader suit filed by the 1st respondent in the revision. The suit filed by the petitioner was one for recovery of a sum of Rs.

600 due under a pronote executed by the 1st respondent in favour of Garudamma and transferred to him. In the written statement filed by the

respondent to that suit by the petitioner he pleaded "inter alia" that the original promisee, Garudamma was not in law entitled to transfer the

pronote in question and that the adopted son of Garudamma was entitled to the amount and further that he had already paid Rs. 200 on behalf of

the pronote amount to Garudamma in the presence of the petitioner himself, who is no other than the maternal uncle of the original promisee. Issues

have been framed in the original suit. After the framing of the issues, in consequence of certain notices issued by the adopted son to the respondent

claiming the amount due on the promissory note, the respondent filed an interpleader suit to which objections have been taken by the petitioner.

2. In the plaint of the inter-pleader suit the respondent has pleaded more or less the same ground as set out in the written statement filed by him to

the previous suit filed by the petitioner. Therein he raised the contention that the transfer was without legal authority that the original promisee was

only the holder of life estate, that she was not entitled to dispose of any property, that the adopted son was the person properly entitled to claim

the amount, and that he had discharged the pronote in part payment of a sum of Rs. 200 during the lifetime of the original promisee.

3. The question now is whether this inter pleader suit could be entertained and whether there is sufficient justification for allowing the respondent

to file the suit. This suit is obviously filed u/s 88 of the Civil P. C. Mr. Neti Subramanjam the learned counsel for the petitioner has invited my

attention to the decision reported in "Hari Karmarkar v. J. A. Robin". 4 Rang 465, which is more or less on facts similar to those contained in the

present petition. In that decision it has been held that if the plaintiff in the inter-pleader suit was found to have any interest in the subject-matter of

the suit or that if he was found to have colluded with one of the claimants, then the right to file an inter-pleader suit could not be availed of by him.

On the facts of the present case it is evident both from the written statement filed by the 1st respondent as also the plaint filed by him in the inter-

pleader suit that he has sufficient interest in seeing that the claim of the petitioner is defeated. The contents of the written statement as well as the

plaint would point out only to that fact. Besides there is also ample evidence to show that the 1st respondent is in collusion with one of the

claimants, namely, the adopted son. In this view I do not think that there is enough justification for allowing the 1st respondent to file the inter

pleader suit. In this connection Mr. Subramaniam has also invited my attention to a decision in National Insurance Co. Ltd. Vs. Dharendra Nath

Banerjee and Another, . The principle laid therein is that in order to enable a party to file an inter-pleader suit the party should be in a position to

walk out of the suit with a mere claim for costs and shall not be entitled to have any other matter of contest between himself and the claimants. In

this case the fact that the 1st respondent is claiming to have paid Rs. 200 already to the original promisee and is also raising contentions which have

to be gone into at length to find out whether the transfer is valid, whether the petitioner is a holder in due course and so forth will certainly not bring

the inter-pleader suit within the scope of Section 88 of the Civil P. C. On the other hand. Mr. Kothandaramiah appearing for the respondent has

referred to a decision in "Secretary of State v. Mir Muhammad", 1 Mad H C Rule 360. I do not think the facts of that case apply to the facts in

the present case. In my view the requirements of Section 88 are not satisfied in the present case so as to enable the 1st respondent to file the inter-

pleader suit. The learned District Munsif, therefore is not right in having allowed the 1st respondent to file the suit. The order of the lower Court is

set aside. This revision petition is, therefore, allowed with costs.