

(1933) 11 MAD CK 0040
In the Madras High Court

Poturaju Seshayya and Others

APPELLANT

Vs

Pillai Sanjivarayudu

RESPONDENT

Date of Decision : 07-11-1933

Acts Referred:

Citation : AIR 1934 Mad 350 : 150 Ind. Cas. 885 : (1934) 39 LW 579

Hon'ble Judges : Cornish, J

Bench : Division Bench

Judgement

Cornish, J.—The petitioners in Civil Revision Petitions 1215 and 1216 were defendants 1 to 4 in two suits brought by the plaintiff-respondent on two promissory notes signed by one Venkataratnam. The notes were specially endorsed by the payee to the plaintiff. Accordingly, the plaintiff is the endorsee within the definition in Section 16(1), Negotiable Instruments Act. The petitioners are the paternal uncles and coparceners of Venkataratnam, who was the manager of the family business carried on by them. Venkataratnam died before suit. A decree has been made against the petitioners upon the ground that the money borrowed on the notes was used for the petitioners' family business. The Sub-Judge says:

S.C.S. No. 668/28 is instituted on a pronote executed by the deceased Venkataratnam himself for amount borrowed for the trade carried on by him for the benefit of the joint family S.O.S. No. 669/28 is instituted for the recovery of Rs. 980-7-3 due on a pronote executed by the deceased Venkataratnam as manager of the joint family consisting of himself and defendants 1 to 4 and by defendants 5 to 8.

2. The language of the Sub-Judge suggests that it is apparent on the notes that Venkataratnam executed them in his capacity of manager. The note in S.C. 668 is signed by Venkataratnam in his own name. It is stated to be for a sum of Rs. 100 "borrowed for my necessity for the purpose of trading." The note in S.C. 669 is signed by Venkataratnam and by defendants 5 to 8 who were partners with him in a business distinct from the business carried on by the petitioners' family.

In the body of the note it is stated that it is the joint note of the five signatories. In neither of the notes is there any indication that Venkataratnam executed it as manager or on behalf of the family business of the petitioners. It is a fundamental principle of the law merchant that no person can be sued on a bill of exchange, or promissory note unless he has appeared as a party to it by name or designation on the face of the instrument. This principle has been affirmed by their Lordships in *Sadusuk Janki Das v. Krishnan Pershad* AIR 1918 P.C. 146. It follows that Venkataratnam having died the only person who could be sued and made liable on the note in his place would be his legal representative. But it has been established in this High Court by the decision in *Krishna Ayyar v. Krishnaswami Iyer* (1900) 23 Mad. 597 that in a suit against the manager of a joint Hindu family on a promissory-note executed by him in his own name the coparceners may be joined as defendants and will be held liable to the extent of their shares in the joint property if the plaint alleges and there is proof that the money raised by the manager on the note was for a family purpose. The plaintiff in, *Krishna Ayyar v. Krishnaswami Ayyar* (1900) 23 Mad. 597, was the payee of the note.

3. The ruling has been applied in *Nataraja Naiaken v. Ayyaswami Pillai* AIR 1917 Mad. 61 a suit on the note by the endorsee against the maker and his coparceners. In *Krishnanand Nath Khare v. Raja Ram Singh* AIR 1922 All. 116, which was likewise a suit by an endorsee, the learned Judges appear to have favoured the view that the family might be regarded as the maker of a note signed by its managing member. It may be observed that this view was unsuccessfully advanced in the argument in *Krishna Ayyar v. Krishnaswami Ayyar* (1900) 23 Mad. 597, and, with respect I think that the proposition cannot be maintained. The liability of the manager-maker is on the note; the liability of the co-parceners is the liability imposed on them by the Hindu law for debts justifiably incurred on behalf of the family. Although the liability of the coparceners can be enforced in the suit upon the note against the manager, it stands to reason that the liability of the co-parceners does not arise until the manager's liability on the note has been established. It would not arise if the manager successfully pleaded that there was no consideration for the note; and it would not arise (except in the case of the co-parceners being the sons of the maker) if it should be found that the note was executed for the manager's private benefit. The case here, however, is somewhat different to the cases to which reference has been made. The maker of the note died before suit. It is admitted by Mr. Suryanarayana, the learned advocate for the plaintiff, that the suits are on the notes. There is no doubt that plaintiff had not a right of action against Venkata-ratnam on the loan for which the notes were given because there is no privity of contract between endorsee and maker in respect of the debt : *Lewin v. Edwards* 9 M. & W. 720. Moreover, an endorsement, while it transfers the property in the note to the endorsee as the new holder, does not operate as an assignment to the endorsee of the debt due by the maker to the original payee. *Seetkarama Chetty v. Seshiah Chetty* (1912) 17 I.C. 417,

Shanmuganatha Chettiar v. Srinivasa Ayyar AIR 1917 Mad. 108, (per K. Srinivasa Ayyangar. J.;;) and Ram Jas v. Shahabuddin, AIR 1927 Lah. 89. I think that the plaintiff could not have against the petitioners a right of action on the debt which he had not got against Venkataratnam. The liability of the co-parceners is described by Shepherd, J., in Krishna Ayyar v. Krishnaswami Ayyar (1900) 23 Mad. 597 as "external" to the obligation on the note, which I take to mean as not independent of the manager's liability on the note. The plaintiff as endorsee, had no right of action against Venkataratnam except upon the notes. In my judgment, if the maker of a promissory note has died before suit the only person who can be sued upon the note is his legal representative. In such a suit if the surviving co-parceners are the legal representatives they will be liable on the note; if they are not the legal representatives, but have been impleaded with the legal representative, they will be liable upon the Hindu law liability if the liability of the legal representative upon the note is established. There is no suggestion in the present case that the petitioners were Venkataratnam's legal representatives or that they or anybody else had been sued in that character. The suits were not maintainable against them and ought to have been dismissed. Civil Revision Petitions 1215 and 1216 are accordingly allowed.

4. With regard to plaintiff's petition Civil Revision Petition 1709, I think that the Sub-Judge's decision is manifestly right. Defendant in Section C. 651 was the maker of the suit-note and he is a stranger to Venkataratnam's family. Venkataratnam gave a letter to the payee undertaking to pay the amount borrowed by defendant 1. This letter was, I think, a guarantee by Venkataratnam of the loan made by the payee to defendant 1. The letter was not assigned by the payee to the plaintiff when he endorsed the note to him. I doubt if it was assignable. At any rate, the guarantee being personal to the payee, he would be the only person to sue upon it : Sheers v. Thimbleby & Sons (1897) 76 L.T. 79. The plaintiff had no right of action against Venkataratnam on the note. The Civil Revision Petition is dismissed. The petitioners will have their costs in both the Courts in respect of Civil Revision Petitions 1215 and 1216, and their costs of the petition in No. 1709; there will be one set of costs.