
(1960) 07 AP CK 0003
In the Andhra Pradesh High Court
Case No : Appeal No. 496 of 1956

Punyamurthy Venkata Satyanarayana Shetti	APPELLANT
Vs	
Gunda Subbaiah Chetty and Others	RESPONDENT

Date of Decision : 14-07-1960

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 10, 78, 8, 81, 82

Citation : AIR 1961 AP 301

Hon'ble Judges : S. Qamar Hassan, J; Bhimasankaram, J

Bench : Division Bench

Advocate : N.V.B. Shanker Rao, for Rao, Chowdari and P. Seshapani, for the Appellant; K. Venkatramaiah and A. Siva Rao, for the Respondent

Final Decision : Dismissed

Judgement

Bhimasankaram, J.—The appellant made a promissory note on 15-12-1953 in favour of the 1st respondent. When a demand was made by the latter for payment of the amount due thereon he stated that the money had been paid to the 2nd respondent who is the 1st respondent's adopted son and pleaded discharge of his obligation thereunder; Thereupon, the 1st respondent instituted the suit out of which this appeal arises, impleading the appellant as the 1st defendant and his (the plaintiff's) adopted son as the 2nd. The principal defence raised to the suit is to be found in paragraph 4 of the 1st defendant's written statement and is as follows :

"As regards the amount due on the said suit promissory note the 2nd defendant made repeated demands on behalf of the plaintiff. When the 2nd defendant made such "demands, the defendant paid the amount due under the promissory note to the 2nd defendant, on 23-2-1954 2nd defendant received the said amount and gave the receipt filed hereto. As the plaintiff and the 2nd defendant are members of a joint family the 2nd defendant himself lent the amount under the promissory note on behalf of the plaintiff and obtained the suit promissory note in favour of the plaintiff and the 2nd defendant himself made

repeated demands on behalf of the plaintiff For these reasons, the 2nd defendant was believed and the defendant paid bona fide. When I asked that the suit promissory note may be returned, he said that it was in the village and it will be sent later on The defendant need not pay anything to the plaintiff."

2. The learned District Judge held that the plea so raised is not a good plea in law. The question in the present appeal is whether his view is right. In our opinion, it is and we shall proceed to give our reasons.

3. Now, it is enacted by Section 78 of the Negotiable Instruments Act that "Subject to the provisions of Section 82, Clause (c) to which we shall presently refer payment of the amount due on a promissory note must, in order to discharge the maker or acceptor, be made to the holder of the instrument." u/s 81, any person liable to pay, and called upon by the holder thereof to pay, the amount due on a promissory note, is before payment entitled to have it shown, and is on payment entitled to have it delivered up, to him.

Section 82 deals with the mode of discharge of negotiable instruments in general and the effect of Clause (c) of that section is that a negotiable instrument is discharged from liability to all parties thereto, If the instrument is payable to Nearer, Or his been endorsed in blank and its maker, acceptor or indorser makes payment in due course of the amount due thereon. It is also necessary to refer to the definition of "holder" which is contained in Section 8 and is as follows;

"The "holder" of a promissory note, bill of exchange or cheque means any person entitled in his own name to the possession thereof and to receive or recover the amount due thereon from the parties thereto."

(We need not refer now to the other paragraph of that definition)

Applying this definition to the facts of the present case, it is clear that the plaintiff the payee under the suit note is the holder; he is the person "entitled in his own name to the possession thereof and to receive or recover the amount due thereon" from the defendant. The 2nd respondent was clearly not the holder; he was not in possession at all of the note and if the appellant exercised his right u/s 81, he could not have even shown it to him before payment, much less deliver it to him on payment. The payment, therefore to the 2nd respondent was not a payment to the holder falling u/s 78.

4. It is urged however that payment made to a member of a joint Hindu family when a promissory note is executed in favour of its manager, would operate by way of discharge of the promissory note. This contention is clearly not supported by the language of the Negotiable Instruments Act, So far as a promissory note payable to the order of a certain person (such as the instrument before us) is concerned, the person entitled in his own name to the possession thereof is either the payee or the indorsee.

The Act is not concerned with persons who may be beneficially interested in the amount due on a negotiable instrument. As pointed out, for instance, in Subba

Narayana Vathiyar v. Ramaswamt Aiyar , ILR 30 Mad 88 it is not open to the maker of the negotiable instrument to, plead that the payee or the indorsee is a mere benamidar. Nor can tie escape liability by pleading payment to the alleged real owner. Now, therefore, although the 2nd defendant is a member of a joint Hindu family along with the 1st and the promissory note made in favour of the latter is really for the benefit of the family, it cannot be said that the family is the holder within the meaning of the definition.

5. Clause (c) of Section 82 does not apply because, in the first place, the suit promissory note is not payable to bearer and in the second place because it cannot be said that the payment was made in due course. "Payment in due course" is defined in Section 10, as meaning "payment in accordance with the apparent tenor of the instrument in good faith and without negligence to any person in possession thereof " under specified circumstances. The 2nd defendant as already Stated, was not in possession of the promissory note.

6. The plea of the appellant, therefore, is not a good one in law and the suit was rightly decreed.

7. This appeal, therefore, fails and is dismissed with costs.