

(1925) 10 MAD CK 0037
In the Madras High Court

Rajah Ingunti Venkatarayanim Varu

APPELLANT

Vs

W. H. Nurse

RESPONDENT

Date of Decision : 20-10-1925

Acts Referred:

Citation : AIR 1927 Mad 34 : (1926) ILR (Mad) 815

Judgement

1. This reference has been necessitated by the judgment of Devadoss, J., in C. S. No. 877 of 1923 sitting on the Original Side of the High Court

wherein the learned Judge held that under Order 6 (a) of the High Court Rules of Practice a person suing on a negotiable instrument had an option

to bring his suit in the ordinary form or under the summary procedure as he liked, the rules in the order, though in form peremptory, being in reality

only directory and not mandatory; and that a suit by or against the legal representative of a party to a negotiable instrument and not by or against a

party himself should be brought as an ordinary suit and not as a summary suit.

2. On both the above points it seems to us with all respect that the learned Judge's views cannot be supported. Rule 62 of Order 6 (a) says that

the

procedure prescribed by Order 37 of the First Schedule of the Code of Civil Procedure, 1908 shall be followed in all suits on negotiable

instruments with the modifications mentioned in this order.

3. Order 37, Civil Procedure Code, no doubt gives an option to bring such a suit either in the summary form or in the ordinary form; for Rule 2 (1)

thereof says:

All suits upon bills of exchange, hundis or promissory notes may, in case the plaintiff desires to proceed hereunder, be instituted, etc.

4. Now it is in this very rule that Order 6 (a) has introduced a modification; for Rule 63 (a) thereof which corresponds to it has deleted the words

may, in case the plaintiff desires to proceed hereunder,"" which are the words giving the option and has substituted for them the word ""shall."" There

can be no clearer indication. than that of the object of the framers of the rules to take away the option and substitute for it a rigid rule requiring all

suits on negotiable instruments to be brought in a summary manner. The form prescribed for the plaint under the rule, namely, Form No. 4 in

Appendix B, Civil Procedure Code, is a form adapted only for summary suits and not for ordinary suits. The intention underlying the High Court's

Rule was to expedite the disposal of all suits on negotiable instruments and the rule has had a salutary effect in that direction. The very object of the

rule will be defeated if we are to hold that in spite of its language there is still an option left to a plaintiff suing on a negotiable instrument to bring his

suit in the ordinary form. We hold there is no such option..

5. In this connexion it may be mentioned that it was feebly suggested that, on the view we are taking, the rule would have to be treated as ultra

vires because it is said that it takes away the ordinary right of suit from a litigant suing upon a negotiable instrument. That may be the effect of the

rule, but the High Court which framed the rule has full powers to frame rules for regulating its procedure under Clause 37 of the Letters--Patent

under which this rule was framed; and the rule is purely one of procedure and does not affect any substantive rights of parties. This objection is

therefore groundless.

6. The last question is whether suits on negotiable instruments brought, not by or against parties to it but by or against their legal representatives are

excluded from the scope of Order 6 (a). On this point there is no difference between the rule under the CPC and the one in Order 6 (a). They

both refer to all suits on bills of exchange, hundis or promissory notes; there is no limitation that the suit should be by or against parties to the

instrument. So long as the suit can be properly described as a suit on a bill of exchange, hundiS or promissory note, it can be, and in the High

Court it must be, brought in the summary form. A suit on a negotiable instrument by or against a legal representative is still a suit on the instrument

and will fall under Order 6 (a). It is only if any other cause of action is added not

based on the instrument that the suit may fall outside the scope of the order; if the liability sought to be enforced is solely under the instrument it would not matter whether it is sought to be enforced against a party to the instrument or a legal representative of such a party such as an executor; or administrator, or heir of his. The English practice is in accordance with this view; there does not seem to be any proper reason to adopt a different rule here. Undoubtedly where summary suits are brought against executors, administrators, or other legal representatives who were not parties to the instrument, the rule as to granting leave to defendants will be liberally interpreted as the learned Judge observes. In such an action unconditional leave to defend will generally be given if the defendant has any reasonable ground for asking that the claim should be strictly proved. That removes any hardship that a legal representative defendant may be put to by the adoption of the summary procedure.

7. It is argued that summary procedure is not available where apart from the note sued on, other facts have to be proved to make the defendant liable as no evidence is taken in such suits, and *Remfry v. Shillingford* [1876] 1 Cal. 130 and *Bhupati Ram v. Sourendra Mohun Tagore* [1903] 30 Cal. 446 are cited in support of the contention. To meet the objection raised in these cases the law has been changed under the new Code of 1908 by adding to Rule 2 (2) of Order 37 a provision which says that if leave to defend is not obtained ""the allegations in the plaint shall be deemed to be admitted"" making it unnecessary to prove them by evidence. The same rule applies under Order 6 (a), for it adopts the rules of Order 37 unless modified by itself. These decisions are therefore of no force now.

8. We hold that suits on bills of exchange hundis and promissory notes by or against legal representatives of parties can and must be brought in the High Court in the summary form.

9. The case will go back to the learned Judge on the Original Side for disposal. The costs of the reference will be costs in the cause.