

(1904) 09 MAD CK 0001
In the Madras High Court

Ramanuja Aiyangar, Minor by his Guardian and Adoptive
Mother Seshammal

APPELLANT

Vs

Sadagopa Aiyangar

RESPONDENT

Date of Decision : 14-09-1904

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 32

Citation : (1905) 15 MLJ 249

Judgement

1. In this case a promissory note was executed by the defendant to one Seshammal in September 1897.
2. On the 6th August 1903, the present suit was brought by the plaintiff a minor and the adopted son of Seshammal by his next friend Seshammal (his adoptive mother) for the amount of it.
3. The Munsif held that as the note was obtained for the minor and with his money the suit was not barred and the minor might sue and gave a decree for the plaintiff.
4. On a revision petition to this Court the decree was set aside as the minor was not the holder or payee of the promissory note and he could not be put forward as such to save the bar of limitation which had already run against the payee. This is an appeal from that decision.
5. In an unreported case in this Court C.R.P. 578 of 1895 7 L.J.R. 64 it was held that the payee of a note being only a benamidar cannot sue in his own name.
6. In February 1897 it was held (Gurumurthi v. Sivayya ILR 21 Mad. 391) that an infant could sue by a next friend on a note not endorsed to him by the payee his mother and guardian when it was alleged to have been made and delivered on account of his estate. In April 1897, it was held

(Bojjamma v. Venkataramayya ILR 21 Mad. 31 that the holder and payee of a note even though a benamidar could sue on the note and in that

case the learned Judges say in their judgment: ""In the case of negotiable instruments especially it would be most mischievous in our opinion to hold

that a holder and payee of an instrument may be put to proof whether the money advanced was his own."" We can find no authority in favor of the

plea now suggested. We entirely disagree with the unreported decision in Ganapathy, Naiker v. Saminatha Pillay C.R.P. No. 578 of 1896 See 7

M.L.J.R. 64. We think it is clear that under the Negotiable Instruments Act (Act 26 of 1831) the only person entitled to sue is the payee or holder.

7. By Section 32, the maker of a promissory note is required to pay ""according to the apparent tenor of the note to the holder"" and by Section 78

to discharge the maker, he must pay the holder of the note. The holder by Section 8 means "" the person entitled in his own name to the possession

thereof and to" receive and recover the amount due thereon from the parties thereto."".

8. A benamidar or trustee who takes a note in his own name is the person entitled in his own name to the possession thereof and not the cestui que

trust or person for whom he holds the note. He is, therefore, in our opinion, the proper person to sue upon it.

9. In this case the note was taken by the mother in her own name and she undoubtedly could at any time have sued upon it during the currency of

the Statute of Limitations and we are of opinion that the infant son was not the holder or payee or a person entitled at any time to sue upon it.

10. We, therefore, hold that the suit was rightly dismissed and dismiss this Letters Patent Appeal with costs.