

(1925) 12 BOM CK 0010
In the Bombay High Court

Ranchhod Raghunath Patel and Others	APPELLANT
Vs	
Ravjibhai Nathabhai Patel	RESPONDENT

Date of Decision : 07-12-1925

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 11
Negotiable Instruments Act, 1881 (NI) — Section 4

Citation : AIR 1926 Bom 357

Hon'ble Judges : Macleod, C.J.;Coyajee, J

Bench : Full Bench

Judgement

Macleod, C.J.—The plaintiffs alleged in the plaint that the defendant had borrowed Rs. 2,000 from Plaintiff No. 1 as guardian of Plaintiff No. 2 in Aso 1974, and the defendant in respect of this liability had executed a promissory note in favour of Plaintiff No. 1 in Uttarsanda on October 10, 1918 (the 5th of Aso Sud, 1974). A certain amount had been paid in 1920, and after giving credit to defendant for what had been paid, the plaintiffs claimed a balance.

2. The document signed by the defendant appears to us to come within the definition of a promissory note u/s 4 of the Negotiable Instruments Act. It was conceded that the Plaintiff No. 1 by adding the words "the guardian of Patel Shanabhai Ashabhai a minor" made a material alteration which prevented him from suing on the note. The suit was dismissed on this ground by the trial Judge, who at the same time found on the issue of limitation in favour of the plaintiffs. The appeal was summarily dismissed by the District Judge, who said:

Two questions are raised : one is whether the alteration is not material, and secondly, whether the appellants can be allowed to sue on the original consideration, ignoring the altered note. The appellant fails on both these contentions and I dismiss this appeal under Order 41, Rule 11, Civil Procedure Code. The appellant is correct in his argument that the promissory note in suit is not a negotiable instrument. The case is not governed by any section of the Negotiable Instruments Act, but by general principles of law, and those general

principles of law are nowhere more definitely laid down than in the case quoted by the lower Court : Gour Chandra Das v. Prasanna Kumar Chandra [1906] 33 Cal. 812.

3. I do not quite understand what the Judge means by saying that this document is not negotiable instrument. He still calls it a promissory note thereafter in his judgment. But admitting that the document cannot be sued on, the question is, whether sufficient is left in the plaint to found a suit. It was held in Krishnaji v. Rajmal [1900] 24 Bom. 360 that where there is an independent admission of a loan, the holder of a hundi, bill or note, which is defective and inadmissible in evidence for want of a stamp, may still sue, on the consideration, the person to whom he gave it, though he cannot use the bill in support of his suit.

4. In referring to the various decisions on the question, the learned Chief Justice agreed that (p. 366)

the general principle seems well settled that the existence of an unstamped promissory note does not prevent the lender of money from recovering on the original consideration, if the pleadings are properly framed for that purpose.

5. Reference was made to Hira Lal v. Datadin [1882] 4 All. 135 and Straight J. therein said (p. 137 : of 4 All.);

The existence of the promissory note does not debar the plaintiff from resorting to his original consideration.

6. If, then, the promissory note had been merely a piece of evidence in support of the plaintiff's suit, and owing to the fact that the plaintiff could not have recourse to that piece of evidence, the plaintiff had to prove his case from other evidence, I do not think that Section 91 was a bar to the plaintiff succeeding in his suit, if he could show, without any reference to that document, that he advanced Rs. 2,000 to the defendant, and that his claim to recover the money was not barred by the provisions of the Indian Limitation Act.

7. But another suggestion has been made by the respondent before us, namely, that as the promissory note, instead of being merely inadmissible in evidence on account of the defective stamp, had been materially altered, the plaintiff is debarred from resorting to his original consideration. That is a question which does not arise in the present appeal, but it can be argued before the District Judge.

8. We must allow the appeal, and refer the case back to the District Judge to admit the appeal. The appellants will be entitled to their costs of the appeal.

Coyajee, J.

9. I agree.