

(2012) 11 MAD CK 0263
In the Madras High Court
Case No : C.R.P. (NPD) (MD) No. 2403 of 2012

Sundar

APPELLANT

Vs

Ramdass, Vijayalakshmi and District Collector,
Ramanathapuram

RESPONDENT

Date of Decision : 15-11-2012

Acts Referred:

Contract Act, 1872 — Section 23

Insurance Act, 1938 — Section 38

Transfer of Property Act, 1882 — Section 130, 3, 6, 6(e)

Citation : AIR 2013 Mad 133 : (2013) 1 LW 184

Hon'ble Judges : G. Rajasuria, J

Bench : Single Bench

Advocate : V. Sathish, for the Appellant;

Final Decision : Dismissed

Judgement

G. Rajasuria, J.—Heard the learned counsel for the petitioner, who would echo the cri de coeur of his client to the effect that the Pauper O.P. was filed before the Subordinate Court, Paramakudi to declare the petitioner as pauper and to exempt him from payment of Court fee for Rs. 8,00,000/-, so as to enable him to recover Rs. 8,00,000/- from the respondents as compensation. However, even before numbering the Pauper O.P., the Lower Court rejected the Pauper O.P., on the ground that the said Pauper O.P. was not maintainable. Being aggrieved by and dissatisfied with the order passed by the Lower Court, the petitioner has filed this Civil Revision Petition on various grounds. Perused the records. Heard the learned counsel for the petitioner. A mere running of the eye over the averments as found set out in the Pauper O.P., one could discern and infer that the case of the petitioner is that an Advocate has assigned his right to the petitioner to sue the defendants and claim compensation for they having allegedly defamed him. The Lower Court dismissed the said Pauper O.P., on the ground that such an alleged right to sue for damages on the part of the said Advocate cannot be assigned in favour of the petitioner.

2. At this juncture, I would like to extract hereunder Section 3 of the Transfer of Property Act, 1882 which contains the definition of actionable claim and also Sections 6 and 130 of the Transfer of Property Act, 1882:

Section 3:

"actionable claim" means a claim to any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of movable property, or to any beneficial interest in movable property not in the possession, either actual or constructive, of the claimant, which the Civil Courts recognise as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent;

Section 6:

6. What may be transferred.- Property of any kind may be transferred, except as otherwise provided by this Act or by any other law for the time being in force,-

(a) The chance of an heir-apparent succeeding to an estate, the chance of a relation obtaining a legacy on the death of a kinsman, or any other mere possibility of a like nature, cannot be transferred;

(b) A mere right of re-entry for breach of a condition subsequent cannot be transferred to any one except the owner of the property affected thereby;

(c) An easement cannot be transferred apart from the dominant heritage;

(d) All interest in property restricted in its enjoyment to the owner personally cannot be transferred by him;

(dd) A right to future maintenance, in whatsoever manner arising, secured or determined, cannot be transferred;

(e) A mere right to sue cannot be transferred;

(f) A public office cannot be transferred, nor can the salary of a public officer, whether before or after it has become payable;

(g) Stipends allowed to military, naval, air-force and civil pensioners of the Government and political pensions cannot be transferred;

(h) No transfer can be made (1) in so far as it is opposed to the nature of the interest affected thereby, or (2) for an unlawful object or consideration within the meaning of section 23 of the Indian Contract Act, 1872 (9 of 1872), or (3) to a person legally disqualified to be transferee;

(i) Nothing in this section shall be deemed to authorise a tenant having an untransferable right of occupancy, the farmer of an estate in respect of which default has been made in paying revenue, or the lessee of an estate, under the management of a Court of Wards, to assign his interest as such tenant, farmer or lessee.

(emphasis supplied)

Section 130:

130. Transfer of actionable claim.- (1) The transfer of an actionable claim whether with or without consideration shall be effected only by the execution of an instrument in writing signed by the transferor or his duly authorised agent, shall be complete and effectual upon the execution of such instruments, and thereupon all the rights and remedies of the transferor, whether by way of damages or otherwise, shall vest in the transferee, whether such notice of the transfer as is hereinafter provided by given or not:

Provided that every dealing with the debt or other actionable claim by the debtor or other person from or against whom the transferor would, but for such instrument of transfer as aforesaid, have been entitled to recover or enforce such debt or other actionable claim, shall (save where the debtor or other person is a party to the transfer or has received express notice thereof as hereinafter provided) be valid as against such transfer.

(2) The transferee of an actionable claim may, upon the execution of such instrument of transfer as aforesaid, sue or institute proceedings for the same in his own name without obtaining the transferor's consent to such suit or proceeding and without making him a party thereto.

Exception.- Nothing in this section applies to the transfer of a marine or fire policy of insurance or affects the provisions of section 38 of the Insurance Act, 1938 (4 of 1938).

3. I would like to refer to certain excerpts from "Mulla, The Transfer of Property Act, Tenth Edition by G.C. Bharuka" thus:

Prior to the amending Act 2 of 1900 this clause was - "a mere right to sue/or compensation for a fraud or for harm illegally caused cannot be transferred". The amending Act of 1900 widened the clause by omitting the words other than "a mere right to sue", and at the same time restricted the definition of actionable claim (which formerly embraced all claims which a civil court recognised as affording grounds for relief) to debts and beneficial interests in movable property not in possession. The effect of this amendment was to make clear the distinction between property and a right to sue. As before the amendment, a right to sue for damages for breach of contract would have been an actionable claim, although such right was not properly not attachable as such. Again the former definition was inadequate, for it was limited to rights of suit for damages for tort. Such rights are undoubtedly not assignable; but there are other rights to sue arising out of contract which also cannot be assigned.

In England, what were called bare or naked rights of litigation were regarded not assignable at common law as they savoured of champerty and maintenance. At equity, however, each such transaction was considered on its merits, and if it was found to be tainted with champerty or maintenance it would be struck down.

However, equity would not "emulate the hysteria of the common law in smelling out maintenance where no maintenance was". It was held that the basis of S. 6(e) is this rule of English Law. The Supreme Court, in *Union of India v. Sri Sara Mills Ltd*, has held that:

Section 6(e) of the Transfer of Property Act states that a mere right to sue cannot be transferred. A bare right of action might be claims to damages for breach of contract or claims to damages for tort. An assignment of a mere right to litigation is void. An assignment of property is valid even although that property may be incapable of being received without litigation. The reason behind the rule is that a bare right of action for damages is not assignable because, the law will not recognise any transaction which may savour of maintenance or champerty. It is only when there is an interest in the subject-matter that a transaction can be saved from the imputation of maintenance. That interest must exist apart from the assignment and to that extent must be independent of it.

A Full Bench of the Andhra Pradesh High Court has, in similar words, indicated the true scope of the clause:

The basis of the exception being that (a) transaction savouring of maintenance or champerty should not be recognised, it follows that a transaction not open to the charge would be upheld. Therefore, soon an exception to the rule of a bare right of action being assignable came to be recognised. This exception provides that a right of action may be assigned if it be incidental or subsidiary to a conveyance of property. From the aforesaid historical background it is clear how s 6(e) of the Transfer of Property Act which provides that a mere right to sue cannot be transferred is associated with the exception of the bare right of action not being assignable. It is equally clear that the provision being aimed against transactions which according to English law would amount to champerty and maintenance, whenever a transaction would be free of such charge, it would be valid.

It should also be remembered that the specific rules of English law against champerty and maintenance have not been adopted in India, and English decisions on what is a naked right of action are not always a safe guide in determining cases arising under this clause.

A right to sue is personal to the party aggrieved, and there can be no assignment of a right to sue for damages for tort or for breach of contract.

4. A mere running of the eye over the aforesaid provisions of law and the excerpts would unambiguously and unequivocally highlight and spotlight the fact that mere right to sue for damages concerning defamation cannot be transferred by one person in favour of another. As such, the right is a personal one attached to the person who claims to have such right to sue for damages for defamation.

5. I would also like to reiterate that a mere reading of Section 6 of the Transfer of Property Act, 1882, more specifically, clause (e) of Section 6 of the Act. would

make the point pellucidly and palpably, obviously and axiomatically clear that a mere right to sue cannot be transferred.

6. As such, the lower Court correctly rejected the Pauper O.P at the numbering stage itself, warranting no interference in Revision. Accordingly, this Civil Revision Petition is dismissed. No costs.