

(1966) 09 AP CK 0019

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 1240 of 1965

Telkoti Ramchandraiah Gupta

APPELLANT

Vs

Firm Gandham Narayana Gupta and Sons and Another

RESPONDENT

Date of Decision : 12-09-1966

Acts Referred:

Hyderabad Paper Currency Act — Section 15
Paper Currency Act, 1910 — Section 23
Reserve Bank of India Act, 1934 — Section 31

Citation : AIR 1968 AP 325

Hon'ble Judges : Chandrasekhara Sastry, J

Bench : Single Bench

Advocate : K. Malipati Rao, for the Appellant; B.V. Subba Rayudu and N. Vasudevarao, for the Respondent

Final Decision : Dismissed

Judgement

Chandrasekhara Sastry, J. 1. O.S. No. 72 of 1964 was filed to recover money due on a dishonoured hundi executed by the defendant Telkoti Ramchandriaiah Gupta. The hundi is drawn on Sri Kothur Seethiah Gupta, Osmangunj, Hyderabad, for Rs 1,600 in favour of Sri Gandham Narayana Gupta and Sons. Gandham Narayana Gupta and Sons endorsed it in favour of the State Bank of Hyderabad which presented it to Kothur Seethiah Gupta, but it was dishonoured. So the hundi was re-transferred by the State Bank of Hyderabad to the plaintiff who filed the present suit.

2. The defendant filed I.A. No. 37 of 1965 under Order 13, Rule 3, Civil P.C., contending that the hundi is payable to the bearer and so is null and void and it was prayed that that question might be decided first. That application was opposed.

3. The lower Court held that the hundi is a valid document and overruled the objection. Hence the defendant filed the above civil revision petition.

4. Again, before me, it is contended that the hundi is one payable to bearer and, therefore, offends Section 31 of the Reserve Bank of India Act, and is void and that no decree can be passed on the basis of the hundi. To decide whether this contention is correct or not it is necessary to refer to the language of the hundi which is in Telugu and which may be translated as follows:--

"To

M.R.Ry. Kothur Seethiah Gupta,

Osman Gunj, Hyderabad. Your Telkoti Ramchandriah Gupta Varu pays respects; thereafter.

We have now executed a hundi for Rs. 1,600 payable on sight to Raja Sree Gandham Narayana Gupta and Sons, or order. Therefore, whoever brings this hundi to you his address may be enquired into and noted and payment may be endorsed on the hundi after paying the amount.

(Sd.) Telukoti Ramchandriah Gupta."

5. The argument of the learned counsel for the petitioner is that, though the hundi was drawn in favour of Gandham Narayana Gupta and Sons or order, still there is a direction in this document that the amount of the handi should be paid to whosoever might present it to the drawee. Therefore, it is contended that this hundi offends the provisions of Section 31 of the Reserve Bank of India Act which is as follows:--

"31. (1) No person (in India) other than the Bank or as expressly authorized by this Act. The Central Government shall draw, accept make or issue any bill or exchange, hundi, promissory note or engagement for the payment of money payable to bearer on demand, or borrow, owe or take up any sum or sums of money on the bills, hundis or notes payable to beaver on demand of any such person.

Provided that cheques or drafts, including hundis. payable to bearer on demand or otherwise may be drawn on a person's account with a banker, shroff or agent.

(2) (Notwithstanding anything contained in the Negotiable Instruments Act, 26 of 1881, no person (in India) other than the Bank or, as expressly authorised by this Act, the Central Government shall make or issue any promissory note expressed to be payable to the bearer of the instrument.)"

6. This section corresponds to Section 26 of the Paper Currency Act of 1910. Therefore, the learned counsel for the petitioner placed very strong reliance upon the decision in V. C. T. N. Chidambaram Chettiar v. Ayyaswami Thevan ILR 40 Mad 585 :(AIR 1917 Mad 201). where it was held that--

"A promissory note payable to a person or order or bearer is illegal and void u/s 26 of the (Indian) Paper Currency Act (2 of 1910) and a bearer cannot be given any decree for money in a suit on such a note."

In the course of the judgment Oldfield J. , one of the Judges that decided the case, observed:

"There is no doubt that u/s 26, Paper Currency Act 2 of 1910, the making of such a note as that referred to is illegal. The argument that, because it is to order or bearer in the alternative, it cannot be within the mischief of an Act, which forbids the making of notes payable to bearer, does not commend itself."

Finally, the learned Judge held that no decree can be passed on the basis of the hundi. The other learned Judge, Krishna J., referred to this argument and held that--

"It was further argued that the note in suit did not fall within Section 26 as it was a note payable not only to bearer but to a person or his order also. This addition can make no difference as the note is still a note payable to bearer on demand. See *Jetha Parkna v. Ramachandra Vithoba* (1892) ILR 16 Bom 689, the observations of Farran J., on the point. The note is, therefore, within the scope and mischief of the section and it is invalid and no suit can be maintained on it as such."

7. Next, reference is made to the decision in *H. V. Low & Co., Ltd. v. Sudhanna Kumar Chakravarti* AIR 1981 Cal 791. There also a promissory note was made payable to one Haridas Banerjee and also to bearer on demand. Rankin, C. J., held that the promissory note offended the corresponding provision of the Paper Currency Act of 1923. The decision in ILR 40 Mad 585 : (AIR 1917 Mad 201) was also referred to and followed.

8. A Full Bench of the Hyderabad High Court also took the same view in *Budhilal v. Deccan Banking Co., Ltd.* AIR 1955 Hyd 69. There the scope of Section 31 of the Reserve Bank of India Act and Sections 15 and 16 of the Hyderabad Paper Currency Act were considered, and it was pointed out that --

"When Section 15 of the Hyderabad Paper Currency Act prohibits payment to bearer on demand, what it prohibits is a promissory note which in law will be payable to bearer on demand. The test for determining whether a promissory note is hit by the provisions of Section 15 of the Hyderabad Paper Currency Act is whether the promissory note is payable to any person who may be in possession thereof or, to put it in another way, will the bearer of the note without any endorsement obtain payment of the money due on the note."

It was also held that in that particular case the promissory note was such that it was payable to bearer on demand and was hit by the provisions of Section 15 of the Hyderabad Paper Currency Act.

9. It is unnecessary to refer to the other decisions cited before me because the law on the point is settled and admits of no controversy.

10. Therefore, I have to see whether in this particular case the hundi is payable to bearer on sight. No doubt if the second sentence in the hundi is taken by

itself, the amount of the hundi will be payable to whoever presents it for payment, and would be hit by Section 31 of the Reserve Bank of India Act. But as Mr. B. V. Subbarayudu, the learned counsel for the respondent, points out, the hundi has to be read as a whole and if so read, it is clear that the direction in the said sentence is merely to the drawee to note the address of the person to whom the amount of the hundi was ordered to be paid by the payee and nothing more.

11. On a fair reading of the entire hundi it is clear to me that the expression. "whoever presents the hundi to the drawee" refers only to the person in whose favour the hundi is drawn, viz., Gandham Narayana Gupta and Sons, or any person in whose favour the hundi is endorsed. It follows that the hundi is not one payable to the bearer on sight and is not hit by Section 31 of the Reserve Bank of India Act.

12. The Civil Revision Petition, there fore, rails and is dismissed with costs.