
(1927) 01 MAD CK 0038
In the Madras High Court

V. Panduranga Bhatta

APPELLANT

Vs

M. Krishna Nayak and sons and Others

RESPONDENT

Date of Decision : 25-01-1927

Acts Referred:

Citation : AIR 1927 Mad 889

Judgement

1. A. S. No. 211 of 24. I have come to the conclusion, not without considerable reluctance, that this appeal must be allowed. The case was brought on two promissory notes, dated the 10th April, and the other the 25th April 1923, and there is no doubt that some of the defendants were previously engaged in the conduct of a motor bus concern known as the Canara Transport Co. It seems to me clear that efforts were made which eventually succeeded to get the appellant Panduranga Bhatta into this business to set it on its feet, because it was in or about the beginning of 1923 in a very bad way and owed money to several creditors of whom the plaintiff was one. The learned Judge relied upon a document, Ex. 4, as proving not merely that the appellant Panduranga Bhatta was a partner as and from its date as he had been before and that was to cover the promissory note of the 10th April. In my opinion, the document when looked at clearly indicates that it was meant to speak as from the date that it came to birth and that it purported to constitute the partnership as from 17th April 1923. Therefore, prima facie there would be no liability on the appellant in respect of the promissory note of the 10th April so long as his liability is put on the footing of his being a partner de facto. The case, however, is put in two other ways. It is said that although he was not a partner--and I am speaking entirely of the earlier of the promissory notes--that, assuming he was not a partner on the date when that promissory note was executed, he may nevertheless be liable upon it for one or two reasons. The first is that he was sought to be made a partner by holding out, that is to say, by estoppel. The answer to that appears to me to be twofold. The first is that no such case was pleaded or sought to be made in the Court below; indeed the only two documents which, it is suggested, could support an estoppel are two promissory notes which were neither exhibited in

the Court below, nor of course consequently have been printed here and it seems astonishing that the plaintiff should seek to build up a case, the only documents in support of which he has not even taken the trouble to produce. Therefore, I think that the case of estoppel goes, because the only other evidence of it is the reference by the plaintiff's witness 1 in his evidence to vague statements made by the defendants to him in September 1922 that they were all partners.

They (the defendants) themselves told me so (namely that they were all partners) in September 1922 in connexion with their desire to open credit with me.

2. That is a conversation which is not fixed on to the appellant (defendant 5) and one knows how dangerous it is to attach legal liability on the faith of a conversation between four or five people when all that the person who was present at the conversation says is "they say" and he was never asked in examination-in-chief to develop this, or to say exactly what were the words used by the defendant 5 as distinct from the others. In my opinion, therefore, it would be quite impossible to place any reliance on that one statement of the plaintiff's witness 1 in order to found a liability in estoppel.

3. With regard to the second promissory note, that is dated the 25th April 1923. No doubt on the face of it that would look like a document which, as it came into birth after Ex. 4, would be one which very likely would bind the new partnership and, therefore, the defendant 5. But unfortunately the suit here can only be on the consideration because the defendant 5 did not sign the promissory note and the evidence is that this note was a renewal of an earlier note which admittedly came into existence and created the debt long before there was any question of the defendant 5 being a partner at all. Now it is said that it is the law that if a newly constituted partnership agrees among its members that the members of new partnership shall have the power to bind it for the taking on of the debts of the previous firm which the new partnership had taken over, that would be binding on the new partnership. The answer is:

certainly, provided there is anything in the transaction to show that the persons, who executed the bills or notes or whatever are relied upon, were purporting to act on behalf of the new partnership.

4. Of that here there is not a trace. The promissory note was signed by the signatories without a hint that they acted in any representative capacity; nor do they append the description either in the body or after the signature in the note that they signed on behalf of the Canara Transport Co. In these circumstances it appears to me that the plaintiff failed to make out his case and that the appeal must be allowed with costs. I think the conduct of the defendant 5 is very suspicious, but after all we cannot found a judgment or even deprive a man of costs merely because we think that he gave rise to ideas in various people's names by entering into transactions that he was likely to be concerned in. It cuts both ways and it rather militates against the view that he was a near relation of

the defendant 1 who was unquestionably liable for all these debts because one knows it is very common in this country--it is not so in England--for people to sign notes on behalf of relations in matters in which they have no concern whatever other than the accommodation of the persons concerned. The costs throughout will be paid by the plaintiff (respondent 1.)

5. A. S. No. 283 of 25.--This appeal is allowed and the plaintiff (respondent 1) will pay the appellant the out of pocket expenses.