
(1987) 10 KAR CK 0024
In the Karnataka High Court
Case No : RFA No. 5/1978

Vijayalatha Chit Fund (P) Ltd. and Others APPELLANT
Vs
K.L. Krishna Shetty and Others RESPONDENT

Date of Decision : 13-10-1987

Acts Referred:

Contract Act, 1872 — Section 227

Citation : (1988) 1 KarLJ 143

Hon'ble Judges : K. B. Navadgi, J;M. P. Chandrakantharaj Urs, J

Judgement

Chandrakantharaj Urs, J.-This is unsuccessful second plaintiff's appeal directed against the Judgment and Decree dated 28-6-1977 of the learned Civil Judge at Mangalore in O.S. No. 84/70 on his file.

2. In the course of this Judgment, we will refer to the parties by the rank assigned to them in the trial Court.

3. The brief facts leading to this appeal may be stated and they are as follows:

The first plaintiff is a Chit Fund Company registered under the Companies Act as a Company of limited liability. The second plaintiff is the holder in due course of a promissory note. Ex. P-7, said to have been executed by defendants 1,2 and 3 in connection with the chit transaction of the first defendant with the first plaintiff Company at its Chikmagalur Branch. First defendant K.R. Anantha Shetty was a member of the Chit Fund Company and had subscribed to more than one chit. The suit pronote related to Ex. D-1 with reference to "T" series bearing No. 30 having chit value of Rs. 20,000/-. The plaint allegations were that the first defendant was the subscriber in the first plaintiff Company and after joining Group "T", he paid one instalment of Rs. 400/- and was the successful bidder at the auction held in that group and received Rs. 19,600/- as consideration in respect of which he executed the suit pronote agreeing to pay interest at 12 1/2 per cent per annum from the date of execution till date of payment. The first plaintiff thereafter and on 10-10-1969 for valid consideration assigned the promissory note in favour of the second plaintiff. On 10-10-1969, the plaintiffs

got a Lawyer's notice issued to the defendants intimating the fact of the endorsement of the On Demand Promissory Note in favour of the second plaintiff and demanding payment of the amounts due under the pronote to the second plaintiff. In that circumstance, together with notice charges and the interest due thereon as on the date of the plaint, the plaintiffs prayed for a decree in the sum of Rs. 25,780/-.

4. The suit claim was resisted by the first defendant alleging that he was a member in the first plaintiff Company; that he subscribed to the chits in the total value of Rs. 50,000/- and that he was paying monthly instalment of Rs. 400/- each on chit in "T" series bearing Nos. 28 and 30 while he was subscribing Rs. 20/- as daily contribution to yet another chit having chit value of Rs. 10,000/-. He admitted that he was the prize winner in Group "T" for chit value of Rs. 20,000/- and was paid the prize amount. He, however, pleaded specifically that on taking proper accounts it would be found that he had fully discharged the entire amount due under the suit chit or the promissory note. He also alleged that the second plaintiff was not a bona fide holder in due course, but only a name lender to the first plaintiff Company. He denied his liability under the suit claim and prayed for dismissal of the suit.

5. The second defendant, who joined defendant-1 in executing the pronote along with defendant-3 was none other than the surety. He took the stand that the suit was not maintainable on the ground that the Company had stopped business and had stood dissolved on the date of the suit. He also denied that the second plaintiff was a bona fide holder in due course. He also contended that the defendants had discharged all the instalments due under the chit and therefore there was no liability under the suit pronote.

6. On such pleadings, the trial Court framed as many as three issues which are as follows:

1. Whether this Court has territorial jurisdiction to entertain the suit?
2. Does Defendant No. 1 prove that he had executed a blank bond and not a Promissory Note filed with the suit?
3. Does Defendant No. 1 prove that he has fully paid the entire instalments due in respect of the amount paid under the suit pronote in connection with the Chit fund?

7. The parties went to trial on the above issues. For plaintiffs, one witness was examined, namely, the Managing Director of the Company appointed in 1966 who was also the indorser of the suit pronote in favour of the second plaintiff as Managing Director of the first plaintiff Company. As many as 13 documents including the suit pronote were marked for the plaintiffs. The defendants got marked 4 documents and adduced the evidence of one Rangaswamy, who was none other than the power of attorney holder of plaintiff-1 Company through its Managing Director.

8. Before we notice the contentions advanced before us by Sri P. Ganapathy Bhat, it is very necessary for us to make certain observations so that the trial Courts henceforward will not commit the errors which penalty are committed in the conduct of the trial of this case. Having regard to Section 36 of the Negotiable Instruments Act, the first plaintiff who was the payee or the promisee under the suit pronote was as much liable to make good the amount, as a holder in due course, to the second plaintiff as defendants themselves were. This aspect escaped the attention of the trial Court and plaint was accepted as if the suit was by the promisee as well as the holder in due course. Undoubtedly, under Section 36 of the Negotiable Instruments Act, a holder in due course has an option to choose all previous holders including the promissor or choose the one who was the previous holder or the promissor to enforce the liability. Therefore, in permitting the former Managing Director of plaintiff-1 to be examined as the witness for plaintiffs, the Court practically allowed a defendant or one who should have been arrayed as defendant to give evidence for plaintiffs. This procedure, apart from being inequitable and contrary to law is patently unjust to the defendants.

9. In any event, the probative value of the oral testimony of P.W-1, the Managing Director at the relevant time, should fall or stand in the light of the facts pleaded and in the light of the documentary evidence, the admissions made by him and the circumstances under which he claimed to have indorsed the pronote in favour of the second plaintiff on behalf of the Company.

10. He has not deposed as to the consideration he received for causing the endorsement. He has very evasively stated that he could not remember. He has also not stated that he was duly authorised by the Company to endorse the pronote in favour of the second plaintiff. He has admitted that power of attorney was issued to D.W-1 in regard to certain matters that required attention and settlement at the Chikmagalur Branch of the Chit Fund Company. We see from the notice issued through counsel by defendants 1 and 2 that the endorsement took place on 10-10-1969 by which time, if due credence is given to Ex. D-1(c), the particular debt of defendant-1 had stood discharged. D.W-1 in his evidence has asserted that he might have written a letter about the discharge to the Company's Head Office at Mangalore P.W-1 has admitted that this would be reflected in the books of the Company maintained at the Head Office at Mangalore. Beyond the Register, Ex. P-13, no other books have been produced in support of the case of the plaintiffs. In fact, it is clear that on the date P.W-1 gave evidence, he had ceased to be the Managing Director of the Company. It was in these circumstances that the evidence adduced for the defendants should be appreciated to establish or fail to establish the plea of discharge.

11. Mr. Ganapathy Bhat has pointed out that there was no clear plea of discharge and what was said disjointedly in the written statements of both defendant-1 and defendant-2, the Court should not appreciate the parole evidence tendered by D.W-1 together with the endorsements made by him on Ex. D-1 at D-1(a),

D-1(b) and D-1(c) as proof of discharge, as the evidence is contrary to the pleadings.

12. Time and again, the Courts in India have laid down that in the matter of pleadings the Courts will liberally construe what is pleaded for various reasons such as ignorance of parties, illiteracy generally in the Country, inadequate equipment of Lawyers in mofussil towns and such other factors. We are satisfied that in substance both the defendants had pleaded discharge. Their pleadings amounted to an assertion that if accounts were taken between the parties, it would be found that they had paid all the instalments due on the chit. In whatever manner such assertion may be understood, we cannot fail to draw the conclusion that what they meant to say was that they had discharged their obligation arising out of the chit transaction with which we are concerned.

13. More over, it will not be a good precedent to allow the principal to take advantage of what he considers the misconduct of his agent as in the instant case. D.W-1 undisputedly was the power of attorney holder of P.W-1 acting as Managing Director of the Company, has not only put his signature in Ex. D-1, but he has also spoken that he had the authority to receive chit fund dues and give discharge to the same. The power of attorney itself was marked in evidence as Ex. D-4. A perusal of the contents in Ex. D-4 clearly shows that he was conferred with such power. When that is the position, it will not be prudent for the Courts to act on the suggestion that there was criminal prosecution launched against him for various criminal acts of commissions and omissions and therefore, his evidence was unworthy of any credence. It should be ignored by us.

14. Worst still for the plaintiffs is the fact that even on the date D.W-1 gave evidence, the power of attorney had not been cancelled. Perhaps, it could be said that it was not cancelled because the Managing Director had ceased to be the Managing Director of the Company by then. But that does not take away the probative value of the evidence given by the agent contrary to the interests of his principal. It is asserted by D.W-1 that in the Criminal Court he was never charge-sheeted and that the complaint filed against him was dropped as there was no material to proceed against him.

15. Taking all these facts into consideration, we cannot but sustain the conclusions reached by the trial Court.

16. It is common knowledge that these chit fund transactions are carried on by the Chit Fund Companies to attract generally the people who in order to get rich quickly by the high rate of interests offered by the sponsors of Kuries and chits. It is equally common knowledge that the organisers enrich themselves and leave the subscribers holding the sack, in some cases losing all that they have saved in their life time.

17. Therefore, taking the totality of circumstances, we are satisfied that the trial Court did the right thing in dismissing the suit.

Appeal dismissed. No costs.