ANDHRA PRADESH HIGH COURT

Vaddadi Venkataswami

Vs.

Hanura Noor Muhamad Beegum

Second Appeal No. 2048 of 1950, in Appeal No. 335 of 1949

(Chandra Reddy, J.)

02.12.1954

JUDGMENT

Chandra Reddy, J.

1. The defendant has brought this Second Appeal against the judgment of the Subordinate Judge of Srikakulam confirming that of the District Munsif of Rajam.

2. The plaintiff instituted a suit in the Court of the District Munsif of Rajam on the basis of a promissory note executed by the defendant on 8-5-1946 in favour of her husband, claiming to be an assignee of the promissory note from the latter. The consideration for this promissory note is the amount due under a contract entered into between her husband and the defendant on 12-10-1945 for the supply of 400 bags of groundnut. It was made up of Rs. 1,000/- being the balance of the advance received by the defendant, and a sum of Rs. 920/- being the difference between the then market rate and the price at which the goods were agreed to be sold. The plaintiff became entitled to the suit promissory note by virtue of a settlement deed executed by her husband in her favor under which all his assets were transferred to her.

3. The suit was resisted mainly on two defenses : (1) that the contract upon which the suit promissory note was founded was hit at by the Oil Seeds (Forward Contract) Prohibition Order of 1943, and therefore, the consideration for the promissory note had failed, and (2) that as the suit promissory note' was net endorsed in favor of the plaintiff, she could not maintain a suit on the promissory note.

4. The trial Court decreed the suit negativing both the objections and it was confirmed, on appeal, by the Subordinate Judge. In support of this appeal filed by the aggrieved defendant against that judgment, the pleas which were unsuccessfully put forward before the Courts below have again been raised.

5. I will first take up the arguments based on the Oil Seeds (Forward Contract) Prohibition Order, 1943.

6. Section 3 of the Ordinance prohibits forward contracts by enacting :

> "No person shall after the specified date for any class of oil seeds, enter into any forward contract in any of those Oil Seeds".

7. In the schedule to that Order groundnut was included, which means that there can be no forward contracts from 315-1943 even in respect of groundnuts. Subsequently, a Notification was issued by the Government of India in its S.D. Notification No. 1161 dated 16-2-1944 excluding from the operation of Section 3.

> "Forward contracts for groundnut, linseed, mustard seed, rapeseed or troika seed of specified quantities or types and for specific delivery at a specified price not transferable to third parties".

8. It is manifest from this Notification that forward contracts which are not transferable are saved. Therefore, the question for consideration is whether the suit contract is one falling under the notification. As laid down in a number of rulings of the Madras High Court, *Yuma Satyanarayana Murthy v. Sitramaya and Co*[1]*., Seetharamaswami v. Bhagavathi Oil Co*[2]*., Hussain Kasam Dada v. Vijianagaram Commercial Association*[3]*,* to get the benefit conferred by the notification, it should be established that the non-transferability is a term of the contract. In other words, if it could not be gathered from the document itself that it was not intended to be transferred, such a contract offends against the provisions of Section 3, and would, therefore, be held to be void and unenforceable. In the last mentioned case. AIR 1334 Madras 528 it was laid down that the contract was 'ab initio' void.

9. Bearing in mind principles stated in those cases, I have to see whether this contract attracts the notification in question. It has to be mentioned that there is a rubber stamp on the body of the document with the words "not transferable", and reliance is placed by the plaintiff on these words to claim exemption from the provisions of Section 3.
Mr. Venkatesam, the learned counsel for the appellant contends that as the rubber stamp is affixed on the document, and does not form part of the writing of the document, it should be deemed to be an addition, and the burden is on the plaintiff to show how and when this stamp came to be affixed. The learned counsel continues that there being no definite evidence adduced on the side of the plaintiff in this respect the suit contract does not come within the ambit of the notification.

10. The Courts below considered this aspect of the matter and came to the conclusion that the rubber stamp was affixed at the time of the execution of the document, and these words Were there from the beginning i.e., from the time of the making of the contract. In support of this conclusion several circumstances were relied on by the lower appellate Court as can be seen from para 9 of the judgment, and it is not necessary for me to recapitulate all of them. But I would like to stress one fact which goes a long way against the contentions of the appellant. While P.W. 2 stated hat although the Oil Seeds (Forward Contract) Prohibition Order of 1943 was in force at the time of the making of the contract it was not affected by it, presumably because of its falling under the notification; the defendant, who went into the witness box afterwards, had not chosen to say that the rubber stamp was not affixed at the time of

[1]1950-1 Mad LJ 557 [3] AIR 1954 Mad 528

[2]1951 - 1 Mad LJ 147
the making of the contract and came into existence later on. His silence is significant.
In the circumstances, I cannot say that the finding of the Courts below is perverse or not borne out by the evidence on record or erroneous in any way. Concurring in the opinion of the Courts below, I hold that this contract is saved by reason of its not being transferable to third parties and does not violate Section 3 of the Order. This contention, therefore, fails.

11. There remains the question whether the suit is maintainable on the promissory note. According to Mr. Venkatesam, the plaintiff could not sue on the suit promissory note as there was no valid assignment. The only method of assigning a promissory note is by endorsing it, and no other method of transfer would entitle the assignee to base his cause of action on the promissory note itself. This argument is founded on Section 46, Negotiable Instruments Act, and is reinforce by endorsement and delivery thereof".

12. Before examining the cases for and. against this contention, it is useful to refer to the relevant terms of Section 46, Negotiable Instruments Act.

> "A promissory note, Bill of Exchange or Cheque payable to order is negotiable by the holder by endorsement and delivery thereof".

13. It is urged for the appellant that it is only in cases, where this provision of law is compiled with, the assignee gets the rights under the promissory note. This interpretation of the clause receives support from a ruling of the Madras High Court in '*Pattat Ambadi Marar v. Krishnan*[4] There Muthuswamy Ayyar and Brandt, JJ., held that in a case where the suit was laid on a promissory note by a person who claimed right thereto under an agreement in writing but was not endorsed, the suit did not lie on the promissory note, that the promissory note could not be negotiated by mere execution of a deed of assignment, and that the only method of negotiating a promissory note was by endorsement and delivery. In '*Abboy Chetty v. Rama Chandra Rau*[5]', Muthuswamy Ayyar, J., who was A party to the above case followed it without any discussion of the matter.

14. Reliance was next placed by Mr. Venkatesam on *'Arunachala Reddy v. Subba Reddy*[6]'. I do not think that this really advances the case of the appellant. What happened there was that the plaintiff sued on a promissory note which was alleged to have been allotted to him verbally at a partition. There was no writing assigning this promissory note to the plaintiff. The learned Judges Benson and Wallis, JJ., dismissed the suit holding that such a promissory note would not come within the exceptions to Section 137, Transfer of Property Act. It was not laid down there, that a transfer could be effected only by means of negotiation as contemplated under Section 46, Negotiable Instruments Act. On the other hand, the following remarks of the learned Judges are significant, and which, in my opinion, negative the contention put forward on behalf of the appellant.

> "Consequently, the assignment of the chose in action on which he relies is bad for want of writing under Section 130, Transfer of Property Act". This clearly

[4]11 Mad 290
[5]17 Mad 461
[6]17 Mad LJ 393

shows that if the promissory note was transferred as a chose in action complying with the provisions of Section 130, Transfer of Property Act, it would have been a valid assignment which would enable the transferee to maintain the suit on the promissory note itself.

15. Mr. Venkatesam then called in aid a ruling of Coutts-Trotter, J. in '*Ulagappa Chetty v. Ramanathan Chetty*[7]*',* Here again the appellant does not derive any benefit from it. It does not appear from the report that there was any document assigning the promissory note involved in that suit. The learned Judges relying on 17 Mad LJ 393 and refusing to follow *'Lodd Govind Dass v. Muneppa Naidu*[8]*',* decided that a suit on a promissory note which had not been endorsed to the plaintiff was not maintainable. As already remarked, in 17 Mad LJ 393 (F) there was no transfer of the promissory note as a chose in action within the meaning of Section 130 of the Transfer of Property Act. In 31 Mad 534 the promissory note executed in favor of the Manager of the Court of Wards was handed over by him to the father of the plaintiff without any endorsement. The plaintiff instituted a suit on the death of his father for recovering the amount due under the promissory note. The defense that the suit was not maintainable on the basis of the promissory note for the reason that there was no endorsement in favour of the father of the plaintiff was overcome on the reasoning that though the document was executed in the name of the Court of Wards, it must be deemed to have been executed in favor of the landlord, the promissory note having been executed for arrears of rent, and the plaintiff being the holder at the time of the filing of the suit, he must be deemed to be a payee. Coutts-Trotter, J. in '*Ulagapa Chetty v. Ramanathan Chetty* observed that to accept the doctrine embodied in *'Lodd Govind Dass v. Muneppa Naidu*, would be to 'protanto repeals the provisions of the Negotiable Instruments Act. I am not here concerned with the correctness of the ruling in *'Lodd Govinda Dass v. Muneppa Naidu'*, Suffice it to say that the decision in '*Ulagappa Chetty v. Ramanathan Chetty*, does not really assist the appellant.

16. I would refer to two other cases of the Allahabad; High Court cited by Mr. Venkatesam as supporting his contention. In '*Parsotam v. L. Bankey Lal*[9]*',* Sulaiman, C.J., and Bennet, J., ruled that a transferee of a promissory note claiming it under a sale deed is not a holder of the negotiable instrument within the meaning of Section 8, and so cannot enforce the rights conferred upon such a holder in due course under Section 43, Negotiable Instruments Act. Under Section 43, Negotiable Instruments Act, a holder in due course is entitled to recover the money paid by him from the transferor if the negotiable, instrument was found to have been executed without any consideration. The learned Judges ruled that to derive the benefit conferred by the Section, it is necessary that one should be a holder within the meaning of Section 8 e.g., by the document being indorsed in his favor, and a person who claims title to the promissory note under a sale deed is not entitled to invoke Section 43. It is thus seen that the question for determination there was not whether a promissory note could be transferred otherwise than by endorsement and the suit could be maintained by a person who claimed a right to the promissory note under a deed of assignment. It is interesting to note that dealing with *'Suratchandra Saha v. Kripanath Choudhury*[10]*',*

[7] AIR 1917 Mad 512
[8] 31 Mad 534
[9] AIR 1935 All 1041
[10] AIR 1934 Cal 549

the learned Judges said that that observation was not necessary for the purposes of that case

because the transferee of the instrument was certainly entitled to maintain the suit for the recovery of the amount due on the promissory note on the strength of the sale deed in his favor when it was established that the promisor has not made the payment". In my opinion, these remarks show that the learned Judges assented to the view that a promissory note could, be assigned otherwise than by an endorsement. All that they decided was that such an assignee cannot enforce the rights of a holder in due course derived from Section 43, Negotiable Instruments Act.

17. To the same effect is the ruling of another Bench of the same Court in *'Jang Bahadur v. Chander Bali*[11]*',* The question that fell to be determined in that case was whether a person to whom a promissory note was transferred for consideration, by means of a sale deed could recover from the transferor under Section 43, Negotiable Instruments Act, the consideration paid by him when it was proved that the document was executed originally without receiving consideration.

18. Another case relied on by Mr. Venkatesam is '*Virappa v. Mahadevappa*[12]*',* There a promissory note executed in favour of a manager of the family was allotted to the share of another member at the family petition. The question arose whether the allottee could sue on the promissory note. It was held that so long as the document was not endorsed by the payee in favour of the holder, the latter could not sue on the promissory note. The point that arises in this instant case did not fall for consideration in the case cited. On the other hand, the passage occurring at page 358 seems to have the effect of holding that a promissory note could be assigned otherwise than by endorsement.

> "The Statutory Law is contained in Section 13(1) and explanation, and S, 48, Negotiable Instruments Act and Section 130, Transfer of Property Act and there are three possible modes of transfer conceivable; by endorsement, by assignment as a chose in action, and by operation of law".

This makes it abundantly clear that there are modes of transfer other than by endorsement. Thus this ruling does not contain any proposition that would support the appellant. A detailed examination of the various cases cited above-shows that there are only two decisions i.e., 11 Mad 290 and 17 Mad 461 which substantiate the submission made on behalf of the appellant.

19. I shall now proceed to notice cases which have expressed a contrary view. The first of the series is *'Muhammad Khumarali v. Ranga Rao*[13]*',* There, the plaintiff sued on a promissory note claiming under an endorsement made only by one of the two payees. Objection was taken that under Section 51, Negotiable' Instruments Act, the endorsement should be made by each of the payees individually. The learned Judges held that though the plaintiff could not maintain the suit as an endorsee, he could recover the amount due under the note if there be no other defense to the suit, as assignee of the chose in action, by reason of the other joint payee having transferred

[11] AIR 1939 All 279 [13]24 Mad 654

[12] AIR 1934 Bom 356

his interest therein to him. They pointed out the difference between the two modes of transfer in the following words :

> "The important difference between transfer by endorsement and transfer otherwise than by endorsement of a negotiable instrument is that, in the latter case, the assignee will acquire in the bill or note as a chattel no more than the right, title and interest of his assignor, whereas in the former case the assignee by endorsement will have all the rights and advantages of a holder in due course of a negotiable instrument".

20. In support of their conclusion, the learned Judges relied on '*Ramachandra Rao v. Abeeb Rowthan*'[14], pointed in the foot note to this decision 'at page 657'. It was observed in the last-mentioned judgment as follows :

> "It is argued that, by the Negotiable Instruments Act, any other mode of transfer than by endorsement is excluded. We can see nothing in the Act to justify this contention".

21. These two cases were relied on by another Bench of the Madras High Court (Subramania Ayyar, Offig. C.J. and Boddam, J.) in '*Muthar Sahib Maraikayar v. Kadir Saheb Maraikayar*[15]', In the cited case, the learned Judges declined to accept that ratio decidendi' involved in *'Pattate Ambadi Marar v. Krishnan* and *'Abboy Chetty v. Ramachandra Rau,* as a sound one.

22. In *'Narayanamurthy v. Vumamaheswaram'*[16], it was stated that a plaintiff suing on a promissory note as an assignee of a chose in action could get only such rights as the assignor had at the time and not the full rights of a holder or of a holder in due course.

23. The observations of the Full Bench in *'Muthukrishna Aiyar v. Veeraraghava Iyer*[17]', also seem to throw some light .on the question involved in this enquiry. In that case, the defendant mortgaged to the plaintiffs a house and a promissory note executed in favour of the former by a third party, as security for money due by the defendants to the plaintiffs. The promissory note was endorsed to the plaintiffs. The plaintiffs having allowed the note to become time-barred, the question arose as to whether the plaintiffs should be debited with the amount due on the promissory note. In dealing with the point, the Full Bench stated :

> "The mortgage thereof, was in my opinion a transfer of an actionable claim within the meaning of Section 130, Transfer of Property Act, which vested in the transferee the rights and remedies of the transferor, subject to the equities which remained in the transferor by reason of the fact that the transfer was by way of security".

24. In my opinion, the doctrine embodied in this passage is in consonance with the principle underlying 24 Mad 654; 11 Mad 290 and 17 Mad 461, as it recognises an assignment of a promissory note as a transfer of a chose in action within the meaning

[14] Appeal No. 175 of 1897 (Mad)
[15] 28 Mad 544
[16] AIR 1930 Mad 197
[17] AIR 1915 Mad 1031

of Section 130, Transfer of Property Act. The opinion expressed in *'Perumal Ammal v. Perumal Naicker*[18]', by Sir John Wallis, C.J. and Hughes, J. seems to accord with the statement of law containing in the rulings referred to above. One of the points that was considered there was whether a gift of mortgage debts, book-debts and promissory notes fell under Chap. VIII, Transfer of Property Act and it was answered in the affirmative.

25. The view of another Bench of the Madras High Court in *'Venkatarama Aiyar v. Krishnaswamy Chettiar[19]',* accords with that expressed in AIR 1930 Madras 197 and also in *'Muhammad Kumarali v. Ranga Rao and[20]* The learned Judges noticed the clash of Judicial opinion, but preferred to follow the later course of decisions.

26. Pandrang Row, J. in *'Subbarayudu v. Subbarayudu[21]',* came to the same conclusion. It is true that the learned Judge has not referred to any of the rulings in support of his view but that does not make any difference for the purpose of our case.

27. In AIR 1934 Calcutta 549 the Calcutta High Court held that a hand-note could be transferred otherwise than by endorsement but the transferee could only get such title as the transferor had in the same note and could not claim the rights which he would have been entitled on a transfer by endorsement.

28. A Special Bench (of five Judges) of the Patna High Court in *'Ghanshyam Das v. Ragho Sahu[22]',* took the same view. There is an elaborate discussion on this question in the judgment. The decision was reached after referring to almost all the available cases on the topic, including those of the Burma Chief Court and the Chief Court of Punjab which took the same view. In my opinion, the principle adumberated in those several cases is a sound one, if I may say so with respect, and I express my respectful accord with it.

29. Apart from the overwhelming authority, my opinion seems to be strengthened by the very provisions of the Negotiable Instruments Act. In my opinion, Section 46 provides for only one; mode of transfer, that is, by negotiating the instrument by means of endorsement and delivery. This does not mean that there is no other method of assignment of a promissory note. If the contention of Mr. Venkatesam that the only way of assigning a bill of exchange is by endorsing it, is to be accepted, the assignment by operation of law, also cannot take effect. I have already referred to the statement in AIR 1934 Bombay 356 which negatives such theory. It was not seriously disputed by Mr. Venkatesam that a person claiming the bill of exchange by operation of law has a right to maintain an action on the promissory note. That apart, there is authority for this position in '*Ramanadhan Chetty v. Katha Velan[23],* The support for this theory can be found in Sections 43 and 118 Negotiable Instruments Act. Section 43 enacts that a negotiable instruments made, drawn, accepted, 'indorsed or transferred' without consideration or for a consideration which fails, creates no obligation of payment between the parties to the transaction. In my judgment, the two expressions 'indorsed' and 'transferred' contemplates two modes of transfer of a promissory note. It could not be assumed that the Legislature used the expression

[18] AIR 1921 Madras 137 [20]28 Mad 544 [22] AIR 1937 Pat 100 (FB)
[19] AIR 1933 Madras 133 (1) [21] AIR 1935 Mad 473 [23] AIR 1918 Mad 482

"transferred" by way of redundancy. If meaning is to be given to both the expressions, it means the negotiable instrument could be assigned either by endorsement or by other ways i.e., other modes of transfer are recognized.

30. Similarly, Section 118, Negotiable Instruments Act which deals with certain presumptions as to negotiable instruments provides that every negotiable instrument was made or drawn for consideration and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration. Here again the expressions use are 'indorsed' 'negotiated' and 'transferred', which in my considered view support

the theory that transfer otherwise than by negotiation is permissible and that the Negotiable Instruments Act does not' prohibit the other modes of assignment. If a negotiable instrument could be assigned otherwise than by an endorsement, the assignee thereof is certainly entitled to sue on the note. As already stated, the two other methods are by operation of law, and transfer as a chose in action as contemplated by Section 130, Transfer of Property Act. A comparison of Section 130 with Section 137, Transfer of Property Act clearly shows that the transfer of a promissory note by means of writing is not barred. Section 137, Transfer of Property Act saves negotiable instruments from the operation of Section 130. This does not mean that Section 130, Transfer of Property Act cannot be availed of for a transfer of a negotiable instrument nor does Section 46, Negotiable Instruments Act debar a party from resorting to the provisions of Section 130, Transfer of (Property Act. The only difference between the two modes of transfer is that while the transfer by negotiation of a document clothes the transferee with certain rights, the assignment of it as a chose-in-action under Section 130 is limited to such rights as the transferor had in the document i.e., he takes only subject to the equities in favour of the maker of the document.

31. Recently, Umamaheswaram, J. following the decisions cited above expressed the same view in *'Seshachalam Naidu v. Venkatachallam Chetty*[24]*',* It is thus seen that the weight of authority is in favour of the decision reached by me, supported as it is, by the terms of the relevant provisions of the Negotiable Instruments Act itself. What emerges from this discussion is, an assignee of a promissory note otherwise than by endorsement such as a transfer by means of writing under Section 130, Transfer of Property Act, can file a suit on the promissory note. It follows that the second contention has also to be repelled.

32. In the result, the judgment and decree under appeal have to be confirmed and the Second Appeal dismissed with costs. The Government Pleader's fee is fixed at Rs. 150/-. For consideration of grant of leave adjourned to Tuesday.

33. This case having been set down this day for further orders, the Court made the following order : Leave granted.

Appeal dismissed.

[24] AIR 1954 Mad 820