

N. Devaraje Urs vs M. Ramakrishniah on 6 December, 1951

Equivalent citations: AIR1952KANT109, AIR1952MYS109, AIR 1952 MYSORE 109

JUDGMENT

1. The plaintiff is a building contractor. He constructed a house in Mysore City for one Annapurnamma and a sum of Rs. 17807/- was found due to him in that connection. She conveyed the house to the defendant by a sale deed dated 15-4-1941 and it was provided in that sale deed that the defendant should pay this sum to the plaintiff as a part of the purchase money due to Annapurnamma. The plaintiff's case is that the defendant agreed to do so and has also paid Rs. 1470/- in pursuance of that promise leaving a balance of Rs. 310/- for which sum and interest thereon by way of damages the suit had to be filed as the defendant later on denied his liability.

2. The defendant denied that the plaintiff had done work to the extent required to enable him to claim Rs. 1780/- and that he had ever agreed with the plaintiff to pay that sum. He pleaded that he had no doubt made some payments as desired by the vendors but had justifiably withheld the balance at their desire as the plaintiff had not completed some of the works. He was not personally liable to the plaintiff and the suit was not maintainable as there was no privity of contract between him and the plaintiff and the suit was also barred by time.

3. The First Munsiff of Mysore, before whom the suit was filed, held all the issues in favour of the plaintiff and granted a decree for the amount claimed less Rs. 100/-, and interest by way of damages at 6 per cent per annum. The Subordinate Judge of Mysore, before whom the plaintiff appealed and the defendant preferred cross-objections, allowed the plaintiff's appeal and granted a decree for the full sum as claimed in the plaint and dismissed the defendant's cross-objections. The defendant has come up in second appeal.

4. There is no doubt that the learned Subordinate Judge was right in not accepting as correct the finding of the learned Munsiff that the plaintiff's claim should be reduced by Rs. 100/-. The learned Munsiff had based that finding on a rather ambiguous sentence in the cross-examination of the plaintiff where he had deposed that he does not remember exactly whether he received Rs. 100/- or a little more after Ex. C. after stating in examination-in-chief that subsequent to Ex. C. he had received Rs. 100/- from the defendant and that he had received in all Rs. 1400/- and odd, the exact figure being as mentioned in the plaint. The plaintiff was being examined in June 1947 long after the payments were made and could not be expected to remember the exact figures and dates. The defendant had not in his written statement pleaded payment of any sum over and above that stated in the plaint. All the payments, except a sum of Rs. 200/- paid on 19-6-41 under a receipt Ex. II which is a consolidated receipt for Rs. 1470/- were by cheques on the Treasury. There was neither plea nor issue, much less proof, regarding such further partial discharge. The Munsiff's finding that the defendant might have paid a further sum of Rs. 100/- was, therefore, clearly wrong.

5. Mr. M. A. Gopalaswami Iyengar, learned Counsel for the Appellant, strenuously contended, that there was no privity of contract between the plaintiff and the defendant and that he could not therefore bring this suit. He urged that the defendant had been merely instructed to pay the plaintiff some amount which may have been due by the former, for him and on his behalf and, that would not create any legal relationship between the defendant and the plaintiff so as to entitle the latter to bring a suit of his own to enforce that agreement, if any. Before considering the cases relied on by him in support of this argument, we may refer to the terms of the sale deed and the other admitted or proved circumstances in the present case. The relevant passage in the sale deed is as follows : "You (purchaser) have to pay him (Plaintiff) the balance of Rs. 1780/- which I (Seller) have to pay him and obtain a consideration receipt from him in settlement thereof. The said amount has been left with you

"In this manner the entire sale consideration of Rs. 4000/- in respect of the property sold has been received and nothing more is due".

The defendant has admittedly paid the plaintiff subsequently Rs. 1470/- as acknowledged in the receipt Ex. II dated 19-6-1941 the sum being described as due to him in respect of the house purchased by the defendant as mentioned in the sale deed. With a letter Ex. c dated 20-5-41 the defendant had by then sent to the plaintiff five cheques on the Treasury for sums aggregating Rs. 1270/-. The letter says that the amount was being sent "as informed to you (plaintiff) in person" and was in respect of the sale amount pertaining to the house and that the balance of the amount would be remitted immediately. All this clearly shows that the defendant not only promised to pay the same but also made part payments towards it.

6. Mr. Gopalaswami Iyengar has relied on a case reported in 'SUBBU CHETTI v. ABUNACHA-LAM CHETTIAB, 53 Mad. 270 (F. B.) and argues that in such circumstances as these there can be neither privity of contract nor a relationship akin to a trust created in favour of the plaintiff. That case, however, can easily be distinguished. In that case, which was also a case of a sale, it had been found as a question of fact by the Courts below that an oral agreement set up by the plaintiff creditor that the defendant had agreed to pay him the balance of purchase money was not proved; the recital in the sale deed was that the amount was to be paid on the vendor's behalf to the plaintiff who was one of the creditors as also to other creditors of the vendor. On the terms of the sale deed the High Court was of the view that no trust, express or implied, was created and that the sale deed merely constituted the vendee the agent of the vendor to pay some of his creditors. Their Lordships therefore held, following 'JAMNA DAS v. RAM AUTAB PANDE', 34 All. 63 (P. C.) that "Where on a contract between A and B, B agrees to pay a sum of money to C and no more circumstances appear, C being a stranger to the contract cannot sue B for the money, though all the parties to the contract are parties to the suit. This is the general rule, though some exceptions to the rule arise under the following circumstances, e. g., (a) where B afterwards agrees with C to pay him direct or becomes estopped from denying his liability to pay him personally; (b) where the contract between A and B created a trust in favour of C; (c) where the contract charges the money to be paid out of some immovable property or (d) where it is due to C under a marriage settlement, partition or other family arrangement".

In 34 AM. 63 (P. C.) the action was brought by a mortgagee to enforce payment personally under Section 90 of the Transfer of Property Act against a purchaser of the mortgaged property an undertaking he had entered into with his vendor to pay the mortgage money. Their Lordships of the Privy Council thought 'it was a perfectly plain case' and said that the mortgagee has no right to avail himself of the undertaking.

"The purchaser entered into no contract with him and was not personally bound to pay the mortgage debt and was not a person from whom in the words of that section the balance was legally recoverable".

In '8 Mys. L. J. 489: 35 Mys. C. C. R. 374' which is the next case relied on by him and which follows among other cases '53 Mad. 270 : 58 Mad L. J. 420 (P. B.) it was found that there was not even an allegation in the plaint that the defendant had undertaken to pay the plaintiff; the terms of the sale deed were not only against the inferring of any trust, express or implied, but were of the nature on which it was held that the defendant was merely an agent of the vendor to pay some of his creditors.

7. Mr. M. P. Somasekhara Rao, learned Counsel for the Bespondent, has also referred to some cases of this Court and to a case reported in 'DEB NARAIN v. BAM SADHAN', 41 Cal. 137. In 28 Mys. C. C. B. 218 which was a suit by a creditor of the vendor against a purchaser under a sale deed with terms in it similar to the present, it was held by Subbanna, J. that although a person who is not a party to a contract and with whom there is no privity cannot gain any advantage by it, yet a contract can be so framed as to secure the benefit to a third party as a cestui que trust in which case the latter may sue in his own name to enforce the contract. 'JAMNA DAS v. RAM AUTAR PANDE', 34 All. 63 (P. C.) has been referred to and distinguished in that case. 6 Mys. L. J. 576: 33 Mys. CCR 133, 28 Mys OCR 39, 'DWABKA NATH v. PBIYA NATH', 22 Cal WN 279 and '16 Mys LJ 27', on which Mr. M. P. Somasekhara Rao has relied affirm the same principle. In '8 Mys CCB 39' a person who was indebted to several persons transferred his property to his mother and wife upon their undertaking to discharge his debts. The mother promised to discharge the debt due to the plaintiff who was one of the creditors but subsequently failed to do so; on the plaintiff suing the mother and wife it was held that the promise of the mother which was supported by lawful consideration viz., the transfer of the principal debtor's property to her ought to be enforced and that in the absence of any such promise on the part of the wife she could not be made personally liable. These cases clearly help the respondent. The facts and circumstances of the present case we have set out above bring it clearly within the class of cases referred to in 'SUBBA CHETTI v. ABUNACHALAM CHETTIAB', 53 Mad 270 (FB) and 8 Mys LJ 489 in which the right of a person in the position of the plaintiff to bring a suit in cases like the pre-sent is accepted.

8. Mr. Gopalaswami Iyengar next contended that the plaintiff's suit is barred by limitation. The Courts below have held that the suit is governed by Article 116 of the Limitation Act and is within time having been filed within six years of the date of the promise contained in the sale deed. That article covers suits for the recovery of compensation for the breach of a contract in writing registered and it has been applied to a case like the present in 'DEB NARAIN v. BAM SADHAN', 41 Cal 137. In that case the transferee of a debtor's liability had acknowledged his obligation to the creditor for the debt to be paid by him under the provisions of the registered instrument conveying

to him all the moveable and immoveable properties of the original debtor. The acknowledgment had been communicated to the creditor and accepted by him. It was held in that case :

" 'First', that the arrangement between the creditor and the transferee did not amount to a novation within the meaning of Section 62 of the Contract Act; secondly, that the obligation undertaken by the transferee was for, and intended to be for the benefit of the creditor; and, lastly, that the creditor is entitled to sue the transferee on the registered instrument."

It was further held that the suit was governed by Article 116. It was observed by Jenkins, C. J. after an examination of the basis underlying the rule laid down in England in 'TWEEDLE v. ATKINSON', (1861) 1 B & S 393, that the administration of justice by the Courts in this Country is not to be in any way hampered by the doctrine laid down in that case and that the bar to filing a suit by the person not a direct party to the contract was probably one of procedure and not of substance.

" 'In India' he points out 'we are free from these trammels and are guided in matters of procedure by the rule of justice, equity and good conscience.'"

The learned authors of U. N. Mitra's Law of Limitation question at page 662, vol. 1, 1949 Edn., whether a suit by a stranger to the contract comes within Article 116. But once it is held that A can sue on the basis of the contract between B and c under certain circumstances it is difficult to see why A's suit cannot be described as one for compensation [or the breach of that contract or that the obligation to pay does not arise directly under that registered instrument.

9. We see, therefore, no reason to interfere With the judgment and decree of the learned Subordinate Judge. This appeal fails and is dismissed with costs.

10. Appeal dismissed.