Rai Ram Kishore And Ors. vs Ram Prasad Mishir on 28 September, 1951

Equivalent citations: AIR1952ALL245, AIR 1952 ALLAHABAD 245

Author: V. Bhargava

Bench: V. Bhargava

JUDGMENT

V. Bhargava, J.

1. This is a plaintiff's second appeal arising out of a suit brought for the recovery of money on the basis of four promissory notes executed by the defendant-respondent. The facts admitted or found proved by the lower Courts are that the plaintiff Rai Ram Kishore formed a joint Hindu family with his brothers, Rai Amar Nath and Rai Ram Charan. There was a joint family firm under the name and style of "Piru Mal Radha Rawan" through which this joint family used to carry on money lending business. The respondent used to borrow money from this joint family firm. The present suite relates to four promissory notes executed by the respondent in the name of Rai Amar Nath as payee in the years 1935 and 1936. The first, promissory note was executed on 2-2-1935, for a sums of Rs. 541, the second on 25-2-1935 for Rs. 175 and the third and the fourth on 8-2-1936, for Rs. 2920 and Rs. 330 respectively. All these promissory notes were renewals of previous loans which has been taken by the respondent originally during the years 1930 and 1931. Rai Amar Nath was the karta of the joint Hindu family, being the eldest brother, and the money, which was advanced came out of the joint family funds. On 3-11-1932 before the execution of these renewed promissory notes which are the basis of the suit, but after the original loans had been advanced to the respondent, one Rai Krishnaji was appointed as arbitrator without intervention of the Court to partition the joint family property between the three brothers. The arbitrator gave his award on 21-12-1933 and the Court was moved to make this award the rule of the Courts During the proceedings in Court a statement was made by all the parties that they would abide by the order of the Presiding Officer, viz., Sri Ratan Lal, Civil Judge, who was authorised as arbitrator to make the partition. Sri Ratan Lal, Civil Judge, gave his decision on 29-4-1937, and passed a decree in terms of his decision. By this decree the renewed promissory notes in suit which had already come into existence during the partition proceedings fell to the share of Rai Ram Kishore, On 14-5-1937, the counsel for Rai Amar Nath filed these promissory notes in Court with an application that they may be delivered to Rai Ram Kishore in whose share they had fallen and making further request that all other property may be given in possession of the parties to whom it had been allotted by the decree. At the time whom these promissory notes were filed in Court Sri A.N. Sinha, counsel for Rai Amar Nath, put his initials on the back of all these promissory notes. The promissory notes were taken back from the Court by Rai

Ram Kishore and he then instituted this suit for recovery of the money due under them. The suit was contested by the respondent on various grounds of which only one need be mentioned here as that is the only ground with which this Bench is concerned. It was pleaded by the respondent that Rai Ram Kishore plaintiff in the suit was not the holder of any of these promissory notes and consequently he had no right to institute a suit which was not maintainable. The other points of contest between the parties were also decided by the trial Court though the suit was dismissed on a decision of this point against the plaintiff. It was held that the suit at the instance of the plain, tiff was not maintainable. In appeal the lower appellate Court considered this question of law only, and since it held that the suit was not maintainable it dismissed the appeal and confirmed the decree of the trial Court. Other points of contest which were decided by the trial Court were not considered by the lower appellate Court as they did not arise when the suit was dismissed on the decision of this question against tbe plaintiff. Both the lower Courts held that Rai Ram Kishore was not the holder of the promissory notes and consequently he had no right to institute a suit for recovery of money on their basis. The only point that falls for determination in this appeal, therefore, is as to whether on the facts mentioned above Rai Ram Kishore had the right to institute the suit. This second appeal came up for hearing before a learned single Judge who referred it to a Division Bench. The Division Bench was of the view that it involved a very substantial question of law and thought it desirable that it should be decided by a Full Bench. The case was, therefore, referred to a Full Bench. Rai Ram Kishore, the original plaintiff of the suit, is dead and the present appellants are his legal representatives. For the sake of convenience, however, we shall refer to Rai Ram Kishore as the plaintiff.

2. Before the Division Bench, as appears from the referring order, the contention on behalf of the plaintiff was that, though the promissory notes in suit were executed in the name of Rai Amar Nath as payee, his name was put in as manager of the joint Hindu family from whose assets the loans were advanced. Rai Amar Nath was, therefore, only the ostensible holder whereas under the Hindu law the real holders were he as well as his two brothers, including the plaintiff. In the partition effected by the decree of the Court the promissory notes fell to the share of Rai Ram Kishore and consequently he became entitled to the money due under them. He was, therefore, the owner of that money and the holder of the promissory notes and was entitled to institute the suit for its recovery against tbe respondent. The contention on behalf of the respondent on the other hand was that the provisions of Hindu law could not override the special provisions of the Negotiable Instruments Act and it was only Rai Amar Nath, the ostensible holder, who could institute the suit for recovery of money on the basis of the promissory notes. A large number of authorities were cited before tbe Bench in support of the proposition that only the holder of a promissory note could institute a suit to recover money on its basis and consequently this suit by Rai Ram Kishore plaintiff was not maintainable. On behalf of the appellant also a number of cases were referred to where it had been held that money due under promissory notes could be recovered even by a person whose name did not appear on the promissory notes as a payee or holder in due course. There was also an additional plea that there was an indorsement in blank on all these promissory notes by Rai Amar Nath the payee because they had all been initialled by Sri A.N. Sinha, his counsel, when he filed these promissory notes in Court. This latter contention was repelled by the lower Courts and we think rightly. It appears from the promissory notes that Sri A.N. Sinha had initialled them only for the purpose of indicating that he was filing them in Court on behalf of his client, Rai Amar Nath. For an

indorsement to bind the payee or the holder of a promissory note, it must be made either by the payee or the holder himself or by a duly authorised agent acting in his name under Section 27, Negotiable Instruments Act. In the present case Sri A.N. Sinha, counsel for Rai Amar Nath in the partition suit, had no such authority to make an indorsement on behalf of Rai Amar Nath and consequently, even if these initials of Sri A.N. Sinha be treated as having been made for the purpose of indorsement, there would be no valid indorsement binding on Rai Amar Nath. It cannot, therefore, be held that these promissory notes had been indorsed in blank and the right of the plaintiff to institute the suit on their basis has to be decided independently of these initials of Sri A.N. Sinha.

3. It was contended in these circumstances on behalf of the plaintiff that, though Rai Ram Kishore may not be the holder in due course of the promissory notes, he was at least the holder, because after the decree in the partition suit the right to the money secured by these promissory notes vested in him. Considerable argument was advanced on behalf of both the parties on the question as to whether Rai Ram Kishore could or could not be held to be the holder of the promissory notes as a result of the decree in the partition suit after the finding that the money advanced under the promissory notes had belonged to the joint Hindu family on partition of which the promissory notes had fallen to the share of Rai Ram Kishore. In our opinion, it is not necessary for the purpose of deciding this second appeal to give any definite finding as to whether Rai Ram Kishore did or did not become the holder of the promissory notes after the partition. There can be no doubt at all that, after the partition had been effected by the decree, Rai Amar Nath, the payee of the promissory notes, no longer had any right in the money due under them. Further the promissory notes were given by the Court in the possession of Rai Ram Kishore plaintiff and thereafter Rai Amar Nath had no right to claim possession thereof. Under Section 8, Negotiable Instruments Act, the holder of a promissory note, bill of exchange or cheque has been defined to mean :

> "Any person entitled in his own name to the possession thereof and to receive or recover the amount due thereon from the parties thereto."

Since Rai Amar Nath ceased to possess any right in the promissory notes after the partition decree, he was no longer entitled thereafter to the possession of the promissory notes and consequently he ceased to be the holder thereof. There was also no indorsement of the promissory notes and consequently after the partition there was no person who could be described as 'holder in due course' of these promissory notes. This suit was, therefore, instituted at the time when there was no holder or holder in due course of these promissory notes if it be held that Rai Ram Kishore had not become the holder. The question, therefore, resolves into one relating to the right of Rai Ram Kishore to recover the money on the promissory notes when there was no holder or holder in due course thereof. In these circumstances we are of opinion that Rai Ram Kishore, who is clearly on the facts entitled to the money due under the promissory notes, has the right to institute a suit to recover it. Under Section 78, Negotiable Instruments Act, the maker or acceptor of a promissory note, bill of exchange or cheque is required to pay the amount due to the holder of the instrument in order to obtain a discharge. When there is no holder at all, it is obvious that the right to receive the money must vest in the person who is entitled to the money due under the instrument and in such circumstances Section 78 will not stand in the way of the maker or acceptor obtaining full discharge

from such person by making payment to him. The obvious case which arises most frequently is where, after the execution of the promissory note, the sole payee dies and there has been no indorsement. In such a case, the legal representatives of the payee have always been held to be entitled to institute the suit for recovery of money on the instrument even though their names may not appear on the face of the instrument. In this connection notice has to be taken of the fact that the Negotiable Instruments Act nowhere specifically provides as to who is entitled to institute a suit to recover money due on a negotiable instrument. The various provisions of the Act deal with the right of negotiation of the instrument which initially vests in the payee but which can also be exercised by the holder or the holder in due course. For the protection of the maker or acceptor of the instrument provision has been made in Section 78 laying down that a payment made to the holder would grant full discharge to the maker or acceptor, this provision cannot and should not be considered to mean that the right to institute a suit on the basis of a negotiable instrument vests merely in the holder of the instrument and in no other person. Obviously, when there is no holder the right to recover the money on the negotiable instrument must, in case the holder dies, pass to his legal representatives and, in other cases, when the holder loses his status as such for any other reason, pass to the person who becomes entitled to the money due under the instrument. In the present case Rai Amar Nath, who was the payee and as such the holder of these promissory notes when they were executed, lost his status as a holder after the partition decree by which these promissory notes were allotted to the share of Rai Ram Kishore plaintiff. Thereafter the right to recover the money due under them vested in Rai Ram Kishore and the present suit brought by him is, therefore, clearly maintainable. Even if the rights in a negotiable instrument, such as a promissory note, are transferred by a registered instrument without any indorsement in favour of the transferee, the transferor ceases to be a holder and the right to recover the money on the promissory notes under these circumstances would vest in the transferee. Transfers by means other than an indorsement have clearly been recognised by the Negotiable Instruments Act. Section 43 makes a clear mention of any instrument being transferred with or without indorsement. In Ghanshyam Das v. Ragho Sahu, A. I. R. (24) 1937 Pat. 100, James J., with whose judgment all the other four Judges constituting the Bench agreed, remarked :

> "I do not think that it can be held in view of these authorities that endorsement is the only means by which a negotiable instrument can be transferred. Chapter 4, Negotiable Instruments Act, deals with the manner of the negotiation of these instruments. In the ordinary way, under Section 48 of the Act, a hand note such as we have before us in the present case would be negotiated by endorsement and delivery thereof ; a promissory note endorsed in blank or a promissory note to the holder or bearer is negotiated in simpler fashion. But the Negotiable Instruments Act itself does recognise that negotiable instruments may be transferred and for consideration otherwise than by negotiation, because Section 118(a) of the Act, provides that unfil the contrary is proved, when a negotiable instrument has been negotiated or transferred, it shall be presumed that it was negotiated or transferred for consideration."

4. A Full Bench (sic) of this Court in L. Parsotam Saran v. L. Bankey Lal, A I. R. (22) 1935 ALL. 1041, when discussing the observations in the case of Suratchandra v. Kripanath, 61 Cal, 425 remarked :

> "That observation was not necessary for the purpose of that case because the transferee of the instrument was certainly entitled to maintain the suit for recovery of the amount due on the promissory note on the strength of the sale deed in his favour when it was established that the promisor had not made the payment. It could not be doubted that payment by the executant of the promissory note to the transferee in the sale deed would have given him full discharge under the document. In any case we are unable to agree with the view that a transferee under a sale deed of such an instrument is a holder of the negotiable instrument within the meaning of Section 8 and can enforce the rights conferred on such a holder by Section 43 of the Act."

5. These comments are in line with our view that a transferee or a holder can institute a suit for recovering the money from the promisor even though the transfer has been made by a registered sale deed without any indorsement on the instrument itself, though, of course, such a transferee cannot claim all the rights of a holder in due course or the benefit of Section 43, Negotiable Instruments Act. Obviously, in both these cases, the right of the transferee to recover the money by suit was recognised because there was no holder, after the transfer, entitled to the possession of the instrument and to recover the money due thereon and the transferee alone could give a full discharge to the maker or acceptor of the instrument. We may refer to a number of other instances where, after the rights of the holder had vested in some other person, Courts recognised the rights of such person to recover the money due under the negotiable instrument. In Sowcar Lodd Govinda Doss Krishna Doss Varu v. Lepati Muneppa Naidu, 31 Mad. 531, promissory notes were obtained by the Court of Wards which had assumed superintendence of a estate of a disqualified proprietor. When the superintendence came to an end, the promissory notes were banded over to the proprietor without any indorsement. The Court held that, since the rights which originally vested in the Court of Wards had ceased on the termination of the superintendence by it, the property in the promissory notes descended to the plaintiff by operation of law and the plaintiff was, therefore, entitled to sue on the notes. In Ramanadhan Chetty v. Katha Velan, 41 Mad. 353, a promissory note had been executed in favour of a trustee who thereafter ceased to hold that capacity It was held that the Negotiable Instruments Act did not affect the devolution of rights by operation of law and consequently the successor trustee was entitled to maintain a suit on it. In Kali Charan v. Mahammad Ibrahim. 41 Cal. W. N. 697, a promissory note bad been executed in favour of a firm of which certain persons were partners and in a suit by those persons for partition of the joint properties, among which the debt due on the promissory note was one, a receiver was appointed and he was authorised to sue for, the debts due, and the receiver brought a suit on the promissory note. It was held that the Receiver was entitled to maintain the suit.

6. In Ramnagina Prasad v. Bishwanath Prasad, A. I. R. (21) 1934 Pat. 85, the principle recognised was enunciated in these words :

> "The principle involved in these two decisions is that, if the plaintiff is in a position to give a valid discharge, the fact that the promissory note does not stand in his name will not disentitle him to a decree in the suit. If the person in whose name the document stands is a party to the litigation and does not dispute the plaintiff's right to recover the loan and give a valid discharge there seems to be no reason why the

> suit should not be maintainable and why a decree should not be made in favour of the plaintiff."

7. In Subbarayudu v. Subbarayudu, A I. R. (22) 1935 Mad. 473, a promissory note standing in the name of defendant 2 as payee was transferred by an award of the Court to the plaintiff. It was held that :

> "There can be no doubt that the effect of the award, which allotted the suit promissory note among other things to the share of the plaintiff, was to transfer the property in the suit promissory note to the plaintiff, and the plaintiff is, therefore entitled as the owner to maintain the suit on the promissory note."

8. In Zujya Pascal Damel v. Manmohandas Lalubhai Pratap, I. L. R. (1940) Bom. 163, a promissory note was executed in the name of a Hindu family firm and subsequently at a partition the debt mentioned in the note was allotted to the share of one of the coparceners. It was held that a suit filed in the individual name of the coparcener due on the promissory note was maintainable.

9. We may also refer to the case of Veerayamma v. Ammireddi, A I. R. (36) 1949 Mad. 854, in which case a son and father were members of a joint Hindu family. The father advanced the debt to the defendant out of the joint family funds though the promissory note was taken in the name of the son. Subsequent to the death of tbe son, the defendant repaid the money to the father and obtained a discharge. The widow of the son filed a suit on the promissory note. It was held that, though the right of action on the note vested during his lifetime in the son, the debt itself belonged to the joint family and, on the son's death, the entire debt vested in his father by operation of law of survivorship, subject to the right of the son's widow under the Hindu Women's Eights to Property Act. The debt being a family debt, the father of the deceased payee and the manager of the family to whom the debt survived in its entirety could realise it and give a valid discharge to the debtor.

10. In Chandana Vencatadri v. Majati Lakshminarasimha, 8 Ind. Cas. 33 (Mad.), it was held that a member of a Hindu coparcenary, to whose share on partition a promissory note executed in favour of the manager of the family was allotted, could sue on the promissory note even though there was no indorsement on it; though there was a further decision that, even if an assignment in writing was necessary to create a right of suit, the partition list in the case was sufficient to satisfy the requirements of Section 130, T. P. Act.

11. It is perfectly clear that the ratio decidendi in all these cases was that the right of suit on a promissory note vested in the person who could give a valid discharge to its maker or acceptor, and that it was not essential that, in order to maintain a suit on the basis of a promissory note, the plaintiff must, on the face of the instrument, be the payee or the holder or the holder in due course. This right of the person entitled to the money to institute the suit was irrespective of any indorsement in the document in his favour and was recognised on the basis of the vesting of the ownership of the money in the plaintiff in the absence of a holder.

12. The decision in the case of Krishnaji Shivaji Pawar v. Hanmaraddi Mallaraddi, A.I.R. (21) 1934 Bom. 385, is clearly distinguishable from the case before us. In that case, a promissory note was passed in favour of a person who was alive and who had not renounced the world and the suit to recover the money on the basis of the promissory note was brought by his son. It was held that the son was not entitled to maintain the suit as he was not the holder of the note. Obviously, in that case, since the holder of the promissory note was alive and the maker or the acceptor could obtain a valid discharge from him by making payment to him in accordance with the provisions of Section 78, Negotiable Instruments Act, the right of the son to recover the money was negatived. Similarly, in the case of Suraj Bali v. Ram Chandra, 1950 ALL. L. J. 610, a learned Single, Judge of this Court held that, where a suit for the recovery of the amount due under a promissory note was brought by the sons of the holder of the instrument who had disappeared but was civilly alive, the suit was not maintainable. This was again a case where there was a holder of the instrument in existence and his death could not be presumed. The right to the money, therefore, vested in the holder and he alone could bring the suit for recovery of the money on the instrument. In the case before us, we have held that, after the partition decree, the payee Rai Amar Nath Agarwal ceased to be the holder of the instrument and there was subsequently no holder at all. When there was no holder at all, the right to recover the money would naturally vest in its rightful owner. The two cases mentioned above are, therefore, not at all applicable.

13. The only case, which appears to lay down a converse view, is that of Reoti Lal v. Manna Kunwar, 44 ALL 290. In that case, the document, which was held to be a promissory note was executed by the defendants in favour of one Kishori Lal. The plaintiff brought the suit on the allegation that the money was advanced by her and that Kishori Lal, in whose name it was drawn, was merely her benamidar as she was pardahnashin. Kishori Lal had died without heirs. The learned Judges, who decided that case, relied on the views expressed in some earlier cases of the Madras High Court and by a learned Single Judge of this Court in an earlier case in Dori Lal v. Sewak Ram, 13 ALL. L. J. 695. In the latter case, the holder of the instrument was still alive and the right of a person claiming to recover the money on the ground of the holder being his benamidar was rejected. It will be seen that, in this case, the holder was still alive and it was in view of this circumstance that the person claiming him to be his benamidar was held not entitled to recover the money even on the allegation that he was the real owner of the money. This aspect of that case was lost sight of by the learned Judges who decided the case of Reoti Lal v. Manna Kunwar, 44 ALL. 290. In this case, the payee had died leaving no heirs and there was no bolder at all after his death. The effect of the decision given by the learned Judges would be that, if the payee or the holder dies leaving no heirs at all, the right of recovery of the money advanced on the promissory note would not vest in any one at all even though some one may be able to prove that he was the real owner of the money that was advanced. This, in our opinion, would not be laying down a correct principle. The law must always be so interpreted as to provide a remedy to the real owner of the money in all contingencies. In case a promissory note is executed in favour of a benamidar, the Negotiable Instruments Act ordinarily permits the payee, in whose favour the instrument is drawn, to recover the money due under it and thereafter, of course, the real owner can claim it from the payee. Any interpretation, which would have the effect of laying down that in the case of a benamidar payee dying without heirs, the recovery of the money due under the promissory note would not be permissible at all by any one, would be against all principles of justice. In our opinion, therefore, that case was wrongly decided

and the error crept in because the learned Judges lost sight of this aspect of the case. They should have held that, in the absence of a holder and his heirs, the right to recover the money vested in the real owner of the money who could maintain the suit for the purpose.

14. In the present case before us, the effect of the decree in the partition suit was to convey all the rights in the promissory notes to Rai Ram Kishore plaintiff and thereafter, since there was no holder, he alone was entitled to recover the amount due under them. This suit was, therefore, maintainable and it has wrongly been dismissed by the lower Courts on the ground of non-maintainability. We consequently allow this appeal with costs, set aside the decree passed by the lower Courts, dismissing the suit, and send the case back to the lower appellate Court for deciding it according to law after hearing the parties on other points of contest.