

Andhra High Court

Maddi Rama Kotaiah vs Maddi Seshamma on 26 February, 1970

Equivalent citations: AIR 1971 AP 315

Bench: Parthasarathi

ORDER

1. The question raised in this revision petition is whether an oral assignment of a promissory note and the grant of a succession certificate based on the recognition of such oral assignment are valid.

2. The competing claims in regard to the right under the promissory note are made by the heir at law on the one hand and the person who sets up the oral assignment, on the other. The first Additional District Judge, Guntur confirmed the finding of the District Munsif that the oral assignment was proved. He also came to the conclusion that the transfer of an actionable claim under a promissory note need not necessarily be effected by instruments in writing.

3. It is urged by the learned Counsel for the petitioner that the view of the District Judge is erroneous. Section 46 of the Negotiable Instruments Act enacts, inter alia, that a promissory note payable to bearer is negotiable by the delivery thereof whereas the one that is payable to order is negotiable by the holder by endorsement and delivery thereof. In the instant case, it is not stated by Counsel on either side that the promissory note is payable to bearer. The case comes under the second category mentioned above and is negotiable by endorsement and delivery. Section 48 reads thus;

"Subject to the provisions of Sec. 58 a promissory note, bill or exchange or cheque (payable to order) is negotiable by the holder by endorsement and delivery thereof."

4. The except in to which Section 58 of the Negotiable Instruments Act relates does not arise for consideration here. The negotiability is dependent on endorsement and delivery of the note. The respondent does not claim under an indorsement; and so that question is, whether the oral assignment found to have been true is sufficient and valid.

5. There has been considerable divergence of opinion on the question whether the title to a promissory note could pass in a manner other than the one specified in the Negotiable Instruments Act. it is not necessary to review the authorities in detail. In *Pattat Ambadi Marar v. Krishnan*, (1888) ILR 11 Mad 290, it was held that there could be no valid transfer of a promissory note payable to order otherwise than by endorsement and delivery. This view endorsement and delivery. This view was affirmed in *Arunachala Reddi v. Subba Reddi*, (1907) 17 Mad LJ 393. In the latter case, it was held that an assignee of a promissory note cannot sue on the note as such unless it be endorsed to him. It was further decided in that case that he would be entitled to sue if the note had been assigned to him otherwise than by indorsement as required by Section 130 of the Transfer of Property Act.

6. On a review of the earlier decisions on the subject, it is apparent that the extreme view that was taken in some cases was that there could be no valid transfer of a promissory note payable to order

otherwise than by indorsement and delivery. The region of this rule was modified by the later pronouncements which recognised that title to a promissory note payable to order could pass by operation of law or by assignment in the manner required under Section 130 of the Transfer of Property Act. In *Ramanathan Chetty v. Katha Velan*, ILR 41 Mad 353 = (AIR 1918 Mad 482) the learned Judges observed.

"The possibility of transfer of right in the note by operation of law has not been the subject of judicial pronouncements to any considerable extent."

"The Negotiable Instruments Act only deals with transfers by Negotiation. Under the English Bills Exchange Act, the common law of the land is expressly saved (see Section 97). It is a pity that there is no such saving clause in the Indian Enactment. Section 57 of the Act, by implication, seems to contemplate that the legal representatives of a deceased person can negotiate a promissory note. The practice of allowing legal representatives in this country to sue on notes executed to their predecessors is apparently founded on the principle that the Act does not abrogate the rules of devolution of rights in the properties of the deceased." In *Veeramma v. Ammi reddy* (1949) 1 Mad LJ 189 - (AIR 1949 Mad 854). *Viswanatha Sastry, J.* reiterated the position that where the right to a debt evidenced by a promissory note vests by operation of law in a person different from the payee named in the note, as for instance, in a receiver in insolvency or a succeeding trustee, it is open to the persons in whom the right to the debts so vests to sue for the recovery even though they may not come strictly within the literal language of Section 8 of the Negotiable Instruments Act as 'Holders.'

7. Another important pronouncement on the subject is the decision of *Chandler Reddy, J.*, as he then was, in *Venkataswami v. Hanura Noor Md. Begum*, 1955 Andh WR 91 (AIR 1956 Andhra 9). He examined the earlier decisions on the subject and came to the conclusion that besides the modes indicated in the Negotiable Instruments Act some other methods by which title passes are valid. The principle was affirmed that by operation of law and transfer as a chose in action under Section 130 of the Transfer of Property Act, a person may become entitled to sue on a promissory note payable to order.

8. In a recent decision of a Full Bench of the Madras High Court in *Muthuveeran Chetty v. Govindan Chetty* (FB) there is a restatement of the relevant principles. The Full Bench gave effect to the position firmly rooted in successive pronouncements that the Negotiable Instruments Act only deals with transfer by negotiation. Section 57 with transfer by negotiation. Section 57 of the Act, by implication, seems to contemplate legal representatives of a deceased person being competent to negotiate and sue on a promissory note. It is now firmly established that in so far as the modes of transfer of Negotiable Instruments are concerned, the Negotiable Instruments Act is not exhaustive and does not prevent the passing of the property in the promissory note by operation of law. The case on hand does not come within the category of cases where the right to the promissory note passes by operation of law.

9. The short question, therefore, is whether the promissory note being an actionable claim within the meaning of the Transfer of Property Act, is capable of being sued on solely on the strength of a

mere oral assignment. there can be no doubt that the promissory note be no doubt that the promissory note payable to order is an actionable claim as defined by the Transfer of Property Act. It follows that the provisions of Section 130 of the Transfer of Property Act regulate the terms and conditions of the transfer of a promissory note. The mode of transfer prescribed by Sec 130 contemplates the execution of an instrument and the vesting of the interests in the transferee shall be complete and effectual only upon the execution of an instrument in writing. It is, however, contended by the learned Counsel for the respondent that Section 137 of the Transfer of Property Act enacts that the provisions in that Chapter i.e., Chapter VII including Section 130 are inapplicable to negotiable instruments. His submission that Section 137 takes promissory notes out of the purview of Section 130 and, therefore, the requirement that the instrument should be in writing is not applicable to a promissory note. This contention, in my opinion, is not well founded.

10. My attention is drawn to a decision of the Division Bench of the Madras High Court in Venkatarama Ayyar v. Krishna Swami Chettiar 35 Mad LW 755 = (Air 1933 Mad 133 (1)) and to the observations made by the learned Judges in that case, Jackson, J., who delivered the Judgment on behalf of the Division Bench, observed.

"It is strenuously argued that Section 137 of the Transfer of Property Act which exempts certain mercantile documents from the provisions of Section 130 of the Transfer of Property Act also denies to such documents the method of Section 130 of the Transfer of Property Act. We see no reason to accept such an interpretation."

11. With respect, I agree with the view so expressed. AS pointed out by the learned Judges, Section 137 of the Transfer of Property Act gives an extended privilege to mercantile documents that is to say that so far as such mercantile documents are subject to the provisions of other enactment's, the applicability of such enactments is preserved. Sections 130 and 137 of the Transfer of Property Act must be read in such a manner as to effectuate the real intention of the Legislature. In my opinion the legislative intentment is to provide a supplementary method in respect of the transfer of mercantile documents in addition to the special provisions applicable to them under the special enactments. It is illogical and repugnant to the underlying purpose of Section 130 to construe Section 137 in the manner contended for by the learned Counsel for the respondent. It is manifest that the Transfer of Property Act classifies certain mercantile documents as actionable claims and it provides for an additional mode for the transfer of property at the option of the parties.

If the contention of the learned counsel that Section 137 renders the mode of transfer prescribed under Section 130 inapplicable to a promissory note, it will not be of any avail to him. Let me examine the consequences of the acceptance of the position that Sec 130 does not apply to a promissory note. The result would be that the only modes applicable would be the method of endorsement expressly provided for by Section 46 of the Negotiable Instruments Act and the implied provision of transfer by operation of law under Sec. 57. The argument of the Counsel, if accepted, would be self-defeating. If promissory notes are held to be outside the purview of Section 130, the result would be that the method of transfer contemplated by the Transfer of Property Act would not be applicable at all to a promissory note, and this result is of no assistance to the respondent.

12. It is however, submitted by Counsel that even if Chapter VIII of the Transfer of Property Act is excluded, an oral transfer would nevertheless, be valid. He submits that the right of a holder of a promissory note is movable property which is capable of being transferred under Section 5 of the Transfer of Property Act even without a written instrument. I do not agree with this contention. In my opinion, if as contended by him, Chapter VIII is held to be inapplicable, the resultant position would be that the Negotiable Instruments Act alone becomes applicable and no mode of transfer can be adopted except in conformity in the conformity with the provisions of the Negotiable Instruments Act.

13. It only remains to point out that the learned Additional District Judge has thoroughly misunderstood the effect of the decision of Chandra Reddy, J. in 1955 Andh WR 91 = (AIR 1956 Andhra 9). In that decision, Chandra Reddy, J. clearly laid down that an assignment of a chose in action can only be under Section 130 such a transfer can be made only in writing. Notwithstanding the clear pronouncement, the learned District Judge has misapplied the ruling and thought that the requirement that the transfer should be in writing is to indicated. The view of the District Judge rests upon an obvious misconception of the decision of Chandra Reddy, J. The revision petition must therefore, be allowed with costs through out.

14. Revision allowed.