

Hazarimal Vs. Sonraj

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Court : Rajasthan

Decided On : Nov-03-1958

Reported in : AIR1959Raj84

Judge : D.M. Bhandari, J.

Acts : Negoiable Instruments Act, 1881 - Sections 50 and 52

Appeal No. : Second Appeal No. 1 of 1954

Appellant : Hazarimal

Respondent : Sonraj

Advocate for Def. : Hastimal, Adv.

Advocate for Pet/Ap. : Sumer Chand, Adv.

Disposition : Appeal dismissed

Judgement :

D.M. Bhandari, J.

1. This is a civil second appeal on behalf of the defendant against the judgment and decree of the Civil Judge, Balotra dated the 24th of September. 1953 reversing the judgment and decree of the Munsif, Bhinmal, dated the 25th of March. 1953.

2. The defendant executed a Hundi in favour of Punamchand Genaji on Achlaji Lakhmaji of Bombay on Jeth Badi 7th Smt. 2001. Punamchand Genaji indorsed this Hundi in favour of Chhogaji Khushalji. He also named Fauzaji Khushalji as drawee in case of dishonour of the Hundi by Achlaji Lakhmaji. The Hundi was dishonoured by Achlaji Lakhmaji and Chhogaji Kushalji received payment from Fauzaji Khushalji.

Punachand Genaji, thereafter, made payment to Fauzaji Khushalji and received back the Hundi. Subsequently, he transferred his rights under the Hundi to the plaintiff Sonraj who brought the suit under the Hundi. The suit was decreed by the lower appellate Court.

3. In this appeal it is argued on behalf of the defendant that Fauzaji Khushalji had not re-indorsed the Hundi in favour of Punamchand Genaji and as such he had no right to transfer his claim under the Hundi. In my opinion no such reindorsement is necessary. Punamchand Genaji had endorsed the Hundi in favour of Chhogaji Khushalji.

Chhogaji Khushalji had received payment from Fauzaji Khushalji and Fauzaji Khushalji had received payment from Punamchand Genaji and the Hundi came in possession of a person who had first endorsed it though of course without any indorsement in his favour.

The question is whether such endorsement is necessary. So far as the law in America is concerned, it has been settled beyond dispute that such re-endorsement is not necessary. Reference in this connection may be made to paragraph 576 in the Treatise on the Law of Negotiable Instruments by J. W. Daniel Sixth Edition quoted below:

'Whether or not an indorser of a bill or note which has upon it a subsequent special indorsement, and no prior indorsement in blank, is shown by there possession of the paper to be entitled to demand payment, has been much questioned. There are a number of cases which hold that such an indorser cannot demand payment, for the reason that it would seem from the face of the paper itself that he had parted with las title; and that a receipt from the last indorsee, or a reindorsement to

him, would be necessary to re-establish it. This doctrine was laid down in an early case by the Supreme Court of the United States, and some of the State tribunals have taken the same view, but in a more recent case the Supreme Court of the United States expressed the opposite opinion, which seems to us the correct one. *Dugan v. United States*, (1818) 3 Wheaton 172. Some of the cases hold that possession of the bill by a prior indorser is sufficient where the subsequent indorsements are cancelled, but the better view seems to be, and is sustained by most respectable authority, that it makes no difference that the subsequent indorsements remain uncanceled. The party may not be still the proprietor in interest of the instrument, but his possession of it would be prima facie evidence that he had paid it himself to a subsequent indorsee, and had reacquired the right to demand payment. And it would also be consistent with the idea that he was holding it and suing for the benefit of a subsequent indorsee.'

The above statement of law has been approved by the Madras High Court in the case of *Muthar Sahib Maraikayar v. Kadir Sahib Maraikayar*, ILR 28 Mad 544. Defendants Nos. 1 to 6 in that case obtained 25 negotiable promissory notes from different persons and indorsed the same to one Meyyappa Chetty, who again indorsed them to the Bank of Madras at Colombo. The notes were dishonoured by the makers on presentation to them by the Bank.

Thereupon Meyyappa Chetty paid the Bank and received back the notes. Meyyappa Chetty assigned those notes to the plaintiff in that suit who brought a suit for the recovery of the amount due under five promissory notes. The defendants had also given three promissory notes to Meyyappa Chetty payable to him or to his order which were similarly assigned by him in favour of the Bank and were returned to him after being dishonoured.

That suit also included the claim on one of the promissory notes executed by the defendants in favour of Meyyappa Chetty which claim had also been assigned to the plaintiff. One of the arguments addressed in that case was that the property in the notes should be taken to be residing in the Bank of Madras and the plaintiff had no right to sue on the notes. This argument was rejected. Their Lordships observed as follows:

'But it may be pointed out that, when a prior indorser, in the technical language of the law, 'takes up a note' see *Ellsworth v. Brewer*, 11 Pickering, per Shaw C. J. at p. 320 on payment to his immediate indorsee and discharges his liability under the contract arising by the indorsement, there is no provision either in the Negotiable Instruments Act Or elsewhere prescribing the mode in which such 'taking up' of the note is to be established. As laid down in Section 452 of Story on 'Promissory Notes', 'the possession of a note by the maker or by the payee or by any subsequent indorser is prima facie evidence that he has acquired the full title thereto'. The proposition thus laid down is, it scarcely need to be added, supported by numerous authorities of which the leading one is the decision of the Supreme Court of the United States in *Dugan v. The United States*, (1818) 3 Wheaton 172 at p. 183 where Livingstone J., delivering the opinion of the Court, said that 'if any person who indorses a bill of exchange to another whether for value or for purposes of collection, shall come to the possession thereof again, he shall be regarded, unless the contrary appear in evidence as the bona fide holder and proprietor of such bill and shall be entitled to recover, notwithstanding there may be on it one or more indorsements in full subsequent to the one to him, without producing any receipt or indorsement back from either of such indorsees, whose names he may strike from the bill or not as he may think proper.'

Subralmanian Chetty v. Alagappa Chetty, ILR 30 Mad 441. The above ruling was approved in the cases of *Satyanarayana v. District Panchayat Officer, West godavan, Eluru*, AIR 1958 Andh Pra 32 and *James and Co. v. Scott*, ILR 36 Gal 291.

4. Under English Law Section 59(2)(b) of the Bill of Exchange Act, 1882 provides as follows:

'Where a bill is paid by an indorser, or where a bill payable to drawer's order is paid by the drawer, the party paying it is remitted to his former rights as regards the acceptor or antecedent parties, and he may. if he thinks fit strike out his own and subsequent indorsements, and again negotiate the bill.'

The effect of that provision is that if the instrument is paid by an indorser, he at once gets his rights which he possessed- as a holder before he indorsed the

instrument. See Halsbury's Laws of England Third Edition Volume 3 paragraph 414 page 230.

(5) I am in respectful agreement with the view expressed in the above authorities. The principle governing this view may be taken to be that when an indorser comes again in possession of the negotiable instrument in his own right he is entitled to say so far as the parties antecedent to him are concerned that he never made the indorsement. So far as parties subsequent to him are concerned his liabilities to them are discharged. This may be shown by striking out the subsequent indorsement but the suit is maintainable even if he does not strike out the subsequent indorsements.

Striking out the subsequent indorsements may be necessary in case it is intended that the document is to be negotiated further, but when case is to be brought in a court of law it is a mere formality. In the case of Veerappa Chetty v. Muthuraman Chetty, AIR 1920 Mad 944 in the last paragraph of the judgment, Spencer, J. expressed his view that the plaintiff could cancel the indorsement even after the suit had been filed.

6. In this case there is definitely an allegation in the plaint that the instrument had been received back by Punamchand Genaji from Fauzaji Khusalji after payment and this fact has been held proved. This is sufficient to entitle Punamchand Genaji or his assignee to maintain the suit. I, therefore, reject this contention raised on behalf of the appellant.

7. It is next urged that the Hundi was without consideration. This contention has been rightly rejected by the lower appellate court and has got no force.

8. The appeal is, therefore, dismissed with costs.