

R. Gopalakrishna Iyer Vs. D. Gopalakrishna Iyer and ors.

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Court : Chennai

Decided On : Nov-09-1909

Reported in : 4Ind.Cas.420

Judge : Munro and ;Abdur Rahim, JJ.

Appellant : R. Gopalakrishna Iyer

Respondent : D. Gopalakrishna Iyer and ors.

Judgement :

Abdur Rahim, J.

1. This second appeal is preferred by the plaintiff in a suit which he instituted in the Tinnevely Subordinate Judge's Court to recover Rs. 3,200 consisting of principal (Rs. 3,000) and interest (Rs. 200) from six defendants of whom defendants Nos. 1, 3 and 6 are respondents before us and the question with which we are concerned relates to their liability. The sum of Rs. 3,000 was due on account of advances made from time to time by the plaintiff to defendants Nos. 1 and 3 who on the 19th November, 1902, executed a hypothecation deed (Exhibit--A) in favour of the plaintiff, by which they hypothecated the money due to them both from the S.I.R. Co., the 6th defendant in the case, on account of certain work done by them for the Railway Company in what is called the 1st Division and also the amount due to the 1st defendant alone from the same Railway Company for works done by him on the 2nd Division of the line. On the same date as the deed of hypothecation the

1st defendant executed a power-of-attorney (Exhibit--D) authorizing the plaintiff to receive from the Railway Company so much of the Rs. 9,400 due by them to the 1st defendant as could then be drawn and to give a proper discharge for the amount to the Company. The plaintiff out of the sum when drawn was to satisfy the debt due to himself from the 1st and the 3rd defendants and pay over the balance to the 1st defendant. Notice of the assignment was duly given to Mr. Lindsay, an Executive Engineer of the Railway Company but he refused to recognize the assignment at all. Further correspondence ensued with the result that the plaintiff placed the matter in the hands of his lawyers who very properly pointed out to Mr. Lindsay that the attitude he thought fit to take up on behalf of the Railway Company was absolutely indefensible and in defiance of the law. But Mr. Lindsay was not willing to acknowledge his mistake and pay to the plaintiff the amount which had become payable to the 1st defendant by the Railway Company. So what he did was to send for the plaintiff and the 1st defendant to his office where a bill for Rs. 4902-3-6 for the 1st defendant's works was drawn up and signed by the 1st defendant and attested by the plaintiff and two cheques one for Rs. 3,500 and the other for the balance were made out in favour of the 1st defendant. The cheque for Rs. 3,500 was then at the desire of Mr. Lindsay endorsed and made over by the 1st defendant to the plaintiff. Directly the plaintiff and 1st defendant went out of the Engineer's room, the endorsement on the cheque in favour of the plaintiff was scored out by the 1st defendant who then endorsed it to his own servant and this man cashed the cheque. The entire amount of the cheque less a small sum which was paid to the plaintiff on account of the interest which was due till then was received by defendants Nos. 1 and 3 who were in need of money for carrying out further works for the Railway Company. The power-of-attorney (Exhibit--D) executed by the 1st defendant was cancelled but not the hypothecation bond Exhibit--A which remained in possession of the plaintiff. All this happened on the 9th February, 1903, and on the 1st May, 1903, defendants Nos. 1 and 3 executed a power-of-attorney (Exhibit--E) in favour of the plaintiff authorizing him to receive from the Railway Company the sum of Rs. 3,000 which was still due to the plaintiff under Exhibit--A, out of the amount of the final bill which became due to them from the Railway Company for the works executed by them in connection with the 1st Division and which had been

mortgaged to the plaintiff under Exhibit--A.

2. Here we may conveniently pause and deal with the contentions which as grounds of defence are common to the 1st and 3rd defendants as well as the 6th defendant. The first contention is that by what happened on the 9th February, 1903, in the room of Mr. Lindsay, the hypothecation bond was discharged. It is absolutely clear from the facts just stated, and these facts are as found both by the Subordinate Judge and the District Judge, that so far as the parties to the bond were concerned, they never intended that the plaintiff should have the proceeds of the cheque or that the liability of defendants NOS. 1 and 3 under the bond should cease. The 3rd defendant was not even present at the interview. What the learned District Judge, however, says is that payment by a cheque was treated both by the 1st defendant in whose favour it was drawn by the Railway Company as well as by the plaintiff as absolute payment in the same sense as if the payment was made in current coin of the realm. This has not been disputed by the learned Advocate-General who appeared for the appellant nor does he quarrel with the conclusion of the District Judge that the liability of the Railway Company for the amount due to the 1st defendant in respect of the 2nd Division Works was extinguished by such payment. And here we take it--and it has not been contended otherwise--that although the cheque was drawn by Mr. Lindsay in favour of the 1st defendant and made over by the former to the latter and not to the plaintiff to whom the amount due was assigned, yet since the 1st defendant at the request of Mr. Lindsay endorsed the cheque in favour of the plaintiff who took it, the plaintiff could not call upon the Railway Company to pay him over again the amount payable by the Company in respect of the 2nd Division Works for which the cheque was given. This, not because the liability of the Railway Company in respect of that debt was satisfied by payment to the plaintiff who alone was entitled to it but because the plaintiff having permitted and been content that payment should be made to a third person, would be estopped from holding the Railway Company still liable for that amount. And apparently both the plaintiff and the 1st defendant taking this view of the transaction cancelled Exhibit--D the power-of-attorney in respect of the money due for the 2nd Division Work. But the lower appellate Court goes further and finds evidently on the evidence of Mr. Lindsay that this gentleman representing the Railway Company intended that the hypothecation bond by which not only the

amount payable to the 1st defendant for the 2nd Division Works but also the money which was payable for the 1st Division Works to the 1st and 3rd defendant's was mortgaged should be discharged. The Railway Company were not a party to the bond and no demand was made upon them and no payment was made by them with respect to the 1st Division Works. It is not easy, therefore, to conceive how any intention on the part of Mr. Lindsay could affect the operation of the bond in respect of what might be due to the 1st and 3rd defendants for works that had not been paid for. Of course it was open to the plaintiff and the 1st and 3rd defendants to treat the bond as discharged although the debt due by the latter to the former was not in fact satisfied but such agreement has not been found and is negatived by the proved facts of the case. The District Judge is, therefore, wrong in holding that the hypothecation bond is discharged. We also agree with the contention of the plaintiff that the power-of-attorney, (Exhibit --E) dated the 1st May, 1903, was in itself a valid assignment to the extent of Rs. 3,000 out of the amount payable by the Railway Company for the 1st Division Works. The answer given by the District Judge to that contention is that Exhibit--E was intended to be provisional in the sense that it was not to be acted upon unless it was approved by Mr. Lindsay. But that was never the case of the defendants with respect to Exhibit-E and the parties did not go to trial on such an issue. We, therefore, hold that it was not open to the District Judge in appeal to make out a new case on the point for the defendants. But before us, Mr. Grant, who appeared for the Railway Company, has argued that in the plaint the suit is based on the hypothecation bond alone and not on the power-of-attorney of the 1st May 1903. But the power-of-attorney is distinctly set out in the plaint and its legal effect was one of the points discussed in both the lower Courts. We think there is no force in this objection.

3. The only question which now remains for consideration is whether there was sufficient and valid notice of the assignment to the 6th defendant. This, of course, concerns only the 6th defendant. The facts in this connection are not in dispute. On the 1st May, the day Exhibit--E was executed, defendants Nos. 1 and 3 sent a letter (Exhibit--F2) to the Executive Engineer No. 1 Division informing him that they owed Rs. 3,000 to R. Gopalakrishnier, the present plaintiff and had executed a power-of-attorney in his favour authorizing him to draw from the Railway Company

Rs. 3,000 out of the amount due on their final bill and at the same time requested the Executive Engineer to pay this amount to the plaintiff when the bill would be ripe for payment in due course unless in the meantime they themselves had otherwise paid off the debt due by them to the plaintiff. On the 7th May the plaintiff himself wrote a letter (Exhibit--F) to the Engineer saying that the defendants Nos. 1 and 3 owed him Rs. 3,000 for which they had executed in his favour a hypothecation bond under which the debt still due to them from the Railway Company was mortgaged to him and that they also executed a power-of-attorney entitling him to draw Rs. 3,000 from the Company and wound up with a request for payment. The plaintiff at the same time forwarded copies of the bond Exhibit--A and the power-of-attorney Exhibit--E to the Engineer. In this notice there was no qualifying clause as in the notice given by defendants Nos. 1 and 3, namely, that the payment of Rs. 3,000 was to be made by the Company if the debt due by the defendants Nos. 1 and 3 to the plaintiff had not already been discharged. On the 11th May the Executive Engineer wrote (Exhibit--F 4) to defendants Nos. 1 and 3 in reply to their letter Exhibit--F2: 'I decline to have anything to do in their private transaction nor do I recognise any power-holder. Payments will only be made to the contractors as per agreement,' and on the 12th May, he forwarded a copy of this reply to the plaintiff in answer to the latter's letter of the 7th May. Whatever the nature of the agreement mentioned in Exhibit--F4, if there was any such agreement no reliance was placed on it either in the lower Courts or before us. What has to be noted here is that the Railway Company on this as on the previous occasion simply refused in utter defiance of the law to recognise any assignment of the money due by them to the contractors and not that they thought that there was any risk in paying the plaintiff because of the qualifying words mentioned above in the notice given by the contractors. On the 21st May the plaintiff sent another letter, Exhibit--F1 insisting that the Company could not disregard the assignment and that if they failed to pay him he would be obliged to seek redress in a Court of law. He received no reply to this; and on the 23rd October being informed that the defendants Nos. 1 and 3 had completed their works and that the bill was ready for payment he wrote again to the Engineer requesting him to pay the amount of Rs. 3,000 to himself and on no account to pay it to defendants Nos. 1 and 3. The Railway Company, however, gave no heed to these letters and soon

afterwards paid Rs. 11,000 to defendants Nos. 1 and 3, the entire amount due for the work done on the 1st Division.

4. The District Judge holds that the notice Exhibit-F2 given by defendants Nos. 1 and 3 was not in accordance with law being only a conditional notice and, therefore, the Railway Company were justified in paying them. He does not say that the transfer of the contractor's claim against the Company was not a valid and legal transfer nor has any such contention been put forward before us. If there was a valid and effectual transfer then according to Section 130 of the Transfer of Property Act, the rights of defendants Nos. 1 and 3 against the 6th defendant immediately vested in the plaintiff, who thus became entitled to enforce them whether notice of the transfer was given or not. The transferors, defendants Nos. 1 and 3, were no longer entitled to payment of the debt so transferred. But if the debtors--the Railway Company--paid their original creditors without notice of assignment of the debt then the law would allow them to plead such payment in discharge of their liability although at the time of payment the right had vested in the assignee, the present plaintiff. Notice is not necessary to perfect the title of the assignee of a debt but until the debtor receives notice of the assignment in accordance with the law his dealings with the original creditor will be protected. Sections 130 and 131 of the Transfer of Property Act lay down that the notice shall be express and in writing--and so it is in this case--and signed by the transferor or the transferee. Here before the Railway Company made any payment to defendants Nos. 1 and 3, they had received one such notice signed by defendants Nos. 1 and 3 (Exhibit--F2), copies of the bond Exhibit--A and the power-of-attorney Exhibit--E, the originals of both of which were signed by defendants Nos. 1 and 3, and three letters written on three different dates by the plaintiff (Exhibits F, F1, F3) notifying the assignment to the Company. The notice signed by the creditors mentioned that they had authorised the plaintiff by a power-of-attorney to draw the sum of Rs. 3,000 without any condition or qualification but the request to the Railway Company to pay the plaintiff is qualified by use of the words 'in case our loan is not cleared till then.' The Act does not say that the notice to be valid must be free from any condition or qualification but Mr. Grant relies upon the case of *Durham Brothers v. Robertson* (1898) 1 Q.B. 765 as laying down that the notice of assignment must not be conditional. But that case decides nothing as to the form

of the notice and all that is decided there is that the assignment must be absolute and not by way of charge only as required by the Judicature Act. That the transfer of the debt by way of security as in this case is good under by Transfer of Property Act, has not been seriously questioned at the bar as it could hardly be in the face of Section 134. Even in the sense of the English Law, the assignment under Exhibits A and E would be an absolute assignment. What then is the duty of a debtor, the claim against whom has been absolutely transferred to another person and who has received notice of such assignment from his creditor but has at the same time been requested by the latter to pay the transferee only if the liability which formed the consideration of the transfer has not already been discharged. The utmost that could be fairly claimed for a debtor in that position is that if his creditor after giving such notice represents to him that he has satisfied the claim of the transferee and the transferee himself takes no steps to realise the debt from the original debtor, the latter would be justified in paying the transferor, but the Railway Company in this case did not pay the contractors until long after they had received a number of notices of the assignment--and no irregularity is alleged in those notices --coupled with demand of payment from the plaintiff nor is it suggested that they paid defendants Nos. 1 and 3 in bona fide reliance on any representation by the latter that they had paid off the debt due to the plaintiff and, therefore, the assignment ceased to be operative. The Railway Company paid the contractors and not the plaintiff because they would not recognise the assignment to the plaintiff at all. The Transfer of Property Act does not lay down what the debtor is to do when the fact of the assignment or its validity and operation is in dispute; but there can be no doubt that in such a case if he has received a duly signed notice of the alleged assignment, the only safe course for him is not to pay either of the claimants but to ask them to interplead. If he pays one of them he does so at his peril and he will be obliged to pay over again to the right person if the persons to whom he paid had no title See *William Brandt's Sons and Co. v. Dunlop Rubber Company* (1905) A.C.454. Even if the notice Exhibit--F2 was not a valid notice, the Railway Company had as we have pointed out perfectly good notice from the plaintiff before they paid the defendants Nos. 1 and 3. Under Section 131 the transferee can sign the notice if the transferor refuses to do so but it was never alleged that circumstances did not exist which justified the plaintiff in

giving the notice and the Act does not require that these circumstances should be mentioned in the transferee's notice. And it would hardly be reasonable to say that if the transferor refused to give a proper notice but gave a notice which was invalid in law, the transferee could not give notice of the assignment so as to prevent the original debtor from defeating the assignment. We hold that the liability of the 6th defendant to the plaintiff was not discharged by payment to defendants Nos. 1 and 3.

5. The appeal must, therefore, be allowed, the decree of the District Judge reversed and that of the Subordinate Judge restored with costs in this Court and the lower appellate Court. The memorandum of objections is dismissed with costs.

Munro, J.

6. I agree.

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