

**(1982) 12 KAR CK 0014**

**Karnataka High Court**

**Case No:** Second Appeal No. 1047 of 1975

Chandrashekara Gouda

APPELLANT

Vs

Canada Bank, Mangalore and  
Others

RESPONDENT

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**Date of Decision:** Dec. 2, 1982

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 41 Rule 33
- Transfer of Property Act, 1882 - Section 130

**Citation:** AIR 1983 Kar 233

**Hon'ble Judges:** G.N. Sabhahit, J

**Bench:** Single Bench

**Advocate:** S.R. Bannurmath, for the Appellant; Padubidri Raghavendra Rao, for the Respondent

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### **Judgement**

1. This appeal by defendant 7 is directed against the judgment and decree dated 5-9-1974 passed by the District Judge, South Kanara, Mangalore in R. A. No, 8 of 1971 on his file, partly allowing the appeal and to that extent reversing the judgment and decree dated 14-4-1971 passed by the I Addl. Civil Judge, Mangalore in O. S. No. 83 of 1968 on his file, dismissing the suit of the plaintiff bank against defendants 6 and 7 granting decree only against defendant 2.

2. Defendant 2 is the Proprietor of a money lending firm called Mangalore City Bankers arrayed as defendant 1. Defendants 3 to 5 are the sons of defendant 2. Under a hire-purchase agreement entered into by defendant 6 for which defendant 7 was the guarantor, dealer of goods vehicle, sold the goods vehicles to defendant 6. In respect of the advance made by defendant 2 to defendants 6 and 7, the plaintiff bank financed defendants 1 and 2 for which defendant 2 executed a pronote for Rupees 1,50,000/- An agreement was entered into between the plaintiff and defendants 1 and 2, according to which, the plaintiff was to advance amounts

from time to time to the limit of Rs. 1,50,000/- on taking hire-purchase agreements from customers. Defendant 6 entered into hire-purchase agreement in favour of defendant 2 the proprietor of defendant 1 and hired the goods vehicle. Subsequently, defendant 2 also took a promissory note as collateral security from defendants 6 and 7 and he assigned the same to the Bank and since the Bank did not receive the instalments from defendant 2 or from defendants 6 and 7, the Bank filed a suit against defendants 1 to 7.

3. As stated above, defendant 1 is the Mangalore City Bankers concern. Defendant 2 is the proprietor of the first defendant; defendants 3 to 5 are the sons of defendant 2 and defendant 6 is the person who entered into hire-purchase agreement with defendant 2. Defendant 7 is the subsequent purchaser of the vehicle after the cancellation of hire-purchase agreement by defendant 2.

4. We are at present concerned only with the case as made out by defendant 7. Defendant 7 has submitted that he was not liable to pay any amount to the Bank. Firstly, because, the hire-purchase agreement was never assigned u/s 130 of the Transfer of Property Act in favour of the Bank. What was endorsed to the Bank is only the promote given by way of collateral security on which the Bank could not sue. Secondly, before his purchase the hire-purchase agreement was cancelled and intimated to the R. T. O. as could be seen from Exhibit P-31. Hence, he submitted that there was no liability on his part to pay any amount to the Bank. The trial Court accepted his contentions and dismissed the suit against defendants 3 to 7 while decreeing the suit against defendant 2 only. Aggrieved by the said judgment and decree the plaintiff bank went up in appeal before the learned District Judge, South Kanara, Mangalore and the I Addl. District Judge, who heard the appeal, raised the following points as arising for his consideration in the appeal.

(1) Whether defendants 6 and 7 have executed the promote for Rs. 30,000/- in favour of defendants 1 and 2 and whether the same has been endorsed by defendants 1 and 2 in favour of the plaintiff-Bank ?

(2) Whether the plaintiff is entitled for a charge on the vehicle ?

(3) Whether defendants 6 and 7 are personally liable to pay the suit claim?

(4) Whether the preliminary decree against the immovable properties of defendant No. 2 should have been passed against defendants 3 to 5 also.

5. Reassessing the evidence on record, in the light of the arguments addressed before him, the learned District Judge answered the points as under:

Under Point No. 1 : It is proved that defendants 6 and 7 did execute the promote Ext. P-1 in favour of defendants 1 and 2 and it is fully supported by consideration.

Under Point No. 2: The plaintiff is not entitled to proceed against the vehicle.

Under Point No. 3 : Defendants 6 and 7 are liable on the pronote Ext. P-1 in favour of the plaintiff as the endorser, but only as sureties, that is to say, they are liable to pay the amount only if the plaintiff is unable to recover anything from the immovable properties of defendant No. 2 or is unable to recover anything from the person of defendant No. 2.

Under Point No. 4: The decree should have been granted against defendants 3 to 5 in respect of the immovable properties concerned.

In that view the learned District Judge partly allowed the appeal and passed the following order:

"In the result, the appeal is allowed in part. The preliminary decree passed by the learned Civil Judge will be against defendants 2 to 5 and not merely against defendant No. 2. The dismissal of the suit as against defendants 6 and 7 is set aside. Instead, there will be a decree against defendants 6 and 7 directing them to pay the suit amount in case the plaintiff is unable to recover anything from the mortgaged properties or personally against defendant No.2. The plaintiff will get the costs in this appeal as well as in the suit from the defendants." Aggrieved by the said judgment and decree defendant 7 who has purchased the vehicle in question has come up with the above second appeal before this Court.

6. The learned Advocate appearing for the appellant strenuously urged before me that the learned District Judge failed to see that what was endorsed in favour of the Bank was only collateral security given by defendants 6 and 7 and that the loan itself covered under the Hire-Purchase Agreement Ext. D-2 was not assigned in favour of the Bank. Hence, he submitted that since the loan was not transferred in favour of the Bank the Bank had no right to bring the suit against defendants 6 and 7 merely on the basis of collateral security, especially so when Exhibit P-31 clearly contained an endorsement that the hire purchase agreement which was taken for the loan advanced was already canceled by defendants 1 and 2 much earlier, as endorsed in the records of the R. T. O.

7. As against that, the learned Advocate appearing for the respondent plaintiff Bank argued supporting the judgment and decree of the first appellate Court.

8. The sole point, therefore, that arises for my consideration in this appeal is : Whether the learned District Judge was correct in holding that the Bank could sue on the promissory note against defendants 6 and 7 given in favour of defendants 1 and 2 by way of collateral security?

9. It is an elementary principle of law that unless the actionable claim covered by the hire-purchase agreement was transferred in favour of the Bank, the Bank had no locus standi to bring a suit against defendants 6 and 7, merely on the basis of the collateral security executed by them by way of pronote.

10. Section 130 of the T. P. Act states:

"(1) The transfer of an actionable claim whether with or without consideration shall be effected only by the execution of an instrument in writing signed by the transferor or his duly authorised agent, shall be complete and effectual upon the execution of such instrument, and thereupon all the rights and remedies of the transferor, whether by way of damages or otherwise, shall vest in the transferee, whether such notice of the transfer as is hereinafter provided be given or not."

There is no dispute about the fact that the actionable claim, namely the hire-purchase deed executed by defendant 6 in favour of defendants 1 and 2 was never transferred in favour of the plaintiff Bank. What was assigned was the promote, executed by defendants 6 and 7 as a collateral security, by endorsement. If the entire loan was raised on the basis of the promote then there could have been no doubt that the Bank should have been holder in due course of the negotiable instrument and it could have locus standi to bring the suit. But, in the instant case it is not in dispute that it is under the hire-purchase agreement that the loan was advanced and not on the basis of the promote. The Bank was aware of this fact. It is not doubt true that the documents executed by defendants 1 and 2 in favour of the Bank and documents executed by defendant 6 in favour of defendants, 1 and 2 are different. But it is held by the Supreme Court in the case [S. Chattanatha Karayalar Vs. The Central Bank of India and Others](#), thus :

"Where a transaction between the same parties is contained in more than one document, they must be read and interpreted together and they have the same legal effect for all purposes as if they are one document."

That being so, the Bank was aware that the first defendant concern was advancing loans to the customers on hire-purchase agreements and the Bank had given overdraft of Rupees 1,50,000/- for that purpose to the first defendant. The first defendant had taken a hire-purchase bond from defendant 6. The Bank should have known that mere transfer of promissory note given by way of collateral security would not enable it to file a suit against defendants 6 and 7, unless the loan was also transferred in the way contemplated u/s 130 of the T. P. Act.

11. This crucial aspect is not considered by the learned District Judge at all, though it is considered at length by the learned Civil Judge. In the circumstances, therefore, I am constrained to hold that the learned Civil Judge is entirely correct when he holds that the Bank had no right to sue against defendants 6 and 7 on the facts of the case, and the learned District Judge committed a legal error in thinking that the Bank had authority to bring a suit against the said defendants.

12. In the result, therefore, the appeal is allowed. The decree passed against defendant 7 is hereby set aside so also the decree passed against defendant 6 vide O. 41, R. 33, C. P. C. while confirming the rest of the decree. No costs of this appeal.

13. Appeal allowed.