

Hameed Haji Vs Appukutti

C.M.A. 134 of 1967

Court: High Court Of Kerala

Date of Decision: July 24, 1968

Acts Referred:

Negotiable Instruments Act, 1881 (NI) " Section 13, 13(1), 35, 4#Stamp Act, 1899 " Section 2, 35

Citation: (1968) KLJ 783

Hon'ble Judges: K. Sadasivan, J

Bench: Single Bench

Advocate: P.K. Shamsuddin, V.M. Kurien and P.J. Mathew, for the Appellant; A.I. Mohammed Basheer, V. Bhaskaran Nambiyar, C.R. Natarajan and M.K. Ananthakrishnan, for the Respondent

Final Decision: Dismissed

Judgement

K. Sadasivan, J.

The question arising in this miscellaneous appeal is whether or not the suit document is a promissory note. The trial court

has held that it is a promissory note; but the learned Judge has dismissed the suit since the document is not sufficiently stamped. u/s 35 of the Indian

Stamp Act.

No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law of consent of parties authority to

receive evidence or shall be acted upon....

In the proviso to the above section documents which can be admitted in evidence on payment of duty have been indicated. But the promissory

note under consideration does not come under that category. The present promissory note is for Rs. 4500/-. Under Art. 49 of the Stamp Act the

duty payable is the same as a bill of exchange and calculated on that basis the plaint promissory note is chargeable with stamp duty of Rs.. 100/-;

But the stamps affixed on the note is to the value of 40 Np. only. So there is no doubt that the document, if treated as a promissory note is

insufficiently stamped and the learned Subordinate Judge has rightly dismissed the suit. On appeal, however, the learned District Judge has taken

the contrary view. According to him the plaint document is not a promissory note since it does not contain the negotiability clause ""or to the order

of"".

2. Under the Indian Stamp Act Section 2 sub-section (22), ""Promissory note"" means a promissory note as defined by the Negotiable Instruments

Act, 1881;"" And u/s 4 of the Negotiable Instruments Act, a ""promissory note"" is defined as,

an instrument in writing (note being a bank-note or a currency- note) containing an unconditional undertaking signed by the maker to pay a certain

sum of money only to or to the order of a certain person, or; to the bearer of the instrument.

3. It is true that in the plaint instrument the clause is absent; but all the other requirements which go to constitute a promissory note are present.

From the definition of the promissory note quoted above, it is obvious that the clause ""or to the order of"" is not mandatory.

Illustrations (a) and (b)

to the section are in respect of promissory note; the plaint promissory note would come under illustration (b) which is as follows:-

(b) I acknowledge, myself to be indebted to B in Rs. 1000, to be paid on demand for value received.

4. The requirement ""or to the order of"" is absent in the above illustration. The illustration contains only an acknowledgment of the debt and

undertaking to pay on demand and that is sufficient to make a promissory note. The trend of decisions as far as I am able to see is in favor of the

view that the absence of the expression ""or to the order of"" will not make the document any the less a promissory note. A Full Bench of the

Madras High Court has held so In the matter of validation of a document dated 14-6-47 executed by Kuppusami Chetty, in favor of In the matter

of validation of a document dated 14-6-1947 executed by Kuppusami Chettiar, in favour of Arunachala Chettiar, Rajamannar, C. J., speaking for

the Bench would observe:-

The mere omission of the expression ""to the order of"" would nor render a document any the less a promissory note if otherwise it fulfilled the terms

of the definition of promissory note. Actually a promissory note need "not contain this expression. "It is sufficient if there is an unconditional

undertaking to pay a certain sum of money to a certain person.

5. To the same effect is the recent decisions in Mangaldas v Luhar Kohan Arja (A. I. R. 1967 Gujarat 7.) and Bahadurrinisa Begum Vs. Vasudev

Naick and Others, . In the former case (A. I. R. 1967 Guj. 7) it was held:-

Where it is not disputed that the document which is in writing is neither a bank note nor a currency note, and it contains an unconditional promise to

pay a specific sum to a certain person on demand, the document is a promissory note as defined in S. 4 of the Negotiable Instruments Act. A

promissory note however is not necessarily a negotiable instrument. For the purpose of deciding as to whether a document is or is not negotiable

the primary test is to find out whether, in fact, the terms thereof satisfy the definition of a negotiable instrument as given in S. 13 of the Negotiable

Instruments Act 1881. If, having regard to the Explanation attached to that section, the document is found to be a promissory note which is made

payable to a certain person, then, the document would be an instrument which is payable to the order of that person, and unless there are other

surrounding circumstances in the case which indicate that negotiability of that instrument was not intended by parties, the mere fact that the

document is one which, in the opinion of the court, is not drawn up in the customary manner in which promissory notes are drawn up by bankers

and merchants, it does not follow that the document must be deprived of its character of negotiability simply because it is a strange visitor in the

accustomed circle of negotiable papers.

6. In the latter case *Bahadurrisa Begum Vs. Vasudev Naick and Others*, , the Andhra Pradesh High Court has observed:-

If an instrument promises to pay a certain sum of money to a certain person, unconditionally merely because it does not contain the words "order"

or "bearer" it cannot be argued that it is not a promissory note. Such an argument will be inconsistent with S.4 of the Act itself.

7. Section 13 (1) Explanation (1) of the Negotiable Instruments Act makes it clear that even if the expression ""or to the order of"" is absent the

document can be negotiated if the negotiability is not expressly prohibited by the terms of the document. The Explanation reads:-

Explanation (1)-A promissory note, bill of exchange or cheque is payable to order which is expressed to be so payable or which is expressed to

be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it shall not be transferable.

8. In the present case there is no express prohibition in the document against negotiability and as a matter of fact the parties also understood it in

that manner as is evident from the fact that it has been negotiated and it is the endorsee who has come forward with the suit.

9. The plaint document reveals also another feature and that is, that an indemnity clause also is incorporated in the body of the document. The

document states that in case the amount with interest is not paid as promised, himself and his properties would be liable for all the loss to be

sustained by the promisee. This provision also cannot detract from the true nature of a promissory note as was held by a Division Bench of the T.

C. High Court in *Kesava Iyer v Maharaja Pillai* (A. I. R. 1955 T. C. 141). The learned Judges would observe:-

A clause in a promissory note that if the promisor fails to pay he and his properties shall be liable for the principal, interest and all damages

consequent on such default does not amount to an agreement making the liability of the promisor conditional. It merely shows that the consequence

of nonpayment on demand would be and does not qualify the operation of the note. The intention of the parties is to make a promissory note and

not a bond or agreement. It is impossible to hold that fix. B is not a promissory note.

Judged in the light of these decisions, I would hold that the plaint document is a promissory note and when it is so construed, it has further to be

held that it is insufficiently stamped. If the promissory note does not bear the stamps as laid down in Art. 49 of the Stamp Act, as we have already

seen u/s 35 of that Act, it cannot be admitted in evidence for any purpose. So the trial Judge is right in having dismissed the suit, and in

confirmation of the same, the judgment of the lower appellate Judge is set aside.