

Santhamma Vs Devaki Amma

Court: High Court Of Kerala

Date of Decision: Feb. 4, 1992

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” Order 7 Rule 16
Negotiable Instruments Act, 1881 (NI) â€” Section 15, 46, 50

Hon'ble Judges: Balakrishnan, J

Bench: Single Bench

Advocate: V.N. Achutha Kurup, for the Appellant; Elizabeth Mathai Idiculla, R. Harikrishnan and Mohan Indiculla Abraham, for the Respondent

Final Decision: Allowed

Judgement

Balakrishnan, J.

Appellant filed OP. (Indigent) No. 16 of 1990 before the Sub Court, Pathanamthitta, seeking Permission to sue as an

indigent person. The Court below rejected that prayer. In the petition the appellant alleged that her father Ragavan Nair borrowed money and gold

ornaments from her and in consideration of that on 20-4-1937 he executed a pronote for Rs.2,16,500/-. He unconditionally undertook to repay

the amount with 12% interest per annum. The appellant demanded the money on several occasions. But her father did not pay and he died on 13-

11-1988. The appellant alleged that on the death of her father his properties devolved on the respondents herein and that they were liable to pay

the amount due to the appellant under the pronote. The appellant also alleged that the second respondent on 24-10-1988 fraudulently induced the

appellant to deliver the original promissory note to him by making her believe that he would settle the claim by transferring his money lying in

deposit in Federal Bank, Kozhencherry. The appellant believed his words and handed over the promissory note after putting her signature on its

reverse side. The second respondent neither transferred the money to the account of the appellant nor paid the amount due under the pronote.

According to the appellant the pronote was thus lost to her and she filed the suit based on the pronote.

2. The court below held that the appellant had already endorsed the pronote in favour of the second respondent and therefore she had no cause of

action to file a suit based on the pronote and in the absence of cause of action the prayer to sue as an indigent person was refused under R.5 (d) of

Order XXXIII. Aggrieved by this the present C.M.A. is filed.

3. It is submitted by the appellant's counsel that the suit is based on the pronote. It is also admitted that the appellant signed the pronote for the

purpose of negotiation and handed over the pronote to the second respondent. Thus it is clear that the appellant gave a blank endorsement of the

pronote in favour of the second respondent. Endorsement has been defined under the Negotiable Instruments Act in S.15 as follows:

Where the maker or holder of negotiable instrument signs the same, otherwise than as such maker, for the purpose of negotiation, on the back or

face thereof on a slip of paper annexed thereto or so signs for the same purpose a stamped paper intended to be completed as a negotiable

instrument, he is said to indorse the same and is called the "indorser".

Section 46 of the Negotiable Instruments Act states that the indorsement of a pronote is complete by delivery, actual or constructive. S. 50 of the

Act says that the indorsement of a negotiable instrument followed by transfer to the indorsee, the property therein with the right of further

negotiation to receive its contents for the indorser or for some other specified person is passed to the indorsee. The section also says that the

indorser by his express words can restrict or exclude such right to indorsee. The question for consideration is whether in the instant case there was

a valid indorsement and if so whether the property therein passed to the indorsee.

4. From the above provisions it is clear that an indorsement requires delivery of the instrument by the indorser himself or by somebody on his

behalf with the intention of passing the property therein. The intention to pass the property in the pronote is essential to make the delivery effectual.

Moreover, the holder of the pronote must have signed the pronote for the purpose of negotiation. If the indorsement and consequential.

If the indorsement and consequential passing of the property in the pronote is subject to certain condition and the indorsee did not fulfil that condition, if

cannot be said that there was a valid transfer. By S.50 of the Act the instrument will not vest with the indorsee unless it is followed by a delivery

and if delivery was made conditional and that condition is not fulfilled by the transferee, it cannot be said that there was a valid delivery and

consequently a passing of property in the pronote in favour of the indorsee.

5. In the instant case the specific case of the appellant is that she signed on the back of the pronote and handed over the same to the 2nd

respondent and he in turn offered to pay the amount. He did not comply with his undertaking and according to the petitioner the indorsee failed to

carry out his obligation and there was a consequent breach of the agreement. So the indorser can treat the indorsement as void and the property in

the pronote can be deemed to have not passed in favour of the indorsee and the appellant continued as a holder of the pronote, even though she

was not in actual possession of the pronote. So going by the allegations in the petition, she has got a cause of action to file the suit and finding to the

contrary by the court below is not correct.

6. The Learned Counsel for the respondents contended that by the subsequent agreement between the appellant and the 2nd respondent, the

original contract between herself and the maker of the pronote had ceased to have any effect and the principle of novation under the Contract Law

is to be applied. The principle of novation has no application to the case. Firstly there was no previous contract between the second respondent

and the appellant. If at all the contract was between the appellant and the maker of the pronote. Secondly the contract which allegedly stemmed

from the endorsement was vitiated by fraud and according to the appellant the endorsee failed to carry out the obligations under the agreement. So

the principle of novation is not attracted.

7. The counsel for the respondents contended that the appellant has not complied with the provisions contained in Order 7 Rule 16 C.P.C as the

case has been filed on the basis of a lost pronote. This question does not arise at this stage.

8. Going by the allegations contained in the petition it is clear that the appellant has go a cause of action to file the petition. Therefore the dismissal

of the petition was illegal and I set aside the same.

The civil miscellaneous appeal is allowed and the court below is directed to consider the petition on merits.