S. Ramiah thevar Vs. Balasundaram

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Court : Chennai

Decided On : Apr-22-1981

Reported in : (1982)1MLJ431

Appellant : S. Ramiah thevar

Respondent : Balasundaram

Judgement :

ORDER

V. Balasubrahmanyan, J.

1. This is a revision brought by the plaintiff in a simple money suit of a small cause nature against the respondent. The suit was brought for the recovery of Rs, 550 and interest at 12 per cent, per annum thereon on a promissory note. The defendant resisted the suit. He pleaded that there was no cause of action for the suit. More particularly he pleaded that the suit promissory note could not be sued upon, because he merely signed his name on a stamped paper which was blank, and it had been filled up at the instance of the plaintiff to make it appear that it was for Rs. 550. The truth, according to the defendant was, his signature on a stamped blank paper was taken by the plaintiff in accordance with the plaintiff's practice in such transactions. According to the defendant, he had borrowed a sum of Rs. 220 agreeing to repay it in monthly instalments of Rs. 22 and that by June, 1976, that loan had been discharged by him in that manner. Nevertheless, according to the defendant, the plaintiff had obtained stamp paper with his signature only in accordance with the practice followed by the plaintiff in such transactions. The plaintiff, it was alleged, undertook to return the blank stamped paper when the loan of Rs. 220 was fully discharged by the defendant. In fact, however, even after the loan of Rs. 220 v/as fully discharged, the plaintiff did not return the stamped paper, but had given a false information to the effect that he had destroyed that piece of paper.

2. At the trial, the Suit promissory note was marked in evidence by the plaintiff. He also gave oral evidence as P.W. 1. Another witness called on by him at the trial was P.W. 2, who represented that he was the scribe of the document. Their evidence was that the defendant did not sign any blank paper, but entered his signature only after the text of the promissory note had been written. The defendant in his testimony denied these allegations. He deposed that he only gave the blank stamped paper carrying his signature, on the undertaking that the plaintiff would return it after the earlier loan of Rs. 220 was discharged.

3. The learned District Munsif considered the oral evidence of the witnesses on either side and also examined the promissory note, marked by the plaintiff, as the

foundation of the suit claim. The learned District Munsif found that there were scorings and internal contradictions in the so - called promissory note. He also found a discrepancy between the evidence on the plaintiff's side and the pleadings on the basis of which the suit claim was sought to be (sic) made. According to the plaint, the defendant executed the promissory note for Rs. 550 on 21st November, 1977, on the defendant receiving the amount on that very day. In contrast, the evidence of the plaintiff as well as the scribe of the text of the promissory note was to the effect that the defendant had received the amount on 19th November, 1977, but, executed the promissory note two days later, namely on 21st November, 1977. The learned District Munsif found, there was a correction regarding the date of the promissory note, which could not be reconciled either with the date of execution of the promissory note or with the dates of payments according to the English calendar, namely, 18th November, 1977 and 21st November, 1977. The learned District Munsif also found that there was a correction in the Tamil Andu set out in the promissory note. The Tamil Andu 1152 was found corrected into 1153 and this introduced another element of incongruity in the document. On this analysis of the evidence, the learned District Munsif recorded a finding that the promissory note was written subsequent to the signature entered by the defendant on the stamps. He further found that the plaintiff had failed to establish that on 21st November, 1977, the defendant had borrowed the sum of Rs. 550 and executed the suit promissory note. The learned District Munsif was inclined to believe the evidence of the defendant as more probable. On the basis of this evaluation of the evidence, the learned District Munsif dismissed the suit.

4. In this revision, learned Counsel, Mr. Balachander appearing for the plaintiff, urged that the dismissal of the suit by the Court below on the ground that there was no cause of action for the suit, was without jurisdiction. Learned Counsel submitted that the two material issues which were framed for trial were - (I) Whether the failure of consideration pleaded by the defendant is true? (2) Whether the discharge pleaded by the defendant is true? Mr. Balachander pointed out that there was no distinct issue to the effect that there was no cause of action for the suit. In the grounds of revision, the contention was not stated precisely on these terms. What was urged in the grounds was that the Court below ought not to have expected the plaintiff to prove the case when the issues were framed in the suit, properly imposing the burden on the defendant.

5. I am, however, satisfied that on the finding of the Court below that the suit promissory note was only a blank stamped paper signed by the defendant and that the entire text was subsequently written into it by or at the instance of the plaintiff, the complexion of the suit had completely changed. The Court had then to decide whether on the basis of such an instrument, the plaintiff could obtain a decree against the defendant. In this case, the question of the defendant pleading that he had obtained only a smaller loan and even that loan had been discharged by him receded into the background. It was in this sense that the Court below had felt that the responsibility of the plaintiff is to prove that he had a cause of action which can be enforced against the defendant in this suit on this basis an the so-called promissory note. The fact that no distinct issue was framed in this manner does not, in my opinion, vitiate the determination of the Court below.

6. It is well-settled that where parties adduce evidence on disputed questions of fact or law and argue the matters before the trial Court, and the Court proceeds to decide that point as if there had been an issue framed on, the subject, then that decision cannot be set aside in appeal on the ground that no issue was actually framed at the

trial. This view of the course of a trial is based on the principle that a mere omission to frame an issue is not fatal to the trial of a suit. The question would be entirely otherwise, if the point decided has not been raised in the written statement. In the present case, however, it has been very clearly raised by the defendant in his written statement that there is no cause of action for the plaintiff on the basis of the so-called promissory note, on which he had founded the suit claim. I must therefore reject the technical plea raised by Mr. Balachander, that the decision of the Court below was not on any distinct issue framed, as such, at the inception of the trial.

7. The defendant's learned Counsel then submitted that there was no material for the Court below to hold that the suit promissory note was not executed by the defendant as a promissory note fully written up at the time of its execution. This point goes into the region of fact. I have already summarised the findings of the Court below, as well as the material basis for such findings. I am satisfied that there was ample evidence in support of the learned District Munsifs findings that the defendant merely gave a signed blank stamped paper on which the plaintiff or the scribe had written up the full text of the promissory note. T have, therefore, got to accept that finding, without question in this revision.

8. Mr. Balachander then submitted that even on the basis that the defendant had signed the stamped, but, blank paper which was subsequently filled up in full by the plaintiff, the plaintiff was entitled to file a suit on the promissory note, which he had written into that paper. For this submission, learned Counsel relied entirely on Section 20 of the Negotiable Instruments Act, 1881. Before considering what Section 20 provides for, it may be stated that a 'promissory note' has been defined under that Act, as an instrument in writing 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. This definition clearly shows that what is signed by the maker of a promissory note must be an instrument which itself contains an unconditional undertaking. This at once excludes the signing by the maker of a blank piece of paper, whether stamped or unstamped. It is in the context of this definition of 'promissory note' under the Act, that Section 20 of the very same Act assumes significance.

9. Section 20 of the Act deals with what are called in the marginal note as 'inchoate stamped instruments'. According to this provision, where a person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments as such, then the person who signs is thereby giving prima facie authority to the holder of that instrument, either to make it as a complete negotiable instrument or to fill up the blanks and make it into a complete negotiable instrument for such amount not exceeding the amount covered by the stamp affixed thereon. This provision is contained in the first part of Section 20 of the Act. The section also contains another part to which I shall refer a little later.

10. Mr. Balachander relying on this part of the section, turned to the facts of the present case. He said that even according to the defendant, he signed the suit promissory note containing the revenue stamp of the value of twenty paise. He also referred to the admission of the defendant, both in his written statement and in the course of his testimony at the trial, which was to the effect that after signing his name on the stamp in a blank paper he gave that paper to the plaintiff. According to Mr. Balachander, these facts perfectly fit in with the requirements of Section 20 of the Negotiable Instruments Act. and therefore, when the plaintiff proceeded to enter the

full text of the promissory note in the stamped and signed paper passed on by the defendant, the plaintiff had the fullest statutory authority to do so under Section 20 of the Act.

11. It seems to me that in so far as this part of the learned Counsel's submission is1 concerned, I may agree with him that on the facts of the present case, the plaintiff must be held to have acquired prima facie authority to enter the full text of the promissory note, the moment the defendant had passed on the signed stamped paper in his favour, but, I cannot accept the further implication in the argument that the Court is bound to accept the textual writings on the promissory note made by the plaintiff as covered by incontestable authority. For, under the express terms of Section 20, the delivery of a stamped paper signed by a person only gives prima facie authority to the person to whom it is delivered to enter on it words of a kind to make it into a negotiable instrument. (Mark the expression 'prima facie'). This indicates that the rule laid down by Section 20 of the Act is not a rule of law, but merely a rule of evidence. The rule of evidence is that in a case covered by the section, the burden is upon the person who signs the instrument, and who delivers that instrument to another to show that he did not thereby intend to confer any authority on the latter to complete the instrument and make it into a negotiable instrument to be dealt with as such. In the present case, the defendant, both in his pleadings and in his evidence has clearly taken the stand that the delivery of this blank stamped and signed paper by him into the hands of the plaintiff was not to invest the plaintiff with the authority to convert it into a full-fledged promissory note, but, was only intended to be kept by the plaintiff in terrorem, to be returned to him when the earlier advance of Rs. 220 had been discharged. This stand taken by the defendant had been accepted by the Court below. If this determination by the Court below can be regarded as one of fact that would have the effect of meeting the arguments of Mr. Balachander based on the first part of Section 20 of the Negotiable Instruments Act.

12. Mr. Balachander, further submitted that the Court below did not properly go into this aspect, since the question was not discussed by the Court below on the basis of Section 20 of the Act at all. I quite see the learned' counsel's point, but at the same time, I do not wish to send the case back for a proper-consideration on this aspect of the evidence. For, even on the footing that there was prima facie authority for the plaintiff in this case to fill up the blanks or write the whole, text of the promissory note in the blank space of the document handed over to the plaintiff. I am of the view that the plaintiff is not entitled to-maintain the suit claim on the basis of the-promissory note. This conclusion of mine is based on what is provided for in the second part of Section 20 of the Act. This part of the section enacts that where a blank stamped paper had been signed and passed by oae person in favour of another and where in exercise of the prima facie authority the latter proceeds to enter upon the stamped paper a full-fledged promissory note or other negotiable instrument, then that would have the effect of rendering the person who had signed the instrument as if he had executed a regular promissory note for the amount mentioned in the instrument subsequent to his signature. It is however, to be remembered that the liability of the person signing the blank stamped payer is limited only to a holder in due course. The attempt of Mr. Balachander in the course of his argument was to make out that the plaintiff in this case occupies the position of a 'holder in due course' with reference to this suit promissory note and nonetheless so far the fact that he was the payee under the promissory note. I do not accept this argument as tenable on a correct understanding of the scope of this part of the provisions of Section 20 of the Negotiable Instruments Act.

13. It is true that under the Negotiable Instruments Act, the 'holder' of a promissory note is denned as any person entitled in his own name to the possession of the promissory note and to receive or recover the amount due thereon. But, a 'holder in due course' under Section 9 of the Act is denned as a person who, for consideration becomes the possessor of a promissory note under Section 9; this expression includes the payee of a promissory note only if it is payable to order and the holder, would be a 'holder in due course' only so long as the amount mentioned in the instrument is still payable. The argument of Mr. Balachander was based on these definitions of 'holder' and 'holder in due course' in the Act. I, however, think that the liability of a person signing a blank stamped paper is strictly confined to a holder in due course after the instrument is fully written over. Such a liability does not extend to the person to whom the blank paper is delivered in the first instance. A look at Section 20 of the Negotiable Instruments Act would show that the first part of the section employs the expression 'holder' of the instrument to refer to the person to whom the signed blank stamped paper has been delivered. This holder has-undoubtedly a prima facie statutory authority to fill up the blanks or to write up the entire text of the promissory note, but, the mere act of filling up the blanks or writing up the text of the instrument does not make him a holder in due course within the meaning of the second part of Section 20 of the Act. It is this part of the section which precisely lays down and defines the acope of the liability of the signatory of the inchoate instrument under the Act. The implication of the section is that a mere blank stamped paper containing the signature of an individual cannot be a promissory note or other negotiable instrument. Any Tom, Dick or Harry, who gets hold of a blank stamped instrument cannot fill it and set himself up as a 'holder in due course' claiming rights against the maker of the instrument. Even the person to whom the stamped, signed paper is delivered is not, in the eye of law, entitled to enforce it as against the maker. To invest the deliveree of an unstamped signed instrument with the trappings of a holder in due course would be, to go against the grain of the Negotiable Instruments Act, as a whole and particularly of the definition of 'Negotiable Instrument' and also of the subsidiary definitions of the expressions, 'promissory note, bill of exchange, and cheque'. The statutory definition of 'promissory note' insists that the instrument must be in writing and it must contain an unconditional undertaking in writing and that unconditional undertaking must be signed by the maker of the instrument. Otherwise, the instrument cannot be called a promissory note. Section 20 of the Act talks of an inchoate stamped instrument, which is the very negation of a negotiable instrument, since all that it contains is the signature of the maker on a stamp. Section 21 lacks the material words 'unconditional undertaking'. The mere implied prima facie authority conferred by Section 20 of the Act, on the person to whom such a paper is delivered to write out the instrument or to complete the instrument is not enough by itself to clothe the instrument with all the characteristics of a fullfledged negotiable instrument. All that Section 20 confers on the deliveree of the stamped paper is an implied prima facie statutory authority authorising him to complete the instrument or to write up the full text of the instrument delivered to him.

The section does not say that by the very act of his filling up the blanks, the person to whom the paper is delivered, acquires the right of a promisee under a promissory note. Even the second part of Section 20, which deals with the consequence of filling up the instruments, does not, in so many words, confer on the holder in due course any right of recourse against the maker of the instrument. All it does is to lay down that a 'holder in due course' who has got such are instrument is liable under that instrument in the same way as a regular 'holder in due course' of an instrument which has never been an inchoate instrument, but has been from the very start a full

fledged negotiable instrument. To spell out from Section 20 of the Act, that the person to whom an inchoate instrument has been delivered and who has filled it up by himself would be entitled to all the rights of a promisee under a promissory note, is to read words in the section which are simply not there.

14. This position which I have derived from the words of the section, is supported by an authority of a Division Bench of the Bombay High Court reported in Tarachand v. Sikri Brothers : AIR1953Bom290 . That was a case where the plaintiff gave a loan of Rs. 5,000 to one Hariram, who, in turn, gave the plaintiff an inchoate hundi drawn by the defendants for that amount. The plaintiff discounted the hundi with the Central Bank. The Central Bank presented the hundi to the defendants for acceptance, but, the hundi was dishonoured. Thereupon the Central Bank recovered the sum of Rs. 5,000 from the plaintiff, because it was the plaintiff who had discounted the hundi with the bank. The plaintiff paid the amount to the bank and thereafter filed a suit against the defendants to recover Rs. 5,000. The defendant's case was that they did not receive any consideration from the plaintiff and they themselves had been defrauded by Hariram, against whom they had proceeded criminally and Hariram was subsequently convicted. The question before the Bombay High Court was whether the plaintiff had any right under Section 20 of the Negotiable Instruments Act under which he could seek to recover the amount from 'the defendants who were the makers of the inchoate instrument. The Division Bench answered the question in the negative and against the plaintiff in that case. On the facas, it was found that the defendants had received no consideration whatever for the execution of the inchoate hundi and there was failure of consideration, but the principal basis for the execution of the inchoate hundi there was failure of consideration, but the principal basis for the decision of the Division Bench was that the plaintiff could not maintain the action by virtue of anything contained in Section 20 of the Negotiable Instruments Act. Chagla, CJ., speaking for the Bench summarised the effect of the provisions of Section 20 in the following manner; The section, he pointed out, provides for two rights in respect of two different persons. One is the right given to the holder of the document, the person who is in possession of the document, the document being an inchoate document and that right is the right to complete it. The other right conferred is upon the holder in due course and that right is that even though the holder in due course might come into possession of a negotiable instrument which was not wholly completed by the maker, he has the same right against the maker as if the maker had himself written out the whole of the document, if the document has been completed by the person who has come into possession of it as contemplated by Section 20. Addressing himself to the question whether the person who himself filled in the document by making himself the payee, can be regarded as a holder in due course so as to exercise the rights under that instrument and render the maker of the instrument liable thereunder, Chagla, CJ., answered this position in the following passage:

The interesting question that arises is whether the fact that he himself...Assuming for the sake of this argument that the plaintiff had given consideration for the document.

The learned Judge answered this question with reference to the definition of the expression 'holder in due course' under Section 9. According to the learned Judge it is only where a person comes into possession of a negotiable instrument having paid consideration for it and being a bona fide transferee, he can be regarded as a holder in due course within the meaning of Section 9. The section implies and contemplates that there must be a negotiation or a transfer to the holder in due course by someone

who had the authority to transfer or negotiate the negotiable instrument. The, transfer and the negotiation must be of a negotiable instrument and not the transfer of an inchoate document which is not a negotiable instrument at all under the Act. On the basis of this reasoning, Chagla, CJ., concluded that a person who under the first part of Section 20 had the prima facie statutory authority to fill in an inchoate instrument and make it into a negotiable instrument, cannot be said to have become the holder in due course, since, he does not become holder by virtue of negotiation or transfer of a negotiable instrument. What he did was to convert an inchoate document into a completed instrument, and this process, which is authorised by Section 20 does, not amount to negotiation or transfer of full-pledged negotiable instrument. Hence, a person who makes himself the payee of an in choate document by writing up or completing the negotiable instrument in a blank paper cannot be regarded as a holder in due course of that document. It follows, therefore that he cannot render liable the maker or the person who signed that blank document as a person who is liable under the Negotiable Instruments Act within the meaning of the second part of Section 20.

15. I consider the decision of the Bombay High Court above cited, as an authority for the position that a person, who might have lawfully exercised the right under Section 20 of the Negotiable Instruments Act, to convert a mere inchoate instrument into a fullfledged instrument making himself a payee thereunder, cannot by the mere act of conversion of the inchoate instrument into a pucca instrument, render the person who signed the inchoate instrument, as the maker of the negotiable instrument. I, therefore, reject the contention of Mr. Balachander based on Section 20 of the Negotiable Instruments Act.

16. In the events, the dismissal by the District Munsif of the plaintiff's suit was quite justified, although, for reasons which the learned District Munsif had not had the opportunity of considering at the trial. In the result, this civil revision petition is dismissed, and the decree of the learned District Munsif is affirmed. Having regard to the basis on which I have rendered the decision in this civil revision petition, there will be no order as to costs.