LAKSHMI-NARAYANA v. DASU.

The defendant's contention is that plaintiff is a mere servant whom he (defendant) can dismiss at pleasure, and that the gift of the land to plaintiff by the widows of the late zamíndár was beyond the scope of the authority of a Hindú widow.

We cannot assent to this view of the plaintiff's position. The widows were the owners of the estate for the time being, and, in the lawful exercise of their rights of management, made an alienation of a very small piece of land for an indispensable religious necessity, not for their own sakes, but for that of their late husband. Such alienations under similar circumstances are recognized—vide *Rama* v. *Ranga*(1), *Paran Dai* v. *Jai Narain*(2), also *The Collector of Masulipatam* v. *Cavaly Vencata Narrainapah*(3).

The second appeal is dismissed with costs.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Brandt.

1887. Nov. 15, 23.

PATTAT AMBADI MARAR AND OTHERS (PLAINTIFFS), APPELLANTS,

and

KRISHNAN AND ANOTHER (DEFENDANTS), RESPONDENTS.*

Suit to recover money due on a promissory note by assignee of rights of payee not being endorsee.

K. executed a promissory note on demand for Rs. 6,000 in favor of S. in 1882. In 1884 S., by an agreement in writing, assigned all her property, including the promissory note, to M., but did not endorse over the promissory note to M. M. assigned his rights in the promissory note to a bank in payment of a debt. In a suit by M., and the bank against K. and S. to recover the principal and interest due under the note:

Held, that the plaintiffs could not maintain the suit.

APPEAL from the decree of K. Kunjan Menon, Subordinate Judge of North Malabar, in suit 33 of 1885.

The plaintiffs in this suit were (1) Pattat Ambadi Marar, (2) Raman Marar, and (3) E. Sherman, Agent of the Bank of Madras at Tellicherry.

(1) I.L.R., 8 Mad., 552.
(2) I.L.R., 4 All., 482.
(3) 8 M.I.A., 550.
* Appeal No. 158 of 1886.

The plaint contained the following allegations :—

(1) First defendant promised to pay second defendant Rs. 6,000 on demand under a promissory note, dated 6th November 1882, now overdue.

(2) First defendant has not hitherto paid that amount.

(3) First defendant is the karnavan of his tarwad. The said amount is payable by him (first defendant) in capacity of karnavan as also in his private capacity. Therefore he, as well as (other) members of his family, and the properties of the tarwad, are liable to discharge this debt.

(4) By a karar, dated 14th August 1884, entered into among plaintiffs 1 and 2 and second defendant and other members of their family, the plaint promissory note and other properties of second defendant were given with consent by him (second defendant) to (his) tarwad in consideration of the tarwad undertaking to discharge the debt due by him (second defendant), then, to the Madras bank, &c.

(5) Under the said karar, it was agreed that all the acts in connection with the tarwad be done by plaintiffs 1 and 2.

(6) On condition to credit the amount of his promissory note on recovery thereof to the (tarwad) debt, the right of the tarwad over it (promissory note) was assigned to third plaintiff.

(7) The cause of action arose on 9th November 1882 at Thiruvangat within the jurisdiction of this court.

	RS.
Principal	6,000
Interest at 6 per cent. from 6th Nov. 1882	1,080
Total ..	7,080

It is therefore prayed that a decree may be passed directing first defendant in the capacity of karnavan of the tarwad, as also in his private capacity, to pay the said amount and the future interest at 6 per cent. from this date till payment and also costs with interest to third plaintiff (on behalf of the bank).

PATTA AMBADI MARAR v. KRISHNAN.

The Subordinate Judge dismissed the suit on the ground that under the Negotiable Instruments Act, 1881, the plaintiffs acquired no valid right to the property in the note.

Plaintiffs appealed, *inter alia*, on the following grounds :—

(1) The suit was brought by the plaintiffs as assignees of the debt itself due to second defendant from first defendant, and not merely as holders and transferees of the promissory note, and the Court below was wrong in confining itself to the question whether the plaintiffs could sue as transferees of the note.

(2) The decision of the Court below on the issue whether the plaintiffs, or any of them, have the right to sue upon the pro-note in question is erroneous in law.

(3) A promissory note, payable to order, is transferable otherwise than by endorsement.

Mr. *Michell* for appellants.

Mr. *Brown* and *Anantan Nayar* for respondents.

The Court (Muttusami Ayyar and Brandt, JJ.) delivered the following judgment :—

MUTTUSAMI AYYAR, J.—On the 6th November 1882 the first respondent, Krishna Nambiar, made a promissory note in favor of the second respondent, Sungunni Marar, for Rs. 6,000, payable on demand. In 1884 it was arranged between the second respondent and other members of his tarwad that the tarwad was to discharge his debts and that he was to give up to it all his properties, inclusive of the promissory note; and in pursuance of that arrangement the promissory note evidenced by document A, was delivered by the second respondent to the first and second appellants. By document C, dated the 17th September 1884, the first and second appellants assigned their right to the third appellant. Although the promissory note was payable to Sungunni Marar, *or order*, it was not endorsed by him in favor either of the first and second appellants or of the third appellant. The first respondent, having failed to pay to the appellants the amount of the note, they brought the suit from which this appeal arises, to recover it. Both respondents resisted the claim and one of the questions raised for decision was whether the appellants, or any of them, were entitled to sue upon the promissory note A. The Subordinate Judge of North Malabar held that they could not maintain the suit, on the ground that

there could be no valid transfer of a promissory note payable to order, otherwise than by both endorsement and delivery. It is urged in appeal that endorsement is not indispensable, and that a negotiable instrument may be transferred, like any other *chose in action* by a deed of assignment, and that, assuming that there was no valid transfer, the appellants were still entitled to a decree upon the original consideration.

I am of opinion that the decision of the Subordinate Judge is right. Document A, purports to be a negotiable instrument payable to the second respondent or order, and, until the latter endorses and delivers it, the property in the promissory note continues to vest in him. The learned counsel for the appellants admits that he cannot refer us to any case in support of his contention, and having regard to ss. 8 and 9 of the Negotiable Instruments Act, which define a holder of a promissory note and a holder in due course, and to s. 46, which declares that a promissory note *payable to order* is *negotiable by the holder by endorsement and delivery*. I entertain no doubt that it cannot be negotiated by the mere execution of a deed of assignment. I do not desire to be understood as holding that the appellants may not sue to compel the second respondent to endorse the promissory note, and after getting it endorsed, put it in suit against the maker, the first respondent, but that is not the relief prayed for in this suit, nor do I find either in the plaint or in the record of the suit any statement of the original consideration on which this action can be supported. It is also to be remembered that the appellants are not the payees. This being so, they cannot maintain an action on the original consideration between the second and first respondents until the property in the promissory note is divested from the second respondent, or until he is restrained from suing upon or negotiating it. The suit, as framed at present, must fail and I would dismiss this appeal with costs.

BRANDT, J.—I concur.