

the provisions of the law we are unable to interfere in the matter.

We accordingly allow the appeal, set aside the decree of the learned Judge of this Court and restore the decree of the lower appellate court. In the circumstances of this case we direct the parties to pay their own costs of the two appeals to this Court.

Appeal allowed.

KASHI
PRASAD
v.
BALBHADDAR
SINGH.

1922
January, 5.

Before Mr. Justice Ryves and Mr. Justice Gokul Prasad.

REOTI LAL AND ANOTHER (DEFENDANTS) v. MANNA KUNWAR (PLAINTIFF).
Act No. XXVI of 1881 (*Negotiable Instruments Act*), section 78—*Promissory note—Suit on note not maintainable by a benamidar.*

The provisions of the Negotiable Instruments Act, 1881, do not admit of a suit being brought upon a promissory note by a *benamidar* whose name does not appear upon the document. *Dori Lal v. Sewak Ram* (1) and *Ramanuja Ayyangar v. Sada, oya Ayyangar* (2) followed. *Churumurti v. Sirajya* (3) dissented from.

THE facts of this case sufficiently appear from the judgment of the Court.

Munshi *Panna Lal*, for the appellants.

Mr. *G. W. Dillon*, for the respondent.

RYVES and GOKUL PRASAD, J.J. :—The plaintiff Musammatt Manna Kunwar sued to recover a sum of money due on a *ruqqa* executed by the defendants in favour of one Kishori Lal. The plaintiff's allegation was that the money was advanced by her and that Kishori Lal, in whose name it was drawn, was merely her *benamidar* as she was *parda-nashin*. Kishori Lal had died without heirs and the plaintiff was entitled to recover the money on this *ruqqa*. The defence was, so far as we are now concerned, that the plaintiff could not maintain the suit. The trial court found all the issues of fact in favour of the plaintiff, namely, that she had advanced the money in cash to the defendants who had executed the *ruqqa benami* in the name of Kishori Lal who was a near relation of the plaintiff. The trial court, however, dismissed the suit on the ground that under section 78 of the

* Second Appeal No. 27 of 1920, from a decree of Ali Ausat, Subordinate Judge of Aligarh, dated the 22nd of July, 1919, reversing a decree of Nawab Husain, Munsif of Havoli, dated the 9th of May, 1919.

(1) (1915) 13 A. L. J., 695. (2) (1904) I. L. R., 23 Mad., 205.

(3) (1897) I. L. R., 21 Mad., 391.

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Negotiable Instruments Act read with section 8 of that Act Musammat Manna Kunwar could not maintain the suit. She appealed. The learned Subordinate Judge agreed with all the findings of fact found by the trial court but held that the suit was nevertheless maintainable. What he says is this:—"The *rugqa* in question is an agreement. It provides for interest and is payable on demand. It is true that under section 78 of the Negotiable Instruments Act only the holder can sue whether the instrument is negotiable or not, but the rule does not apply to agreements. I hold that the *rugqa* in question is an agreement and the *cestui que trust* can sue on it". He nevertheless calls the document a *rugqa*. We have read the document and there is no doubt whatsoever that it falls within the definition of a promissory note given in section 4 of the Negotiable Instruments Act. The learned counsel who appears for the respondent does not, and indeed could not, support the reasoning of the learned Subordinate Judge, but he argues that section 78 of the Negotiable Instruments Act does not bar a suit by the person really entitled to the money payable under a promissory note. It bars the payment out of Court, it is argued, to any one except the payment as defined in section 8 of the Act so as to get a valid discharge, and that that is all it does, and he relies on the case of *Gurumurti v. Sivayya* (1). That case certainly does seem to support his contention, but no reference in that case is made to the provisions of the Act. That judgment, however, has been considered in three later cases by the Madras High Court. In *Ramanuja Ayyangar v. Sadagopa Ayyangar* (2) a Divisional Bench of that Court dissented from it. It was, however, again considered by a Full Bench of the same High Court in *Subba Narayana Vathiyar v. Ramaswami Aiyar* (3). It is true that that case was the converse of the present case. There it was held that a defendant could not set up the plea that the plaintiff, who sued on a promissory note and in whose name the promissory note was, was not in fact the real owner. That is true, but in

(1) (1897) I. L. R., 21 Mad., 391.

(2) (1904) I. L. R., 28 Mad., 205.

(3) (1906) I. L. R., 30 Mad., 88.

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the course of the judgment the case of *Gurumurti v. Sivoyya* (1) was expressly overruled. In *Subramanya Tevan v. Arunachala Tevan* (2) this latter case was followed. In our own Court in the case of *Dori Lal v. Sewak Ram* (3) the point was considered by a Judge sitting alone. The facts there were on all fours with the facts here, and that learned Judge followed the view taken in the later Madras cases to which we have referred. We agree with his view. We think that the decision of the first court was correct. The result is that we allow the appeal and setting aside the decree of the court below, restore that of the court of first instance with costs.

Appeal allowed.

1922
January, 6.

Before Mr. Justice Piggott and Mr. Justice Walsh.
CHIMMAN LAL, POSTI MAL (PLAINTIFF) v. PHUL CHAND,
FATEH CHAND (DEFENDANT) *

Act No. IX of 1899 (Indian Arbitration Act), section 19—Arbitration—Reference made by one party—Subsequent institution of suit by the other—No application for stay of suit, but award delivered by sole arbitrator—Application to file award.

Under the terms of a contract which provided that all disputes arising thereunder should be referred to arbitration, one of the parties made a reference and sent notice to the other to appoint another arbitrator on their side. The other party refused to join in the arbitration and filed a suit. The first party never applied for stay of the suit, but their arbitrator proceeded with the arbitration and delivered an award. *Held*, on application to make the award a rule of court, that the applicant, not having asked for a stay of the suit, must be taken to have waived his right to arbitration and was not entitled to a decree on the award. *Ram Prosad Suraj Mull v. Mohan Lal Lachminarain* (4) and *Appavu Rowther v. Seeni Rowther*, (5) referred to.

UNDER a contract, dated the 7th of August, 1918, the respondents agreed to sell 20 bales of cloth to the appellants. One of the terms of the contract was that in case of a dispute between the parties the matter shall be referred to arbitration.

On the 16th of February, 1919, the respondents despatched the goods. The appellants refused to take delivery on the ground that the goods were not according to sample.

* First Appeal No. 106 of 1921, from an order of I. B. Mundle, District Judge of Cawnpore, dated the 30th of April, 1921.

(1) (1897) I. L. R., 21 Mad., 391. (3) (1915) 13 A. L. J., 695.

(2) (1907) 18 M. L. J., 186. (4) (1920) I. L. R., 47 Cal., 752.

(5) (1917) I. L. R., 41 Mad., 115.