

Hari Kishan v. Khub Ram Munna Lal (1) that the purchase of goods and the fact that the price of the goods is owing does not constitute a loan by the seller to the purchaser. We consider that ruling should be accepted and that the principle is correct. In the definition of "loan" in the U. P. Agriculturists' Relief Act, section 2(10)(a), there must be an advance to the agriculturist. In the case of goods being sold we do not consider that this can be held to be an advance to the agriculturist. The goods themselves are not advanced as a loan. They are actually sold and it is intended that the title in the goods should pass permanently to the agriculturist at the time of sale. For these reasons we allow this civil revision and we return the appeal to the court below for disposal according to law on the merits. Costs hitherto incurred will abide the result.

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 MATHURA
 PRASAD
 v.
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 GIRJA
 SHANKAR

Before Justice Sir Edward Bennet and Mr. Justice Ganga Nath

JANG BAHADUR SINGH (PLAINTIFF) v. CHANDER BALI SINGH AND ANOTHER (DEFENDANTS)*

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 January. 4

Negotiable Instruments Act (XXVI of 1881), section 43—Promissory note without consideration—Transfer to "holder" for consideration—Rights of such holder—Negotiable Instruments Act, sections 8, 14, 15, 48—"Holder", who is—Transfer of promissory note, payable to order, by sale deed without any endorsement—Transferee not a "holder".

A promissory note, payable to order, was transferred by the payee for consideration, by means of a sale deed, but without any endorsement. In a suit by the transferee on the promissory note it was found that the note was made without consideration, and thereupon the plaintiff claimed a decree by virtue of section 43 of the Negotiable Instruments Act:

Held, that the transfer by means of a sale deed, and without any endorsement, of a promissory note payable to order is not a "negotiation" thereof nor is the transferee a "holder" thereof within the meaning of section 8 of the Negotiable Instruments

*Civil Revision No. 53 of 1937.
 (1) [1937] A.L.J. 766.

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Act, and, therefore, such transferee is not entitled to the rights conferred on a holder for consideration by section 43 of the Act. Sections 14, 15 and 48 show that the "holder" in section 8 is a person to whom there has been negotiation by endorsement and delivery in the case of an instrument payable to order, and not a person who has merely acquired rights under a sale deed.

Mr. *Shiva Prasad Sinha*, for the applicant.

Mr. *K. L. Misra*, for the opposite parties.

BENNET and GANGA NATH, JJ.:—This is a civil revision by a plaintiff against a decree of the small cause court dismissing his suit. On the 1st of July, 1933, a promissory note was executed by defendant No. 1, Chander Bali Singh, in favour of defendant No. 2, Ranbaj Singh, purporting to be for Rs.200 in cash. On the 14th of February, 1936, defendant No. 2 executed a sale deed of this promissory note in favour of the plaintiff but no endorsement was made by defendant No. 2 in favour of plaintiff on the back of the note and no endorsement of any kind. The defence was as follows. Ranbaj Singh has a daughter Mst. Phulbasi Kunwar who was married to the brother of defendant No. 1 and the brother is apparently dead. There are two daughters, issue of this marriage. A suit was brought by Mst. Phulbasi Kunwar for maintenance against defendant No. 1 and a compromise was executed in that suit by which defendant No. 1 agreed to maintain Mst. Phulbasi Kunwar. It is found and is common ground that seven or eight days before this compromise the promissory note in suit was executed by defendant No. 1 in favour of defendant No. 2. The case for defendant No. 1 was that he executed this promissory note not for any cash consideration but as security that he would carry out the compromise of maintenance of Mst. Phulbasi Kunwar and the compromise agreeing to meet the expenses of the marriages of her two daughters. The court below has found that this defence is correct and that the promissory note in suit was not executed for any cash con-

sideration but was merely executed as security. The court therefore dismissed the suit of the plaintiff. In revision the ground is taken that plaintiff was a holder in due course and was entitled to a decree even if the promissory note was without consideration. This argument is based on the provisions of section 43 of the Negotiable Instruments Act, Act XXVI of 1881. That section provides as follows: "A negotiable instrument made, drawn, accepted, indorsed or transferred without consideration, or for a consideration which fails, creates no obligation of payment between the parties to the transaction. But if any such party has transferred the instrument with or without indorsement to a holder for consideration, such holder, and every subsequent holder deriving title from him, may recover the amount due on such instrument from the transferor for consideration or any prior party thereto." The question arises whether it can be said that the plaintiff is a holder for consideration. Learned counsel relies on section 8. But this section merely states what are the rights of a holder and does not tell us how a holder comes into existence. For the creation of a holder we must refer to sections 14 and 15 which provide as follows:

Section 14: "When a promissory note, bill of exchange, or cheque is transferred to any person, so as to constitute that person the holder thereof, the instrument is said to be negotiated."

Section 15: "When the maker or holder of a negotiable instrument signs the same, otherwise than as such maker, for the purpose of negotiation, on the back or face thereof, or 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'."

These sections show that a holder is created by endorsement and negotiation. If the promissory note,

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bill of exchange or cheque is payable, as in the present case, to order, section 48 applies, which provides as follows: "Subject to the provisions of section 58, a promissory note, bill of exchange, or cheque, payable to order, is negotiable by the holder by indorsement and delivery thereof." This shows that for a promissory note payable to order there must be negotiation by endorsement and delivery. If on the other hand the promissory note was payable to bearer the delivery would be sufficient, as is provided by section 47. It is for this reason that the words occur in section 43, "But if any such party has transferred the instrument with or without indorsement to a holder for consideration, . . ." Sections 47 and 48 occur in chapter IV, headed "Of negotiation", and section 46 states that "A promissory note, bill of exchange or cheque payable to bearer is negotiable by the delivery thereof." and "A promissory note, bill of exchange or cheque payable to order is negotiable by the holder by indorsement and delivery thereof." It follows therefore from these definitions that the holder in section 8 is a person to whom there has been negotiation by endorsement and delivery in a case like the present, and not a person who has merely acquired rights under a sale deed. In the case, therefore, of a promissory note payable to order there must be an endorsement and in the case of a promissory note payable to bearer there need not be an endorsement. A cheque is also governed by the same rule.

The point has been before the Court in a previous ruling, *Parsotam Saran v. Bankey Lal* (1). It was held there that a transferee under a sale deed of a promissory note is not a holder thereof within the meaning of section 8 of the Negotiable Instruments Act, and cannot enforce the rights conferred on the holder by section 43 of that Act. In that case it was held that the instrument was not negotiated and that the mere

(1) [1936] A.L.J. 454.

note on the back of the promissory note that the amount due under it had been transferred to the plaintiff by means of a sale deed was not sufficient to constitute negotiation. In the present case there is not even a note on the back of the instrument that there has been any transfer by the sale deed. Learned counsel for the applicant referred to an earlier ruling, *Hazari Lal v. Tulshi Ram* (1). In that ruling there had been a transfer of a promissory note to the plaintiff by a registered sale deed. It was not stated whether or not the note had been endorsed in favour of the plaintiff and this question was not raised in argument. The ruling therefore is no authority on the point now before us. Following the ruling first mentioned we hold that there has been no negotiation in favour of the plaintiff of this promissory note and therefore the plaintiff is not a holder within the meaning of section 43 of the Negotiable Instruments Act and he cannot claim the right of a holder for consideration under that section.

Learned counsel suggested that the plaintiff might get a decree against his vendor defendant No. 2. No doubt the plaintiff did ask for an alternative relief against defendant No. 2 in the plaint but in the grounds of revision no such ground has been advanced. We therefore consider that the point cannot now be raised. For these reasons we dismiss this application in revision with costs.

(1) (1913) 11 A.L.J. 481.

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