

learned counsel for the appellant relied on *Baijoo v. Musammal Tulsha* (1), but this is a point which it is not necessary for us to go into for the purposes of this appeal. It is sufficient for the purposes of this appeal that, as we have said above, section 35 of the Provincial Small Cause Courts Act applies.

We therefore allow this application with costs and setting aside the decree of the lower appellate court remand the appeal to that court for decision on the merits.

*Application allowed.*

### REVISIONAL CIVIL

*Before Mr. Justice Bisheshwar Nath Srivastava, Chief Judge  
and Mr. Justice H. G. Smith*

JIA LAL (DEFENDANT-APPLICANT) *v.* JAGMOHAN LAL  
(PLAINTIFF-OPPOSITE PARTY)\*

1937  
April 14,

*Promissory note—Assignment of pronote made by written deed, validity of—Assignee, if can sue on pronote—Endorsement of transfer on pronote, if essential for its transfer.*

A written assignment of a promissory note is valid and under the general law, apart from the Transfer of Property Act, such assignment gives to the assignee the right of suit upon the note. There is no authority to show that assignment of a pronote is not possible except by means of an endorsement. *Palawan v. B. Kanu* (2), relied on. *Parsotam Saran v. Bankey Lal* (3), *Harkishore Barua v. Guru Mian Chowdhry* (4), and *Maung Saw v. Ingraswamy* (5), distinguished.

Mr. G. P. Shukla, for the applicant.

Messrs. H. D. Shandra and Nasir Ullah Beg, for the opposite-party.

SRIVASTAVA, C.J. and SMITH, J.:—This is an application in revision under section 25 of the Provincial Small Cause Courts Act against the decree of the learned Second Additional Judge of the Small Cause Court

\*Section 25 Application No. 115 of 1935, against the decree of Pandit Girja Shankar Misra, Second Additional Judge, Small Cause Court, Lucknow, dated the 30th of September, 1935.

(1) (1917) 20 O.C., 350.

(2) (1922) 66 I.C., 501.

(3) (1935) A.I.R., All., 1041.

(4) (1931) A.I.R., Cal., 387.

(5) (1920) 56 I.C., 259.

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Lucknow. On the 7th of July, 1933, the defendant executed a promissory note for Rs.100 in favour of Rupan. The latter instituted a suit on the 27th of April, 1935, to recover the money due on the pronote. During the pendency of this suit Rupan made an assignment of his rights in respect of the pronote under a sale-deed, dated the 14th of May, 1935, in favour of Jagmohan Lal, who was substituted as plaintiff in his place by an order of the court, dated the 30th of May, 1935. The suit was resisted by the defendant on several grounds which it is not necessary for us to state for the purpose of this application. The lower court disallowed all the pleas raised in defence, and decreed the claim in favour of the plaintiff.

The only contention urged in support of the application is that the plaintiff is not entitled to a decree on the basis of the assignment made in his favour because Rupan had not made an endorsement of transfer on the pronote. It is argued that in the absence of such an endorsement the plaintiff cannot be regarded as a holder in due course, and that in the case of a negotiable instrument there can be no valid transfer except by means of an endorsement. It may be pointed out that this is a new plea which was not raised in the lower court. We are further of opinion that the plea must fail also on the merits. The fact that the plaintiff cannot be regarded as a holder in due course appears to us to be of no importance in the present case. The Negotiable Instruments Act allows certain privileges to a holder in due course, but no such privileges are claimed by the plaintiff in this case. Therefore the fact of the plaintiff not being a holder in due course is of no consequence. No authority has been cited for the proposition that rights in respect of a pronote cannot be transferred by means of a written assignment under the general law, and that no assignment of a pronote is possible except by means of an endorsement. Reference

has been made to a few cases, but none of them appears to us to be in point. In *L. Parsotam Saran v. L. Bankey Lal* (1), it was held that the transferee of a negotiable instrument under a sale-deed is not a holder of the negotiable instrument within the meaning of section 8, and cannot enforce the rights conferred on such a holder by section 43 of the Act. In this case the question about the transferee being a holder within the meaning of section 8 was of importance because of the question which arose in the case regarding the application of section 43 of the Act. No such question arises in the present case. The case further shows that the validity of a transfer of a negotiable instrument under a deed of sale was recognized in the case. In *Harkishore Barua v. Guru Mian Chowdhry* (2), and *Maung Saw v. Ingraswamy* (3), it was held that a person, even if he is a true owner, is not competent to prosecute the suit, if he is not the holder of the note, and the fact that the holder of the note has been made a party, and has admitted that he is only the plaintiff's *benamidar*, makes no difference. No such question of *benami* arises in this case. On the other hand the case seems to be fully covered by the decision of the Lower Burma Chief Court in *Palawan v. B. Kanu* (4). It was held in this case that a written assignment of a promissory note is valid, and that under the general law, apart from the Transfer of Property Act, such assignment gives to the assignee the right of suit upon the note. We are therefore of opinion that no case has been made out for interference by us with the decree of the lower court. The application therefore fails, and is dismissed with costs.

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*Application dismissed*

(1) (1935) A.I.R., All., 1041.

(3) (1920) 56 I.C., 259.

(2) (1931) A.I.R., Cal., 387.

(4) (1922) 66 I.C., 501.