

trial of the petitioner should proceed from the point at which it has been left for the purposes of this petition.

JAMES, J.—I agree.

DHAVLE, J.—I agree.

Rule discharged.

APPELLATE CIVIL.

Before Das and James, JJ.

MUSAMMAT BIBI KAZMI

v.

LACHHMAN LAL SAO.*

Negotiable Instruments Act, 1881 (Act XXVI of 1881), sections 5 and 13—Bill of exchange—drawer and drawee, whether may be one and the same person—holder, if entitled to treat it as such—bill of exchange—expressed to be payable to particular person—prohibitory words restricting transfer, absence of—document, whether a negotiable instrument—suit against firm—members impleaded—suit, whether maintainable—Code of Civil Procedure, 1908 (Act V of 1908), Order XXX.

In order that an instrument may constitute a bill of exchange within the meaning of section 5 of the Negotiable Instruments Act, 1881, it is not necessary that the drawer and the drawee should be two different persons.

But where the drawer is the same person as the drawee that person is not entitled to treat the instrument as a bill of exchange; but the holder of the bill may treat it as such.

*Appeal from Appellate Decree no. 1111 of 1927, from a decision of Babu Phanindra Lal Sen, Subordinate Judge of Patna, dated the 15th August, 1927, reversing a decision of Babu Radha Krishna Prasad, Additional Munsif of Patna, dated the 25th December, 1926.

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BHARAT
KISHORE
LAL
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MODAK.

COURTNEY
TERRELL,
C. J.

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Capital and Counties Bank v. Gordon(1), followed.

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A bill of exchange which is expressed to be payable to a particular person and does not contain words prohibiting transfer or indicating an intention that it shall not be transferable, is a negotiable instrument by virtue of *Explanation (1)* of section 13, Negotiable Instruments Act.

Although the Code of Civil Procedure, 1908, allows the plaintiff to sue the members of a firm not in their individual capacity but as a firm, it does not affect the law on the subject which is to the effect that a plaintiff bringing a suit against a firm may implead all the members of the firm as defendants in that suit.

Appeal by the plaintiff.

The facts of the case material to this report are stated in the judgment of Das, J.

Syed Ali Khan, for the appellant.

Rai Gurusaran Prashad and Janak Kishore, for the respondents.

DAS, J.—This appeal arises out of a suit instituted by the appellant to recover Rs. 1,000 as principal and Rs. 380 as interest on the foot of an instrument, to use a neutral expression, executed in her favour on the 22nd June, 1922. The instrument runs as follows:

“To Bhai Kanhaia Lal Lachuman Lal, whose compliments please accept. Further we draw hundi for Rs. 1,000 full double of 500 rupees the half thereof in favour of Musammat Kazmi Begum Sahiba *dhanijoge*. Please pay after 60 days from Miti Asarh Badi 12, 1979 Sambat, according to the rules of Hundi. Dated Miti Asarh Badi 12, 1979 Sambat, by pen of Raja Ram.”

It is not disputed that Raja Ram was a partner of the firm of Kanhaia Lal Lachuman Lal and the suit was instituted against the members of the family of which Raja Ram was one of the kartas and it is the case of the plaintiff in the plaint that the firm of Kanhaia Lal Lachuman Lal consisted of the members of the joint family of which Raja Ram was the karta.

The suit was resisted on various grounds and one of the grounds put forward was that the suit was barred by limitation. The learned Judge in the lower appellate court has found that the instrument was in fact executed by Raja Ram and that consideration passed in respect of the same; but he has dismissed the suit on the ground that it is barred by limitation. Now it will appear that the instrument was in fact executed on the 22nd June, 1922, and it was payable by the terms of the instrument on the 21st August, 1922. It was contended before the learned Subordinate Judge that under section 22 of the Negotiable Instruments Act the instrument matured on the third day after the day on which it was expressed to be payable. In other words, it matured on the 24th August, 1922. Now if the plaintiff is right in this contention, then there is no doubt whatever that the suit is well within time. The learned Subordinate Judge, however, overruled the contention on the ground that the instrument did not purport to be a bill of exchange. According to the learned Subordinate Judge the drawer and the drawee of the instrument being the same person the instrument cannot be described as a bill of exchange within the meaning of that term as used in section 5 of the Negotiable Instruments Act. Now that section provides that a bill of exchange is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument. I can find nothing in the section to support the argument of the learned Subordinate Judge that if the drawer and the drawee be the same person the instrument cannot be described as a bill of exchange. It is true that where the drawer and the drawee is the same person that person is not entitled to treat the instrument as a bill of exchange although it is well established that the holder of the bill may treat

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it as a bill of exchange [See *Capital and Counties Bank v. Gordon*(1)].

The next point taken by the learned Subordinate Judge is that as the bill is payable to Musammat Kazmi Begum Sahiba and not to bearer or to her order, the document cannot be described as a negotiable instrument. The cases upon which the learned Subordinate Judge relies were all decided before section 13 was amended by Act VIII of 1919. Now section 13 provides that a negotiable instrument means a promissory note, bill of exchange, or cheque payable either to order or to bearer. Now if there was nothing else in section 13, the learned Subordinate Judge would be perfectly right in saying that the instrument in this case is not a negotiable instrument; but *Explanation (1)* provides that a promissory note, bill of exchange or cheque is payable to order which is expressed to be so payable or which is expressed to be payable to a particular person and does not contain words prohibiting transfer or indicating an intention that it shall not be transferable. It follows, therefore, that the instrument in question is payable to order and is, therefore, a negotiable instrument within the meaning of section 13 of the Negotiable Instruments Act. This being the position the plaintiff is clearly entitled to the benefit of section 22 and the bill cannot be said to have matured till the 24th August, 1922.

The only other point taken in the judgment of the learned Subordinate Judge is that as the defendants are not sued as a firm, the suit cannot be regarded as a suit on a hundi. With great respect to the learned Subordinate Judge, I do not think that there is anything at all in the point. Before the Civil Procedure Code of 1908 a partnership firm as a legal entity was not recognised in the mufassal courts in India. The Civil Procedure Code of 1908

(1) (1908) A. C. 240.

no doubt allows the plaintiff to sue the members of a firm not in their individual capacity but as a firm but it does not in the slightest degree affect the right of the plaintiff to bring on the record the different members of the firm. The Civil Procedure Code of 1908 merely provides a new procedure. It does not affect the law on the subject which is to the effect that a plaintiff bringing a suit against a firm may implead all the members of the firm as defendants in that suit.

I would, therefore, allow the appeal, set aside the judgment and the decree passed by the court below and give the plaintiff a decree for Rs. 1,000 with interest thereon at six per cent. per annum from the 24th August, 1922, until realization. The decree as against the minors will be limited to the extent of the assets of those minors in the partnership firm. The appellants are also entitled to her costs throughout.

JAMES, J.—I agree.

Appeal allowed.

APPELLATE CIVIL.

Before Ross and Wort, J.J.

KAMLA PRASAD SINGH

v.

LALJI PRASAD.*

1929.

MUSAMMAT
BIBI
KAZMI
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Hindu Law—limited owner, alienation by, for marriage expenses of her daughter—transaction, whether for legal necessity.

Where a limited owner, being a married woman, alienated certain property in her hands to pay off a prior

*Appeal from Original Decree no. 78 of 1927, from a decision of Babu Suresh Chandra Sen, Subordinate Judge of Muzaffarpur, dated the 5th of February, 1927.