Original Jurisdiction (a)

Special Case No. 61.

VEMBAKUM SOMAYAGEE JANAKEE AMMAL, widow, executrix of and VEMBAKAM RUNGACHARRIAR. } *Plaintiff.*

P. MOONESAWMY CHETTY.....*Defendant.*

According to Hindu Law not only is the beneficial interest in the subject matter of the contract but the contract itself is assignable.

The assignee therefore may sue in his or her own name. This doctrine is applicable to suits brought in the Madras Small Cause Court.

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THE following case was stated for the opinion of the High Court by the Judges of the Madras Small Cause Court.

This was an action upon a promissory note brought by plaintiff, the widow and executrix of one of the two payees thereof against defendant, the maker of the note.

The following is a copy of the note :

Madras, 9th June 1865.

On demand I promise to pay to V. Rungacharry and Co. the sum of Rupees (600) six hundred at the rate of 12 per cent. per annum for value received.

(Signed) P. MOONESAWMY CHETTY.

Endorsed V. Rungacharry & Co.

It will be observed that the note is not negotiable.

The defendant pleaded.

(1) Not indebted, (2) Plaintiff has no right to sue, (3) Partial failure of consideration, (4) Plaintiff not executrix, (5) Note not stamped.

The real point put in issue and tried was that raised by the second plea.

The action was tried before the 1st Judge who non-suited the plaintiff upon the ground that she could not maintain the action as brought.

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The defendant subsequently moved the full Court for a rule *nisi* for a new trial, which was granted by the Court, the 1st Judge dissenting. The rule was subsequently made absolute by the Court, the 1st Judge dissenting, and thereupon by consent judgment was entered for the plaintiff contingent upon the opinion of the Honorable the Judges of the High Court upon a case to be stated to their Lordships.

The facts of the case are briefly as follows:—

The payees of the note were Venbakem Somayajee Rungacharyar and C. Vellary Naidu trading in co-partnership under the name of V. Rungacharry & Co.

In January 1868, Venbakam Somayajee Rungacharyar died.

Six or eight months before his death the partnership had been dissolved and a settlement of their partnership affairs come to between the partners.

The note, the subject of this action, formed portion of the partnership assets, and as such, by an arrangement between the partners, fell to the share of Venbakem Somayajee Rungacharyar, and was treated in the settlement of the partnership accounts as so much cash paid to him.

The note thus became part of the private estate of Venbakem Somayajee Rungacharyar, and as such came into the hands of his widow and executrix.

The other of the partners, C. Vellary Naidu, is still alive. He disclaims all beneficial interest in the note, and affirms the plaintiff's right thereto in virtue of the transaction between the partners already stated.

The note was not endorsed during partnership or on its transfer to Venbakem Somayajee Rungacharyar, but only after action brought by C. Vellary Naidu, who wrote upon it the partnership name.

Some stress was laid by the plaintiff's attorney upon the fact that Sreenevassa Iyengar, the plaintiff's brother, had, subsequently to Venbakem Somayajee Rungacharyar's death, demanded payment of the note from the defendant, who in answer thereto said that he would pay by and bye. The 1st Judge, however, allowed no weight to this evidence,

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because, in the first place, it may be construed as a promise to pay the person lawfully entitled to payment, and not necessarily the plaintiff, and in the second place even though it could be so construed, it could not aid the present action, though it might be a ground for a new action upon the new promise.

The 1st Judge, in disposing of the case, proceeded upon the assumption that the transaction between the partners, already referred to, was a *bonâ fide* and valid equitable assignment of all interest in the note to Venbakem Somayajee Rungacharyar, the plaintiff's testator.

The 1st Judge, however, dismissed the action upon the well established principle of law that *choses in action* are not assignable except in certain well known instances, and held that the note in question not being negotiable, nothing that the payees of it could do would vest in an assignee of it a right of action upon it at law, and that even if the Court had been a Court of Equity, instead of a Court of Law, the plaintiff's suit would not have been maintainable except it appeared that the surviving partner had refused to allow her to sue in his name or otherwise obstructed her remedy at law.

It was urged upon the Court that, assuming the English Law to be adverse to the plaintiff's right of action as brought by her, the Hindu Law was in this respect different from the English Law and was moreover binding upon this Court.

For this position there was no authority whatever cited to the Court except indeed the *obiter dictum* of the High Court in case of *Kristna Chetty* v. *Balarama Chetty* (1 High Court Reports, page 137), can be construed into an expression of opinion by the learned Judges who pronounced the judgment therein, to the effect that a *chose in action* is assignable, and as such an authority in point.

The majority of the Court, differing from the 1st Judge, considered the above case an authority in point; and also held that the assignment of the note to Venbakem Somayajee Rungacharyar was a valid assignment, and as such by Hindu Law vested in the assignee all right, and title, interest in the note, including the right to sue upon it in her own name.

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The question, which we beg to submit for your Lordships' opinion is, whether, under the circumstances stated, the plaintiff was entitled to maintain an action in her own name upon the note?

No Counsel were instructed.

The opinion of the High Court was as follows:—

In the High Court, Appellate Side, it has been distinctly held (1 Madras H. C. Reports 150,) that according to Hindu Law a contract is assignable, and that the assignee may sue in his own name, and the only question is whether that decision is applicable to suits in the Small Cause Court. It is not disputed that in an action ex-contractu between Hindus in the Small Cause Court, that Court is bound to apply the Hindu Law of contracts; and we think that as by that law not only the beneficial interest in the subject matter of a contract, but also the contract itself is transferable, the complete remedy upon the contract must be recognised as vested in an assignee. The rule of the English common law, which enables the assignee of a *chose in action* to bring a suit but requires him to make use of the name of the assignor, rests on the ground that the benefit of the contract is assignable, but not the contract itself. A contrary opinion to this could only be supported on the ground that the question is one of procedure merely, and that consequently the English common law rule must govern. Now in the books a considerable conflict of authority is found on the point whether the inquiry in whose name the suit is to be brought, in that of the assignor or in that of the assignee, belongs to the right and merit of the claim or to the form of the remedy—that is, whether it is to be answered with reference to the *lex domicilii* of the obligee or to the *lex fori*, but we think that the tendency of the later decisions is in favor of the view which we have taken—(See the observations of Mr. Justice Story and the cases cited in the Conflict of Laws, Sections 565, 566; also Phillimore's International Law, Vol. 4, Section 760; and *Vanquelin* v. *Bonard*, 33 L. J. C.P. 78.) We therefore answer the question submitted to us in the affirmative.