

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

The Honourable Mr. Justice Varghese Kalliat

Friday, the 15th January, 1985/26th Magha, 1906.

SECOND APPEAL No: 27 of 1980

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(A.S. No.374 of 1977 of the District Court, Tellicherry.
O.S. No.102 of 1975 of the Munsiff's Court, Kuthuparamba).

APPELLANT - (Appellant - Plaintiff)

Kaniyarakkal Thayikandy Ashraff, S/o Kammu Haji, Trader,
Irrikkor amsom, Paduvam desom.

By Advt. Shri P.A.Mohammad.

RESPONDENTS (RESPONDENTS - Defendants)

1. V.V. Kuriyan, s/o Varkey Vayalil,
Clerk, Payam amsom desom, Tellicherry Taluk.
2. P.K. Joseph, S/o Kuruvila, School Master, residing at
-do- -do-
3. M.T. Varkey, S/o Thomas, School Master, residing
at -do- -do-
4. T.M. Thomas, S/o Thomas, School Master, residing at do. do.
5. T. V. Raghavan, s/o Krishnan Nair, Branch-in-charge
of the Uma Investment Pvt. Ltd.,
Iritty Branch, residing in Gokulam House,
Tellicherry amsom desom, Tellicherry

By ~~Adv~~ Advs. M/s. Govind Bharathan & V. R. Lekha.

This second appeal having been finally heard on
15.2.1985 the court on the same day delivered the following

Varghese Kalliath, J.

S.A.No. 27 of 1980

Judgment

This is an appeal by the plaintiff. He filed the suit on a promissory note. The defendant contended that he is not liable to pay the money to the plaintiff under the promissory note. He contended that the plaintiff has not got a valid assignment of the promissory note. The promissory note was executed by defendants 1 to 4, in favour of Uma Investments (Private) Limited. The 5th defendant is the person in charge of a branch of Uma Investments.

2. Uma Investments (Pvt.) Limited owed some money to the plaintiff. The case is that the plaintiff got an ~~assignment~~ assignment of the promissory note executed by defendants 1 to 4 in favour of Uma Investments, towards the liquidation of the amount ^{due} to the plaintiff.

3. The question that was considered by the courts below was whether there was a proper and valid assignment of the promissory note. Both the courts found that there

was no valid assignment and so the suit was dismissed. ~~In~~
the plaintiff appeals to this court.

4. The learned counsel for the appellant submitted that the finding of the courts below that there was no proper assignment is incorrect. It is seen that the assignment has been made by the 5th defendant who was in charge of a branch. It is further stated that the assignment was made pursuant to an authorisation. ~~But~~ But the courts below have found that the authorisation is invalid and it is not proved properly. So it is clear that the plaintiff cannot get a decree on the basis of assignment. The counsel for the appellant strongly contended that even if the assignment is invalid, by virtue of sections 8, 9 and 113(g) of the Negotiable Instruments Act, the plaintiff should be considered as a 'holder in due course' of a negotiable instrument. I find it difficult to accept the contention. This point has not been ^{specifically} raised in the pleading. The only case pleaded was that the promissory note has been assigned to the plaintiff and by virtue of ^{But} assignment he is entitled to a decree. / both the courts have considered the point raised by the appellant.

5. The counsel for the appellant referred me to
1960 K.L.T. 1242 (Umku v. Gopalan)^{Madhavan Nair, J.} held in that case that
an assignee of a promissory note will get the rights of the
holder of the promissory note and can sue its drawer for the
amount covered by it. If there was a valid assignment,
certainly the plaintiff can maintain the suit. The question
to be answered is whether the plaintiff is a holder in due
course under section 9 of the Negotiable Instruments Act.
A reading of section 9 makes it clear the case in hand will
not come under the ~~para~~ pale of section 9. Both the courts
have found against the plaintiff on this point. I see
no merit in this point.

I find no merit in the appeal. The appeal fails
and it is dismissed. I make no order as to costs.

15th February, 1985.

