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ORDERS OF THE COURT

In view of the majority decision, the appeal is allowed, the order of the learned Single Judge as also that of the learned Tribunal set aside and the Tribunal directed to decide afresh the question of limitation of the recrimination in accordance with law in the light of the observations made above. Costs in this Court shall be borne by the parties.

B.R.T

FULL BENCH

Before Inder Dev Dua, Daya Krishan Mahajan and H. R. Khanna, JJ.

PADAM PARSHAD,—*Appellant.*

versus

LOK NATH AND ANOTHER,—*Respondents.*

Regular Second Appeal No. 998 of 1956.

1964

March, 18th.

Negotiable Instruments Act (XXVI of 1881)—Ss. 8 and 78—Heir of deceased holder of a promissory note—Whether can sue maker thereof for recovery of the amount due on the promissory note.

Held, that an heir of a deceased holder can bring a suit on the basis of the promissory note though such an heir cannot be said to be a holder within the meaning of section 8 of the Negotiable Instruments Act, 1881. Sections 8 and 78 of the said Act do not create any bar in the way of such an heir to sue on the basis of the promissory note and recover the debt due to the deceased holder. Section 78 cannot be construed to mean that the right to institute a suit on the basis of an instrument specified in the section merely vests in the holder and no other person whatever. The crux of the matter is whether the person who is suing or receiving payment on the basis of the promissory note can or cannot give a valid discharge. If he can give a valid discharge, there is no reason why he cannot maintain an action on the basis of the promissory note. In the case of a sole heir, the promissory note by reason of inheritance vests absolutely in him and in the very nature of things he is the only person who can give a valid discharge and can sue on the basis of the promissory note.

Case referred by the Hon'ble Mr. Justice D. K. Mahajan, on 31st October, 1961 to a Full Bench for decision owing to the important question of law involved in the case. The case was finally decided by the Full Bench consisting of the Hon'ble Mr. Justice Inder Dev Dua, the Hon'ble Mr. Justice D. K. Mahajan and Hon'ble Mr. Justice H. R. Khanna, on 18th March, 1964.

Second Appeal from the decree of the Court of Shri H. S. Bhadari, Additional District Judge, Ambala, dated the 21st August, 1956, affirming with costs that of Shri Om Parkash Aggarwal, Sub-Judge, 1st Class, Jagadhri, dated the 17th May, 1956, granting the plaintiff a decree for Rs. 2,164, against defendant No. 1 with costs.

S. K. JAIN, GOKAL CHAND MITTAL AND P. C. JAIN, FOR SHAMSHER CHAND, ADVOCATES, for the Appellant.

JITENDRA KUMAR SHARMA, ADVOCATE, for the Respondents.

JUDGMENT

MAHAJAN, J.—This appeal has been placed before the Full Bench for decision in view of my order of reference dated 31st October, 1961. I referred the case to a larger Bench in view of the conflict of opinion prvailing on the principal question that really falls for determination, namely, whether the heir of a person in whose favour a promissory note has been executed can file a suit on the basis of a pronote. The other question that has been pointedly indicated in my reference order related to the capacity of one of the joint heirs to give a valid discharge of the debt. The answer to this question further depends on the question whether one of the two heirs can give up his rights to the pronote in question in favour of the other. Mahajan, J.

In order to appreciate the entire controversy it will be proper to state the facts of this case in detail. Dwarka Dass, grandfather of Lok Nath plaintiff, had

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leased out some property (two shops) to Padam Parshad on an annual rental of Rs. 600. This property had been mortgaged by Padam Parshad with possession to Dwarka Dass. A sum of Rs. 1,200 was due on account of the lease money. Rs. 400 were taken in cash by Padam Parshad from Dwarka Dass and on 8th July, 1952, a pronote for Rs. 1,600 was executed by Padam Parshad in favour of Dwarka Dass. The rate of interest agreed to in the pronote was Re. 1 per cent per mensem. Dwarka Dass died leaving behind Tara Wati his widow and Lok Nath his grandson.

The present suit was filed by Lok Nath for recovery of Rs. 2,164 on account of principal and interest due on the basis of the pronote dated 8th July, 1952, already referred to. Plaintiff Lok Nath alleged that he was the sole heir and legal representative of Dwarka Dass and was, therefore, entitled to recover the suit amount from Padam Parshad. At the time when the suit was filed Tara Wati was not impleaded as a party. On the objection taken by defendant Padam Parshad, Tara Wati was impleaded by order of the Court dated 15th December, 1955. It has been maintained by the plaintiff that Tara Wati had no right, title or interest to the amount in question and that she had given up her right, if any, to this amount by reason of compromise Exhibit P. 1, dated 22nd March, 1955. Tara Wati has claimed in the written statement filed by her that she is entitled to half the suit amount and that the decree be passed in her favour and in favour of the plaintiff. Padam Parshad defendant raised a number of pleas in defence. It is not necessary to state all his pleas because the issues which are set down hereunder disclose the nature of the same—

"(1) Whether the pronote in suit was without consideration except to the admitted amount of Rs. 900 ?

(2) Whether the stipulated interest was penal or amounted to compound interest as alleged in the written statement ? If so, to what reduction is the defendant entitled ?

(3) Whether the plaintiff could not bring the present suit without getting a money-lender's license ?

(4) Whether the plaintiff is not entitled to costs and interest as alleged in the written statement ?

(5) Whether defendant No. 2 has any rights in the debt in dispute ? If so, to what extent ?"

The trial Court decided issues Nos. 1 to 4 against Padam Parshad defendant. Issue No. 5 was found against defendant No. 2 Mst. Tara Wati, with the result that a decree for Rs. 2,164 was passed in favour of the plaintiff with cost. Against this decision, appeal was preferred by Padam Parshad alone to the District Judge, Ambala, which came up for hearing before the Additional District Judge, Ambala. The learned Additional District Judge, dismissed this appeal. Before the learned District Judge only two matters were raised: (1) that the pronote in dispute was executed in favour of Dwarka Dass deceased named payee, and the amount due thereunder could only be paid to him or to his order. As the promissory note is not indorsed in favour of the plaintiff, therefore, the plaintiff is not competent to recover the amount due on the basis of the promissory note. The mere fact that the plaintiff is the next heir is of no consequence and does not entitle him to bring the present suit on the basis of the pronote. (2) That in any case, Tara Wati has got an equal share in the estate of Dwarka Dass being his widow and, therefore, if the

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suit could be filed by the next heirs it could be filed by both of them and not by one of them alone, and as Tara Wati had been impleaded after the period of limitation had expired the suit must be dismissed as barred by time.

With regard to the compromise Exhibit P. 1 it was argued before the learned Additional District Judge that there was no mention of the transfer of the share in the pronote by Tara Wati. Moreover, such a transfer is not recognised by the Negotiable Instruments Act and that the compromise deed was neither stamped nor registered. The pronote could only be transferred by endorsing it to the transferee and by no other method. The learned Additional District Judge, while dealing with these argumuents, held that the provisions of the Negotiable Instruments Act did not stand in the way of an heir or heirs of a deceased holder to sue on the basis of a pronote and recover the debt due to the deceased. Therefore, the present suit was competent. With regard to the admissibility of the compromise deed Exhibit P. 1, it was held that as no objection on this score was raised at the trial, therefore, in view of the decision of the Lahore High Court in *Amar Singh* v. *Inda* (1), the objection could not be allowed to be raised for the first time in the appellate Court. On the construction of Exhibit P. 1 it was held that Tara Wati had transferred her right in the pronote to the plaintiff and as a result of the transfer the plaintiff had become entitled to recover the entire amount due on the pronote. As regards the plea that Tara Wati had been joined after the period of limitation for the suit had expired and that the suit is barred by time, it was held that Tara Wati had no interest in the pronote amount and, therefore, her absence from the array of parties to the suit was of no

(1) A.I.R. 1934 Lahore 988.

consequence. Even if she was a necessary party, in view of the decision of the Chief Court in *Kanshi Ram* v. *Utmi* (2), the suit having been filed by one of the persons jointly interested in the subject-matter of the suit, the other interested person could be impleaded after the period of limitation had expired but that would not render the suit liable to dismissal as barred by time. Against this decision, the present appeal was preferred. It came up before me and as already stated I referred it for decision by a larger Bench. That is how the matter has been placed before us.

The only question that has been debated before us is as to whether an heir of a deceased holder can bring a suit on the basis of a promissory note or it is incumbent on such an heir to obtain a succession certificate before he can bring a suit to recover the debt due on the basis of the promissory note. This argument is based on the provisions of sections 8 and 78 of the Negotiable Instruments Act. For facility of reference these provisions are quoted below—

> "8. *Holder.*—The 'holder' of a promissory note, bill of exchange or cheque means any person entitled in his own name to the possession thereof and to receive or recover the amount due thereon from the parties thereto.
>
> Where the note bill or cheque is lost or destroyed, its holder is the person so entitled at the time of such loss or destruction."
>
> "78. *To whom payment should be made.*—Subject to the provisions of section 82, clause (c), payment of the amount due on a promissory note, bill of exchange or cheque must, in order to discharge the

(2) 57 P.R. 1905.

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maker or acceptor, be made to the holder of the instrument."

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It will be apparent from the definition of 'holder' that it means a person *entitled in his own name* to the possession of the negotiable instrument and to receive or recover the amount due thereon from the parties thereto. Section 78 provides as to whom payment should be made of the amount due on the promissory note in order that the maker or acceptor thereof is discharged from liability thereon. On the interpretation of the aforesaid two sections, a plethora of case-law has grown up, but it appears to us that so far as the case of an heir of a deceased holder is concerned, the rule of law seems to be well settled. The preponderance of judicial opinion is for the view that an heir of a deceased holder can bring a suit on the basis of the promissory note though such an heir cannot be said to be a holder within the meaning of section 8. The decided cases, which will be noticed hereafter, are almost unanimous that there is no bar created by the aforesaid two sections in the way of such an heir to sue on the basis of the promissory note and recover the debt due to the deceased holder.

The earliest decision which has a bearing on the matter is *Sowcar Lodd Govinda Doss* v. *Muneppa Naidu* (3), wherein it was held that where a manager of a Court of Wards in the course of his management takes from the tenants of the property, promissory notes payable to himself or order for the rents and profits of the mortgaged premises, it is competent to such a mortgagee or his heirs to maintain a suit on such promissory notes when the Court's superintendence comes to an end and delivers to the mortgagee the promissory notes without however endorsing or otherwise assigning the same in writing. It was

(3) I.L.R. (1908) 31 Mad. 534.

observed in the body of the judgment by Mr. Justice Miller that the property in a promissory note may also pass by operation of law. The next decision in point of time is *Ramanadhan Chetty* v. *Katha Velan* (4). In this case it was held that a promissory note executed in favour of a trustee can be sued on by his successor without endorsement or assignment and that the Negotiable Instruments Act does not affect devolution of rights by operation of law. In *Kuppuswami Mudali* v. *Narayanaswami Iyer* (5), it was held that on the death of a holder of a bill the title thereto passes to his personal representatives, that is, executors or administrators, without endorsement. In this case the question arose as to whether a legatee could bring an action on the basis of a pronote executed in favour of the executor who had been subsequently discharged by a decree of the Court and the estate had vested in the legatee. It was held that the pronote having not been endorsed by the executor to the legatee, the legatee had not obtained any interest in the pronote and thus transfer by the legatee to the plaintiff in the absence of endorsement by the executor conferred no right on the transferee from the legatee who was the plaintiff in that case. In *Subbarayudu* v. *Subbarayudu* (6), a promissory note was allotted to the share of a person by an award. On a suit brought by the allottee an objection was taken that the pronote had not been endorsed in favour of the allottee. This objection was repelled and it was held that the award operated as a transfer *inter alia* of the suit note and as such the allottee was entitled to maintain a suit on it even though it was not endorsed. A seemingly contrary view appears to have taken to the aforesaid decision of the Madras High Court in *Virappa* v. *Mahadevappa* (7), but it,

(4) I.L.R. (1918) 41 Mad. 353.
(5) A.I.R. 1923 Mad. 593.
(6) A.I.R. 1935 Mad. 473.
(7) A.I.R. 1934 Bom. 456.

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appears, that in fact there is no real conflict because at p. 358 of the report it was observed by Murphy J. that "it is not mentioned as going to his share in the award, and all there is to infer from that he is the beneficiary, is the acquiescence of his son the payee, in the plaint, which clearly is not enough on any view of the law on the point." Therefore, it is clear that there was no transfer of the note by the award. In *Kamalakant Gopalji* v. *Madhavji Vighji* (8), Mr. Justice Wadia held that where a promissory note had been executed in favour of a father, his only son cannot on the death of the father sue for the sum as the sole surviving co-parcener of a joint and undivided Hindu family of which he and his father were members or, in the alternative, as the sole heir and legal representative of his father. It was held that a co-parcener does not represent the estate of the deceased member of the joint famliy. He gets the property by survivorship in his own right and not as a representative of the deceased. Indirectly, this case recognises that an heir who succeeds to the property as representative of the deceased can sue on the basis of promissory note executed in favour of the deceased. In *Shantaram Vithal Wakde* v. *Shantaram Bhagwan Sinkar* (9), it was observed at p. 452 of the report—

> "But if the holder is dead his legal representatives must, I think, be entitled to sue. Mr. Parulekar who appears for the appellants after some hesitation finally admitted this proposition. In my opinion, there can be no doubt about it. There is nothing in the cases cited, nor in the Act itself, as far as I can see, which is inconsistent with it. The Act regulates the issue and negotiation of bills, notes and chaques, but does not pro-

(8) A.I.R. 1935 Bom. 343.
(9) A.I.R. 1938 Bom. 451.

vide for the transmission of rights in such instruments by operation of law or by transfer."

The aforesaid observations were made in a case where a promissory note had been executed in favour of the manager of a joint Hindu family. After his death, his three sons and one brother sued to recover the money on the note. They had applied in the suit for stay till they produced succession certificate. It was held that though the sons and brother could not sue *qua* co-parceners, they could recover the money due on the note as legal representatives of the deceased holder after producing the succession certificate. In *Damel* v. *Manmohandas Lalubhai* (10), the facts were that a promissory note was executed in the name of a Hindu family firm. On partition, the debt mentioned in the note was allotted to the share of one of the co-parceners. A suit was filed in individual names of the co-parceners to recover the debt due on the promissory note. Objection was taken by the defendants that such a suit was not competent as the co-parcener was not a holder of the note. This objection was rejected and it was held that the suit on the promissory note was maintainable. At p. 158 it was observed by Wasoodev, J.—

> "But it does not necessarily follow that the Act is a compendium of the whole law relating to the transfer of interest in negotiable instruments or the procedure governing actions on them. For instance, there is no special provision as regards the form of a suit by a firm or of representative action. If a firm is the holder of a negotiable instrument, one has to fall back upon the general rules of procedure in the Civil Procedure

(10) I.L.R. (1940) Bom. 153.

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Code for that purpose. In *Shantaram* v. *Shantaram* (11), Mr. Justice Broomfield "observed that the Act regulates the issue and negotiation of bills, notes and cheques, but does not provide for the transmission of rights in such instruments by operation of law or by transfer". If I may say so with respect that view seems to be correct. The Act does not expressly exclude the doctrine of representative action. If a holder named is dead, a person claiming representation to his estate can bring a suit to recover the debt upon a promissory note in the name of the deceased."

In *Bairagi Charan Das* v. *Sarat Chandra Ghosh* (12), Mr. Jusutice Varma held that endorsement and delivery is not the only method by which the negotiable instrument can be transferred on the basis of which a suit can be filed. The common manager appointed under section 301, Succession Act, represents the estate of the deceased for all intents and purposes and can sue on a pronote in favour of the deceased even if he is not a holder in due course.

The matter was considered by a Full Bench of the Allahabad High Court in *Rai Ram Kishore* v. *Ram Parshad* (13), In that case, promissory notes were executed in favour of A and thus a holder of the same, but he lost his status as a holder after the partition decree by which the promissory notes were allotted to the share of his brother B. B brought a suit to recover the money due on the basis of the promissory notes. Objection was raised that the suit was not maintainable by B as he was not a holder of the promissory

(11) (1938) 40 Bom. L.R. 964.
(12) A.I.R. 1941 Patna 403.
(13) A.I.R. 1952 All. 245.

notes. This objection was repelled and it was held that B could bring a suit to recover the amount due on the promissory notes.

The matter in regard to the true effect and scope of sections 8 and 78 of the Act was considered by a Division Bench of the Rajasthan High Court in *Bhagirath* v. *Gulabkanwar* (14). The judgment was delivered by Modi J., with whom Wanchoo, C.J. agreed. It was noticed by the learned Judges that there was a considerable divergence of judicial opinion on the question whether a person who is not a holder of a promissory note can bring a suit on its basis. This judgment is very instructive. At p. 176 of the report the learned Judges have set out the various cases which according to them broadly speaking represented the two schools of opinion on the true scope and interpretation of sections 8 and 78 of the Act. The learned Judges state their own views at p. 177. I have taken the liberty of quoting *in extenso* from this judgment because in my opinion this judgment succinctly states the true legal position and I am in respectful agreement with the same—

> "10. The quuestion then is what is the true effect of S. 78 read with S. 8, Negotiable Instruments Act. Do these sections in their cumulative effect lay down that the holder alone and nobody else can bring a suit on the basis of a promissory note for recovering a sum due thereon, for, that appears to us to be the basic consideration underlying the decisions in *Harkishore* v. *Gura Mia* (15), and other cases following that opinion.

(14) A.I.R. 1956 Raj. 174.
(15) A.I.R. 1931 Cal. 387.

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We have given this matter our very careful and anxious consideration and with respect we have come to the conclusion that it would be going too far to hold that the sections under consideration or the scheme of the Negotiable Instruments Act preclude anybody except the holder of the promissory note or bill of exchange or cheque from filing a suit based thereon.

Section 78 does not say so in clear terms which it might have said if the intention of the legislature was so to provide. What the section really appears to us to lay down is that a payment, in order to act as a full discharge of the instrument, must be made to the holder or as provided in section 82(c) where its application arises. The section does not deal with the right to bring a suit.

It would, therefore, be reading too much into the section to say that it forbids all suits by any person except the real holder, for, it is not difficult to conceive of cases where it is impossible for the holder to bring a suit, and such a case arises where the holder dies before recovering upon the promissory note, or a bill of exchange or a cheque. Can it be said that in such a case no suit at all can be brought? Obviously not.

Again, it may happen that by operation of law, the property in a negotiable instrument vests in a person other than the holder, and there has been no endorsement in his favour by the holder such as where a promissory note is allotted to the share of a person by a decree of the Court in suit for partition.

In such a case also, we see no adequate justification why the true owner should be held to be precluded from bringing a suit in his own name. The true view, therefore, appears to us to be somewhat like this.

The various provisions of Negotiable Instruments Act deal with the right of negotiation of instruments, which initially vests in the payee, but which may also be exercised by the holder or the holder in due course. Some provision is obviously necessary for the protection of the maker or acceptor of instruments concerned as they are negotiable, and it as with a view to achieve this object that section 78 has been enacted to lay down that a payment made to the holder would grant full discharge to the maker or acceptor.

We are, therefore, of opinion that section 78 should not be construed to mean that the right to institute a suit on the basis of an instrument specified in the section vests merely in the holder and no other person whatever. We, therefore, agree, with respect, with the view taken in *Brojolal Sah* v. *Budh Nath* (16), and similar other cases in so far as it accords with what we have stated above.

11. At the same time, it has to be remembered that although a beneficiary or a true owner may bring such a suit, it is the holder who can give a discharge to the maker according to section 78, Negotiable

(16) A.I.R. 1928 Cal. 148.

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Instruments Act, and consequently the debtor would be entitled to insist that before he can be called upon to pay to the true owner, the latter must secure to him a lawful discharge from the holder.

If this essential requirement envisaged in section 78 is not fulfilled it is obvious that the maker or the acceptor would be exposed to a real risk on account of his liability subsisting still to the holder within the meaning of section 78 and we see no justification for adopting a view which would lay him open to such an unnecessary risk involving a double liability.

12. Considering the matter, therefore, from the combined operation of these two principles, we now proceed to examine certain kinds of cases which may arise and to see how the principles we have stated above would work out in relation to them.

13. The first class of cases is where the holder brings a suit himself without impleading the beneficial owner. There is no difference of opinion as regards such a case. Such a suit would be perfectly good and if the holder obtains a decree upon the instrument against the maker, the beneficial owners thereafter cannot be heard to say that the debtor should not have paid the holder or that he was still liable to satisfy the debt so far as the beneficial owner is concerned on the ground that he was the true owner. Section 78 is a complete answer on the point.

14. The second type of cases arises where the beneficial or true owner brings a suit without impleading the holder (who is alive) either as a plaintiff or as a defendant. It appears to us on the principles which have commended themselves to us that in this class of cases the plaintiff cannot maintain his suit in the absence of the holder.

The reason, to our mind, is simple and that is that if the matter is decided one way or the other in the absence of the holder, the latter cannot be held to be bound by any decision which might have been so arrived at, and the maker or the acceptor of the note would be exposed to unnecessary risk, and the object of section 78 would be clearly defeated. We, therefore, wish to point out that those cases which lay down that the claim of the true owner can be decreed even in the absence of the holder and the latter has not been made a party to the suit have gone too far.

On this view, with utmost respect it appears to us that the Full Bench case of *Rai Ram Kishore* v. *Ram Prasad* (13), goes farther than we would be prepared to go, because in that case the holder of the promissory note was alive, but he was not made a party to the suit. The earlier decisions of the Allahabad High Court in *Sewa Ram* v. *Hoti Lal* (17), and *Lachhmi Chand* v. *Madan Lal* (18) seem to us to have struck the correct note when it was laid down

(17) A.I.R. 1931 All. 108.
(18) A.I.R. 1947 All. 52.

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therein that the real owner of a note may sue provided he is in a position to obtain a good discharge from liability for the maker or acceptor of the note, and such a discharge could only be obtained with confidence of certainty where the holder himself is a party.

14 (a). A third type of case may arise in which the suit has been brought by the true owner and the holder has been impleaded as a party whether as a defendant or as a co-plaintiff. We have already held above that a true owner can bring a suit and the further condition that such owner must be in a position to secure a proper discharge from responsibility from the holder is capable of being satisfied in such cases.

Such a case arose in *Sewa Ram* v. *Hoti Lal* (17) where the learned Judges moulded their decree to say that the decretal amount shall be paid to or to the credit of the holder who was the plaintiff's *benamidar*, and it was further provided that it shall not be recoverable except on obtaining a discharge from the holder in respect of the liability of the main defendant under the promissory note in suit, and a provision was also made that if the decretal amount was deposited in Court or was brought to it in execution of the decree, it shall enure to the credit of the holder.

15. We further think that in a case of the aforesaid category where the holder is a co-plaintiff, the position is still simpler. In

such a case the interest of the defendant-maker can be easily safeguarded without any difficulty whatever as the holder is also in the same array of parties as the true owner, and there can be no objection to passing a suitable decree so as to give a lawful and effective discharge to the maker. Such a suit must be held to be competent because the holder is undoubtedly a party to it as a co-plaintiff.

Reference may be made in support of this view to *Rishabkumar Mohanlal* v. *Motilal Kasturchand* (19), where the learned Judges said that they were prepared to accept that suits by a beneficial owner would be good where the holder of the instrument is made a party and gives a valid discharge and that where the *benamidar* is a co-plaintiff, the matter would be simple and the claim in such a suit would be really decreed at his instance though the decree may be passed in favour of the other plaintiff also.

We may, however, point out that this position, in our opinion, will not hold good where the holder is neither a plaintiff nor even a defendant but has merely been produced as a witness in the suit brought by the real owner, as in such a case no decree can be passed *qua* the holder so as to effectually bind him, he being not a party to it.

16. Lastly, another type of case arises where the holder is no longer alive and the debt

(19) A.I.R. 1949 Nag. 21.

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on instrument still remains to be recovered from its maker or acceptor. We are of opinion that in such a case it could not possibly be insisted in law or common sense that no suit whatsoever could be brought as the holder is dead or "that no person other than the holder could give a discharge within the meaning of section 78, Negotiable Instruments Act.

The legal representatives of the holder would appear to us to be clearly entitled to recover upon the instrument and section 78 or anything else in the Negotiable Instruments Act cannot and does not stand in the way of such a suit being brought by the legal representatives of the holder against the person liable on the instrument."

The Full Bench case of Allahabad High Court in *Rai Ram Kishore* v. *Ram Prasad* (13) was considered by the Rajasthan High Court in *Bhagirath's* case and it was observed that the decision in *Rai Ram Kishore's* case goes farther than the learned Judges were prepared to go and they preferred to rely on the earlier decisions of Allahabad High Court in *Sewa Ram* v. *Hoti Lal* (17) and *Lachhmi Chand* v. *Madan Lal* (18) in preference to the Full Bench decision.

I may in this connection usefully refer to the decision of Calcutta High Court in *Kali Charan Prosad* v. *Mohammad Ibrahim* (20). In this case a receiver appointed in partnership suit was held to be a holder of a promissory note and was held entitled to sue on its basis though he was not a named payee or endorsee of that note.

(20) 1936-37) 41 C.W.N. 697.

It will appear from the authorities that have been quoted above that the rule seems to be fairly well settled that an heir of a deceased holder can bring a suit on the basis of the promissory note to recover the amount due thereon to the deceased holder by reason of the fact that he succeeds to the estate of the deceased holder by inheritance. No decision taking the contrary view has been brought to our notice. As would be apparent from the decision of Rajasthan High Court in *Bhagirath's* case, the real conflict has been in cases where the holder of the promissory note is merely a *benamidar* and suit on the basis of that note has been brought by the real owner : see in this connection *Lachhmi Chand* v. *Madan Lal* (18) and *Subba Narayana Vathiyar* v. *Ramaswami Aiyar* (21). The controversy has centered round the interpretation of section 78 read with section 8 as would be apparent from the decision of Madras High Court in 30 Madras 88 on the words "entitled in his own name" occurring in section 8. However, we are not called upon, in the present case, to settle the question as to whether a beneficiary can bring a suit in his own name on the basis of a pronote executed in favour of his *benamidar*. As at present advised, I am of the view that the better view to take of the matter on this desputed question is the one that has been taken by the learned Judges of Rajasthan High Court in *Bhagirath's case*.

It will also be useful to refer to a conflict on the question whether a vendee of a promissory note can sue on the basis of that note. On this question again there is conflict. Allahabad High Court in *Jang Bahadur Singh* v. *Chander Bali Singh* (22) takes the view that such a vendee is not a holder within the meaning of section 8 and thus cannot sue. Contrary view has, however, been taken by the Calcutta High

(21) (1907) 30 Mad. 88.
(22) A.I.R. 1939 All. 279.

Padam Parshad v. Lok Nath and another

Mahajan, J.

Court in *Surath Chandra Saha* v. *Kripanath Chowdhury* (23), and the Patna High Court in *Ghanshyam Das Marwari* v. *Ragho Sahu* (24). The following observations of the Full Bench in *Ghanshyam Das Marwari's* case may be usefully quoted:—

> "I do not think that it can be held in view of these authorities that endorsement is the only means by which a Negotiable Instrument can be transferred. Chapter IV of the Negotiable Instruments Act deals with the manner of the negotiation of these instruments. In the ordinary way, under section 48 of the Act, a hand-note, such as we have before us in the present case, would be negotiated by endorsement and delivery thereof; a promissory note endorsed in blank or a promissory note to the holder or bearer, is negotiated in simpler fashion. But the Negotiable Instruments Act itself does recognise that negotiable instruments may be transferred and for consideration otherwise than by negotiation, because section 118(a) of the Act provides that until the contrary is proved, when a negotiable instrument has been negotiated or transferred, it shall be presumed that it was negotiated or transferred for consideration."

Before parting with the case, I may refer to a Supreme Court decision in *Jagjivan Mavji Vithalni* v. *Ranchhoddas Meghji* (25). At p. 556, their Lordships observed as follows:—

> "Under section 78, the payment must be to the holder of the instrument; and if Vrajlal

(23) A.I.R. 1934 Cal. 549.
(24) (1937) 16 Pat. 74 (F.B.).
(25) A.I.R. 1954 S.C. 554.

had no authority to receive the amount on behalf of the plaintiff, there was no valid presentment of the hundi by him for acceptance either."

These observations suggest that the crux of the matter is whether the person who is suing or receiving payment on the basis of the promissory note can or cannot give a valid discharge. If he can give a valid discharge, there seems to be no reason why he cannot maintain an action on the basis of the promissory note. In the case of a sole heir, the promissory note by reason of inheritance vests absolutely in him and in the very nature of things he is the only person who can give a valid discharge. I see no reason, either on principle or on authority, to hold that such an heir cannot sue on the basis of the promissory note.

In the present case it has been settled by the Courts below that Tara Wati had no interest in the suit pronote and that the note solely vests in the present plaintiff who in law could give a valid discharge of the pronote to the person liable thereunder if the payment was made to the plaintiff. No other question has been raised before us.

In the circumstances of this case, it is not necessary to decide whether it was necessary for the plaintiff to obtain succession certificate to maintain the suit.

For the reasons given above, it appears to me that the lower appellate Court had come to a correct decision that the present suit by the plaintiff was maintainable. The result, therefore, is that this appeal fails and is dismissed, but in the peculiar circumstances of this case I will make no order as to costs.

INDER DEV DUA, J.—I agree.

H. R. KHANNA, J.—I also agree.

B.R.T.