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*Present:* Fisher C.J. and Drieberg J.

RAMASAMY PILLAI v. VENGADASAMY.

440—D. C. Badulla, 4,470.

*Promissory note—Holder as agent of another—Action by holder—Death of principal before trial—Civil Procedure Code, s. 547.*

A promissory note was given to A as agent of B. A sued the maker on the note. After the institution of the action and before the date of trial B died.

*Held*, that the action was maintainable by A as holder of the note.

*Held*, further, A was not entitled to continue the action till administration had been taken out to B's estate.

**A** PPEAL from a judgment of the District Judge of Badulla.

Plaintiff sued the defendant for the recovery of a sum of Rs. 5,981.25 on a promissory note. It appeared that the plaintiff in taking the note acted as the agent of one Sinnatambia Pillai, whose power of attorney he held and to whom the money was due from the defendant. Sinnatambia Pillai died after the action was brought and before the date of trial. The learned District Judge held that the action was not maintainable as the plaintiff's agency terminated with the death of Sinnatamby Pillai and because his estate had not been administered.

*H. V. Perera* (with *Rajakariar*), for plaintiff appellant.

*H. H. Bartholomeusz*, for defendant, respondent.

July 9, 1929. DRIEBERG J.—

The appellant sued the respondent on a promissory note for Rs. 5,981.25 made in his favour by the respondent. The respondent said that the note was a forgery and denied that he received consideration on it from the appellant. Issues were framed on these points and evidence was led on both sides.

The learned District Judge later delivered judgment dismissing the action. He did not give his finding on the issues of fact, but based it solely on an issue which he had framed, viz., "Is this action maintainable at law by the plaintiff?" He says that he framed this issue as it appeared from the evidence that in taking the note the appellant acted as the agent of Sinnatambia Pillai, whose

power of attorney he held, the note being taken for money due to Sinnatambia Pillai. Sinnatambia Pillai died after the action was brought and before the day of trial. The trial Judge was of opinion that the action was not maintainable for the reason that the agency of the appellant ended on the death of Sinnatambia Pillai and also on the ground that his estate was unadministered (section 547 of the Civil Procedure Code). For these reasons he dismissed the action.

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It is a fact that the note was given to the appellant for money due to Sinnatambia Pillai when the appellant was his agent. Full particulars of the making of the note are set out in the affidavit of the appellant dated October 10, 1927.

The first of the reasons given by the learned District Judge is not a good one. Though the appellant acted as the agent of Sinnatambia Pillai he took the promissory note in his own name and is the holder of it. An action on a promissory note can be brought only by the holder of it, and the holder is the payee or the indorsee, or the bearer of it if it is one payable to bearer (section 2, Bills of Exchange Ordinance, 1927). On the death of the holder his title to the note and the right of action on it passes to his executor or administrator (*C. R. Matara No. 548 (Full Bench)*<sup>1</sup>). Sinnatambia Pillai or his legal representative could have become the holder of the note by obtaining the indorsement of it by the appellant or by compelling by action the indorsement of it, but the death of Sinnatambia Pillai could not deprive the appellant of his position as the holder of the note and his right of action on it.

From the appellant's affidavit dated October 10, 1927, it is clear that he brought the action for the recovery of money due on the note to Sinnatambia Pillai, and this being so the action must now be regarded as one for the recovery of property belonging to Sinnatambia Pillai's estate and is therefore subject to the provisions of section 547 of the Civil Procedure Code. I am not aware of a similar case, but it can make no difference by whom an action is brought if the object of it is that stated in section 547. The primary object of section 547 is to protect the revenue (*Wood Renton J. in Hassen Hadjar v. Levana Marikar*<sup>2</sup>).

The action, however, should not have been dismissed, but the appellant is not entitled to continue the action until grant of probate or letters of administration (*Alagakawandi v. Muttumal*<sup>3</sup>).

The order of dismissal is set aside. No further steps can be taken in the action by the appellant until grant of probate or letters of administration of the estate of Sinnatambia Pillai, and any step thereafter must be after notice to the legal representative of Sinnatambia Pillai.

<sup>1</sup> (1899) *Koch's Reports* 38.

<sup>2</sup> (1912) 15 *N. L. R.* 275.

<sup>3</sup> (1920) 22 *N. L. R.* 111.

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**DRIEBERG J.** Mr. Perera asked that leave should be given to the appellant to withdraw the action if he so desires. As this would ordinarily have the effect of barring another action on the note by the legal representative, the appellant should not be allowed to withdraw the action except with the consent of the legal representative, who will be able to secure the interests of the estate by requiring that the withdrawal should be with leave to re-institute.

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The question of costs in the lower Court and of this appeal will be decided by the Judge who finally disposes of this action.

FISHER C.J.—I agree.

*Set aside.*

