Equivalent Citation: AIR 1925 Lah 272, 84Ind. Cas.866

IN THE HIGH COURT OF LAHORE

Decided On: 08.05.1922

Appellants: **Barket Ullah**
Vs.
Respondent: **Muhammad Hayat Ali Khan**

JUDGMENT

1. This is a first appeal by Sheikh Barkat Ullah plaintiff from the order of the Subordinate Judge, 1st class, Delhi, decreeing the plaintiff's claim to the extent of Rs. 200 only out of the Rs. 8,600 claimed against Kanwar Muhammad Hayat Ali Khan of Atrauli in the District of Aligarh. The suit is based upon a promissory note for Rs. 5,000 admittedly executed by the defendant in plaintiff's favour on the 29th November, 1913. The plea was that the defendant was a young man of extravagant habits and of weak intellect and that he executed the promissory note on receipt of Rs. 200 only and a promise that the balance would be paid subsequently. He pleaded that one Ayub got him to execute the promissory note in October, 1916 in Atrauli, District Aligarh, and that it was ante dated to November, 1913 because of a wakfnama in regard to his property which the defendant executed on the 3rd December, 1913. The defendant pleaded that he never received more than Rs. 200 which he obtained at the time when he signed the promissory note. The issues framed were:

(1) Was the promissory note in suit executed in Delhi and has this Court jurisdiction to try the case ?

(2) If so, is the promissory note without consideration ?

(3) Has the promissory note been ante-dated and, if so, what is its effect ?

2. During the hearing of the case the objection as to jurisdiction was given up by the defendant. As regards the second issue the lower Court was of opinion that the onus, if any, on the defendant was a very slight one and that the onus has been shifted and the plaintiff bad not proved that he had paid consideration for the promissory note. A decree was, therefore, passed for Rs. 200 with costs in proportion.

3. The appellant's counsel has urged before us that the onus of proving absence of consideration was upon the defendant. Now, the promissory note sued upon is admittedly not a negotiable instrument within the meaning of the definition given in Act XX of 1881 and, therefore, there is no presumption under Section 118 of the Act that it was made for consideration. In Chirag Din v. Bhagwan Das (1915) 100 P.R. 1915 it was held "that when a defendant admits execution and pleads absence of consideration for a promissory note, the initial onus is almost invariably on the plaintiff to prove that consideration did pass." The Judges in that case said that it was impossible to lay down any hard and fast rule determining the point at which the onus shifted, but in the case before them, as they found that the' defendant was a man of business, and had a good knowledge of English and had executed a promissory note containing the expression "for value received" and had in addition admitted that he received at any rate some portion of the consideration, they held that the onus which originally lay upon the plaintiff was shifted to the defendant). Counsel for the appellant relies upon this ruling and points out that in the present case also the defendant is a literate person who admits having received a portion of the consideration, and asks us to hold these facts are sufficient to shift the onus. In our opinion, these facts are not in themselves sufficient to shift the onus, and we think the proper course is to consider the whole of the evidence on the record and to then see whether the plaintiff has

proved that consideration passed or has succeeded in shifting the onus on to the defendant.

4. Abdul Karim Khan (D. W. 5) whose evidence will be found at page 115 of the paper-book, deposes that the defendant is his first cousin. The defendant's father gave all his property to his wife and she gave some of it to the witness and assigned the rest to defendant's son on account of defendant's conduct. The defendant, according to him, is a man of bad character, wasteful in his habits, addicted to drink bad women, etc. He does cot understand his affairs and is hard of hearing from his birth and weak-brained. The evidence of Faiz Muhamad (D. W. 1) page 113 of the paper-book, is to the same effect. It is not denied that the defendant executed a wakfnama in which he made a settlement of his property for the benefit of his wives and children and in order to ensure payment of his debts and a sufficient allowance for himself to live upon. This is printed at pages 78 et seq of the paper-book and shows that the reason for executing it was that the defendant was deeply in debt. The defendant is a man of large property. It is admitted by Abdul Karim that he is an elected member of the Municipal Board, Atrauli. He was examined as a witness in the case and having regard to his deposition and to the fact that he is a member of the Municipal Board, we do not consider it to be proved that he is of such weak intellect as not to understand his own advantage. At the same time it is quite clear that he is a young man of extravagant habits who would easily become the prey of money-lenders and people of that sorb and would be quite ready to execute a promissory note on receipt of a small sum of money in the expectation of receiving more later on. The very strong point against the plaintiff is that he has entirely failed to show that he was possessed of sufficient funds in November, 1913, to make a loan of Rs. 5,000 in cash to the defendant. He does not pay income tax and has no account books. Though he has a memo book showing his dealings he did not produce it. Muhammad Ishaq (P. W. 8) gave evidence to the effect that on a previous occasion the defendant had borrowed Rs. 2,000 from the plaintiff and had repaid it. The plaintiff, however, did not himself go into the witness box and state the defendant had any previous dealings with him and though he produced the defendant as his witness, he put him no questions in regard to this alleged loan. Under the circumstances we are quite unable to accept the evidence of Muhammad. Ishaq in this respect) and we hold that it is not proved that the defendant had any previous dealings with the plaintiff. In our opinion it is extremely improbable that the plaintiff would have made a loan of such a large sum to a young man with whom he had had no dealings before and without receiving any security for the loan. The only witness produced by the plaintiff to prove that the full sum was advanced to the defendant was Khizar Hussain (P. W. 6) who in his deposition (page 122 of the paper-book) says that Habib-ud-Din and Suleman were also present when the money was paid. It is very significant that neither of these two persons has been produced. Khizar Hussain's shop is opposite to that of plaintiff and he admitted in cross-examination that the plaintiff had never advanced any other money in his presence. There is a certain amount of evidence on the record to show that in 1916 the plaintiff had considerable dealings as a merchant, but these dealings are no proof as to what his position was in the autumn of 1913 when be is alleged to have advanced this sum of Rs. 5,000 to the defendant.

5. We have carefully considered the evidence on the record and we agree with the learned Subordinate Judge that the plaintiff has completely failed to prove that he advanced Rs. 5,000 to the defendant. We also hold that he has not shifted the onus on to the latter. It is quite possible that the defendant received more than the Rs. 200 admitted by him, but the onus of proving that be received more than that sum was on the plaintiff and he has not discharged it.

6. The appeal fails and is dismissed with costs.

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