
(1939) 12 AHC CK 0020
In the Allahabad High Court

Allahabad Bank Ltd.

APPELLANT

Vs

Gulli Lal and Others

RESPONDENT

Date of Decision : 07-12-1939

Acts Referred:

Specific Relief Act, 1877 — Section 42

Citation : AIR 1940 All 243 : (1940) 10 AWR 72 : (1940) 10 CompCas 157

Hon'ble Judges : Bennet, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Bennet, J.—This is a first appeal by the Allahabad Bank Ltd., defendant, against an order in appeal of the learned District Judge of Farrukhabad holding that the suit of the plaintiff lies in the Court of the Civil Judge at Farrukhabad. The plaintiffs are the children of one Nand Lal Gupta and they state in para. 1 of the plaint that Nand Lal Gupta held a fixed deposit of Rs. 3000 with the defendant Bank and that Nand Lal Gupta died on 25th February 1934 at Farrukhabad as the manager of the plaintiff's joint Hindu family. Para. 2 sets out that the plaintiffs are the sole surviving heirs of Nand Lal Gupta. Para. 4 sets out that the cause of action accrued at Farrukhabad on 25th February 1934 on the death of Nand Lal Gupta and on 15th October 1935, the date of the refusal by the defendant to renew the deposit or make the payment till the establishment of legal title. The Bank in its written statement admitted that Nand Lal Gupta had a fixed deposit account with the Bank for the period ending 19th June 1934 and the amount had not been withdrawn. The additional plea alleged that the Court in Farrukhabad had no jurisdiction. Certain other defences were taken that the plaintiffs had been asked to produce a death certificate and affidavit and indemnity bonds and that the plaintiffs had not complied with these demands and had not obtained a limited grant of administration from a competent Court, further that the suit was barred u/s 42, Specific Relief Act.

2. A further written statement was filed stating that a succession certificate was

necessary and "that the depositor could withdraw the moneys in question, after expiry of the period of deposit, from the defendant Bank at Agra only, after production of the fixed deposit receipt pertaining thereto," and that the Bank had no branch at Farrukhabad or Fatehgarh. The Civil Judge found that there was no jurisdiction in the Court at Farrukhabad. The plaintiffs appealed and the District Judge has held that the Farrukhabad Court has jurisdiction. The District Judge states in his judgment that Nand Lal was posted at Bareilly when he made the deposit. He was an Excise Inspector. The deposit was made with the Allahabad Bank Limited in the Agra Branch. There is no allegation to show that the deposit was made in any other way than by Nand Lal going to Agra and making the fixed deposit there. In the case of a fixed deposit, a fixed deposit receipt is granted by the Bank to the depositor and that receipt contains the terms of the contract and may refer to the rules of the Bank on the subject of fixed deposits. The learned Counsel for the plaintiffs in this Court admits that the plaintiffs did not produce fixed deposit receipt and that the plaintiffs have not got it. The plaint is silent on this point. No evidence has been given of the terms of the fixed deposit receipt, nor has it been shown that secondary evidence of such terms would be admissible. "We consider that it was essential for the plaintiffs to prove the terms of the written contract and to show what were the provisions in the written contract in regard to the place of repayment. Learned counsel for the appellant asks us to apply what he alleges to be a general presumption of law that the fixed deposit is repayable in any place where the plaintiffs reside and make a demand. The first ground of appeal to the Court below stated:

The plaintiffs did demand the money from Farrukhabad, their place of permanent residence, hence the lower Court was the only proper forum.

3. It is certainly a strange doctrine of law that a fixed depositor may bring a suit for repayment from a Bank in any place where he happens to reside. If for example, the fixed depositor were in Calcutta, Bombay or Madras, the doctrine would involve that the suit may be brought in those places. Such a view of law appears to be quite intolerable. Nor does there appear to be any reason why the fixed depositor should be limited to India and if the rule existed, apparently the fixed depositor might go to any country in the world and bring a suit there if his deposit was not returned. The only rulings on which learned Counsel relies for this proposition are firstly, Sri Narain Vs. Jagannath and Another, . This is a very brief ruling in which the facts are not clear. It is true the ruling refers to a Bank but the plaintiff and the defendant are described by the names of private persons. The facts are not stated in the ruling. It is not possible to know whether the money was lent at Cawnpore or at Bikaner, the two places mentioned in the ruling. Learned counsel relies on the following passage:

It is not desirable to say more about the facts than this, that in an ordinary case especially a case against a Bank or some trader who holds himself out as a person to receive deposits, it would not necessarily follow that a repayment of the deposit was to be made at the place of business of the Bank; in the majority

of such cases the intention of the parties is, obviously that the money should be paid to the depositor wherever he happened to be when he demanded repayment.

4. Now, it is clear that there is no general rule intended by this statement and further the statement is not especially in regard to banks and does not mention at all banks dealing with fixed deposits. There was no party before the Court who was a regular bank and the case was one apparently dealing with a private money lender who chose to call himself a bank. A bank which is a limited company stands on an entirely different footing from a private money lender. Moreover, in the ruling it is not stated that there was any fixed deposit receipt embodying the terms of the contract and all that the ruling laid down was that the case should go back to the Court below to decide the question on evidence as to whether it did or did not have jurisdiction under the facts of that particular case. The ruling stated that if the Cawnpore Court came to the conclusion that payment was to be made at Bikaner then there would be no jurisdiction in the Cawnpore Court.

5. The next ruling relied on is Gokul Das and Others Vs. Nathu . That was a very different case from the present case. The plaintiff was a money lender and his practice was to send munims with money to villages in different districts to lend the money to persons in those districts. The defendant resided in Shahjahanpur and money was lent to the defendant in Shahjahanpur. The plaintiffs lived in Moradabad and they brought suits for recovery of the money at Moradabad. The plaintiffs gave evidence that the money was to be repaid at Moradabad and showed memoranda in the account books to that effect. The trial Court disbelieved this evidence but in revision the High Court stated that it was trustworthy. The Court further stated that even if the evidence was to be treated as untrustworthy there is a presumption that in the absence of a contract to the contrary the borrower ought to seek the lender for payment and held therefore that the Moradabad Court had jurisdiction where the plaintiff resided. We do not think that this case in regard to a money lender is at all similar to the present case. If any analogy exists, it is that there is jurisdiction where the business of money lending is situated, which is in Agra in the present case. Reference is made to Bansilal Abirchand v. Ghulam Mahbub Khan, AIR 1925 PC 290 . In that case there was a loan borrowed at Secunderabad and the defendants were residents of Hyderabad and the loan was repayable also at Hyderabad. It was held in these circumstances that the Court at Secunderabad had no jurisdiction to entertain a suit by the plaintiffs for recovery of the loan. This again was a suit between a money lender and a client and was not a suit against a bank which was a limited company for the return of a fixed deposit.

6. We consider that no authority has been shown by the respondent for the proposition on which the lower Court held that jurisdiction lay in Farrukhabad Court. For these reasons we allow this first appeal from order and we set aside the order of the learned District Judge and we direct that the plaint be returned

to the plaintiffs for presentation to the proper Court. The order of the trial Court dismissing the suit was not proper where there is a finding of want of jurisdiction. We allow the appellant the Allahabad Bank Ltd., costs throughout in all Courts.