
(1936) 07 CAL CK 0013

In the Calcutta High Court

Case No : Appeal from Original Order No. 22 of 1936

Bhabani Prasanna Lahiri and Another

APPELLANT

Vs

Rai Radhica Bhusan Roy Bahadur

RESPONDENT

Date of Decision : 21-07-1936

Acts Referred:

Citation : (1936) 07 CAL CK 0013

Final Decision : Dismissed

Judgement

Derbyshire, C.J.—This is an appeal from a judgment of Mr. Justice Cunliffe given on the 16th of January, 1936, in favour of the Plaintiff-Respondent, Rai Radhica Bhusan Rai Bahadur, against the Defendants-Appellants, Bhabani Prasanna Lahiri of Rangpur and Krishna Prasanna Lahiri of Rangpur. The Plaintiff claimed recovery from the Defendants of the sum of Rs. 37,716-15-0 as principal, and Rs. 7,479-2-0 as interest, as the endorsee of two promissory notes both dated the 8th of December, 1931, executed by the Defendants in favour of one Sm. Charubala Debi. The claim was for further interest and costs. Mr. Justice Cunliffe found for the Plaintiff and decreed in the terms asked. Shortly the facts of the case are these: The two Defendants are related to one Sm. Charubala Debi, who lives in Bhowanipore, Calcutta, just outside the original jurisdiction of this Court. On the 8th of December, 1931, at Sm. Charubala Debi's residence, the two Defendants executed promissory notes-- one for Rs. 35,000 and one for Rs. 2,710-15-0. The notes were joint and several. The Defendants promised to repay the said sums on demand to Sm. Charubala Debi or order, together with interest at 7 1/2 per cent. per annum. The Plaintiff says that on the 1st of December, 1934, at No. 10, Old Post Office Street, Calcutta, which is within the jurisdiction of this Court, Sm. Charubala Debi endorsed the two promissory notes over to him for valuable consideration, and he brings this action in this Court. The Defendants do not deny the making of the promissory notes, they do not deny that they are liable under them but they say that the endorsement made by Sm. Charubala Debi to the Plaintiff was not a real endorsement but was actually made for the purpose of enabling a suit to be brought in this Court. They suggest

that some other Court, presumably the Court at Alipore which has jurisdiction over Bhowanipore, is the proper Court. In furtherance of the Defendants' allegation they had Sm. Charubala Debi examined on commission before a Commissioner and they say that the evidence given by her supports their contention that this was not a real endorsement, not an endorsement for value, and that it is of no legal effect.

2. In my view, the evidence that the Defendants produced--the evidence of that lady--before the Commissioner proves nothing of the sort. The inference that I draw from that evidence is that the lady in question was of the opinion that she would not be able to collect the money that was owing to her under the promissory notes and as the debtors were her relations she was not particularly anxious to take proceedings against them under those notes herself, that after consultation with her husband who was an Advocate of this Court she came to the conclusion that the best way of dealing with the matter, from her point of view, would be to sell the notes to the Plaintiff in this action. I And that she did sell the notes for valuable consideration. That being so, the Plaintiff was the holder in due course for value and is entitled to sue upon the promissory notes.

3. The Plaintiff took proceedings on the Original Side of this Court under cl. 12 of the Letters Patent which provides that this Court shall be empowered to try and determine suits of every description if, in the case of suits other than those for land or immovable property the leave of the Court shall have been first obtained when the cause of action shall have arisen in part within the local limits of the ordinary original jurisdiction of this Court. In this case the leave to bring this suit was obtained from a Judge on the Original Side. The learned trial Judge who came to the same conclusion on the facts that I have come to, was asked to set aside that leave on the ground that the endorsement in favour of the Plaintiff was mala fide made with the sole object of creating jurisdiction in this Court and to harass the Defendants who were residents of Rungpur.

4. Now, the first question is--did the cause of action here arise in part within the local limits of the ordinary original jurisdiction. In the case of *Raghoonath Misser v. Gobindnarain* ILR 22 Cal. 451 (1895), a hundi was drawn at Benares on the drawer's firm at Bombay in favour of a firm at Mirzapur and Calcutta; it was endorsed at Calcutta by the payee to a firm at Calcutta and dishonoured by the drawer's firm at Bombay. In a suit brought in Calcutta by the endorsees to recover the value of the hundi the defence was raised that the Court had no jurisdiction to entertain the suit. Mr. Justice Hill held that the endorsement having taken place in Calcutta, part of the cause of action arose in Calcutta so as to give the Court jurisdiction. He says in conclusion:

Since the endorsement to the Plaintiffs in the present case took place in Calcutta, a part of the cause of action arose here, and, leave having been given, the Court has jurisdiction.

5. A similar case came before an Appellate Bench of this Court on the 21st of

November, 1935. (2) [Reference is to Nagendra Chandra Lahiri v. Rai Radhica Bhusan Roy Bahadur. --Unreported: Appeal No. 113 of 1934, arising out of Suit No. 953 of 1934.--. Reporter] The Bench consisted of Mr. Justice Costello and Mr. Justice Panckridge and it was an appeal against a judgment of Mr. Justice Cunliffe. The Appellants were Nagendra Chandra Lahiri and others against Rai Radhica Bhusan Roy Bahadur. The Respondent was the same person as the Respondent in this suit and the circumstances of the case were almost exactly similar to the circumstances of this case. Nagendra Chandra Lahiri had given the same lady Sm. Charubala Debi a promissory note for a sum of Rs. 5,000 and that lady had endorsed the promissory note to the Plaintiff-Respondent, Rai Radhica Bhusan Roy Bahadur, at the same place in this city-No. 10, Old Post Office Street, Calcutta. The Plaintiff Rai Radhica Bhusan Roy Bahadur had sued the makers of the promissory note in this Court. An objection was taken that the Court had no jurisdiction. Mr. Justice Costello who delivered the judgment of the Court said:

In my opinion it is clear that the making of that endorsement was not only a part of the cause of action in the present suit, but was an essential part, because but for this endorsement the Plaintiff would not have been able to bring this suit at all.

6. The Appeal was dismissed which means that the suit prevailed. In my view, therefore, it is competent for a Judge of this Court to give leave to a suit to be brought under cl. 12 of the Letters Patent.

7. With regard to the suggestion that the leave should be revoked on the ground that the endorsement in favour of the Plaintiff is mala fide made with the sole object of creating jurisdiction in this Court and to harass the Defendants who are residents of Rungpur, in my view the leave originally given was given properly. The promissory note was executed in Calcutta, it is true outside the original jurisdiction of this Court; it was nevertheless executed in Calcutta; the Defendants--the makers of the promissory note--must reasonably have expected that any proceedings on it might well be brought in the Courts in Calcutta. If those proceedings were brought in this Court rather than at the Court at Alipore it seems to me that it would be of no disadvantage to them. Under the circumstances I agree with the learned Judge who tried this case that there were no grounds for revoking the leave that had been given under cl. 12 of the Letters Patent. It follows, in my view, that the appeal must be dismissed. The appeal is dismissed with costs, as between party and party.

Costello, J.

8. The learned Judge In the course of his judgment said:

I am not at all convinced that on the facts before me, scanty as they are, this assignment, admittedly for value, was brought about simply for the purpose of embarrassing the Defendants and for the purpose of bringing the case within the jurisdiction of the original side of this High Court, although no doubt, the

question of convenience was considered by the persons who eventually decided upon buying and parting with the note. Nor am I satisfied that there was hardship upon the Defendants, more especially because the note was executed quite close to Calcutta, as I have already pointed out, and therefore there would not be this question of difficulty of bringing witness up to give evidence here, if they wished so to do, as there appears to have been in the case before my learned brother.

9. A little later on in the judgment he said:

It seems to me that if you are going to discriminate between Plaintiffs and Defendants who are interested in negotiable instruments on the ground of hardship or humanity, or even on the ground of legitimate collusion to assign, you are striking at the whole root of the law of negotiability as laid down not only in the Negotiable Instruments Act but in the time-honoured principles of the law merchant.

10. With these observations I entirely agree; but as regards the facts of this particular case I take the view that there was no evidence whatever before the Court to indicate that the assignment made by Charubala Debi on the 1st of December, 1934, at No. 10, Old Post Office Street, Calcutta, within the jurisdiction of this Court was otherwise than a genuine transaction.

[His Lordship considered the evidence of Charubala Debi, the assignor and proceeded.]

11. As far as one can see, there is no ground whatever for suggesting that those answers given by Charubala Debi were otherwise than true and, therefore, the assignment made by her to the present Plaintiff Rai Radhica Bhusan Roy Bahadur was a genuine transaction.

12. That being the position, the only possible point which could have been made on behalf of the Defendants is whether or not an assignment of this character constitutes part of a cause in such a way that if leave is given by a Judge of this Court under the provisions of cl. 12 of the Letters Patent this Court will then have jurisdiction to try the suit which is based on the assignment of the promissory notes.

13. My Lord the Chief Justice has already referred to the case of Raghoonath Misser v. Gobindnarain ILR 22 Cal. 451 (1895) and to the judgment given by Mr. Justice Hill in that case whereby Mr. Justice Hill held that where an endorsement over of a hundi which had been drawn at Benares had taken place in Calcutta a part of the cause of action arose in Calcutta so as to give this Court jurisdiction to try a suit based on the hundi and the endorsement over to the Plaintiff. The decision of Mr. Justice Hill was founded in part upon an observation made by Mr. Justice Kennedy--a Judge of this Court--as long ago as the year 1877 in the case of Kellie v. Fraser ILR 2 Cal. 445 at p. 452 (1877), where the learned Judge said referring to the CPC and the Charter of this Court:

I think it is impossible not to hold that "cause of action" in both those enactments has the more extended meaning; and indeed on the face of the Charter itself, it is clear that the earlier meaning must be given to the words in the 12th clause, and that we must hold that it is not the breach alone which constitutes the right to sue, but the entire bundle of facts which would, of necessity, be proved.

14. I think it is obvious that one at least of the bundle of facts which the Plaintiff in a case such as the present would have to prove is the fact that there was an assignment over to him of the promissory note which was the ultimate basis of the claim that was being made. I re-affirm the opinion which I expressed in the case of Nagendra Chandra Lahiri v. Rai Radhica Bhusan Roy Bahadur Unreported: Appeal No. 113 of 1934, arising out of Suit No. 953 of 1934.-- Reporter which was decided in an appeal before this Court (Rai Radhica Bhusan Roy Bahadur was the Plaintiff in the suit, the suit being numbered 953 of 1934). The opinion I then expressed was this:

It is equally clear that the making of that endorsement was not only a part of the cause of action in the present suit, but was an essential part, because but for this endorsement the Plaintiff would not have been able to bring this suit at all.

15. Mr. Justice Panckridge was in agreement with that opinion of mine and we upheld the decision of Mr. Justice Cunliffe, whereby he granted a decree to Rai Radhica Bhusan Roy Bahadur, as the assignee of the promissory note originally given by the Defendants to Charubala Debi. I agree, therefore, that this appeal must be dismissed.