
(1907) 02 CAL CK 0014
In the Calcutta High Court
Case No : Suit No. 708 of 1906

Brij Coomaree

APPELLANT

Vs

Alma Chand

RESPONDENT

Date of Decision : 01-02-1907

Acts Referred:

Citation : (1907) 02 CAL CK 0014

Judgement

Woodroffe, J.—This is a suit to recover the sum of Rs. 5,000 on a hundi. The Defendants' firm drew the hundi upon themselves for Rs. 5,000 payable to the Plaintiff's firm. The Plaintiff's firm sent it to Bombay. It was there sold and endorsed over to Shew Lall Muttu Lall who subsequently resold it and re-endorsed it to the Plaintiff. The Plaintiff's Bombay firm posted the hundi in an unregistered envelope to Calcutta. It was not, according to the evidence, sent by registered post, because the day upon which it was made over by Shew Lall Muttu Lall in Bombay was a Sunday and it therefore could not be sent by registered post. It appears to have been stolen in the course of the post and never reached the hands of the Plaintiff's Calcutta firm. It was, however, presented for payment to the Defendants' firm with what is undoubtedly a forged endorsement on it. The evidence goes to show that the writing purporting to be the signature of the Plaintiff's firm is not in the handwriting of any one authorised to sign the Plaintiff's firm and is not even spelt in the same manner. It also appears in the evidence that the Defendants' firm who are Madrassees are ignorant of the language and character in which the endorsement appears and that their practice is indeed not, to trouble themselves about the endorsements at all events in cases of hundis payable to order. According to the Defendants' manager all they do is to see if the hundi is one drawn by themselves and then any body presenting it is paid. In this case, a man named Jung Bahadur presented the hund with a forged endorsement on it. The evidence shows he was not a man employed by the Plaintiff's firm and admittedly he had never been to the Defendants' place of business before the occasion he presented the hundi. Therefore there was no reason for the Defendant to

suppose that he was authorised to collect the hundi other than the statement of the man himself which was false. There is no doubt that the Defendants acted with bond fides, but as it seems to me, with extreme carelessness. If the endorsement is forged it is a nullity and it is as if there was no endorsement on the hundi at all. It was never endorsed by the Plaintiff or any one authorised by him on his behalf and therefore the Plaintiff's firm are, in my opinion, entitled clearly to recover the sum secured by the hundi from the Defendants. The contentions on behalf of the Defendants are that this hundi must be considered to be a hundi payable to bearer. It is nothing of the kind. Next, that the Plaintiff was guilty of laches. In my opinion that has not been established. The 3rd defence that has been taken is that the Plaintiff is not entitled to recover interest upon the hundi because of the time that has elapsed. I have held that there has been no negligence and therefore there is no reason why the Plaintiff should not be entitled to recover interest. There must therefore be a decree for the sum claimed with interest on decree at 6 per cent, and costs on scale No. 2. I should add that another point was taken, namely, that raised in the last para, of the written statement of the Defendants with reference to the granting of leave under cl. 12 of the Charter. The point was taken that the leave can only be given by the Court and not by the Registrar or Master as is now done. It appears that the Defendant did carry on business in Calcutta and therefore the necessity for leave does not really arise in this case; but as the point has been raised, I should like to say that it appears to me to be a matter to be further looked into. The rule under which the Registrar or Master can give leave is Rule No. 515A. Under that new rule it is declared that "all acts done by the Registrar or Master under this rule shall be deemed quasi-judicial acts within the meaning of sec. 637 of the C. P. C." In my opinion the powers granted by sec. 637 do not authorise that declaration, for sec. 637 refers to acts which the CPC require to be done by a Judge but the granting of leave under cl. 12 is not done under the CPC but under the Letters Patent. It is further doubtful whether the act was one which can be said to be nonjudicial or quasi-judicial. In a case reported in I. L. R. 15 Bom. p. 93 (1), but in which the portion I am about to refer to occurs at p. 98, Mr. Justice Telang said " From all these authorities it seems to me to result that the grant of leave under cl. XII of the Letters Patent is a judicial act." And the same learned Judge referred to the observations in Hadjee Ismail v. Rohima Bye 13 B. L. R. 91 at p. 101 (1874) where Chief Justice Couch points out that an order granting leave is one of great importance to the parties and that " it is not a mere formal order or an order merely regulating the procedure in the suit, but one that has the effect of giving a jurisdiction to the Court which it otherwise would not have." Although the matter does not come under sec. 637 of the C. P. C., the question would have still to be considered whether there is power in the High Court to delegate its authority in this respect to the Registrar or Master either under sec. 15 of the Charter Act, 24 and 25 Vict, cap. 104, under which the High Court has power to make and issue general rules for regulating the practice and proceedings of such Court or under sec. 652 of the Civil Procedure Code.

2. As I have said, it is not necessary to decide this point in this case, but I desire in this connection to point out that the Madras High Court in *Rajan Chetti v. Seshayya I. L. R. 18 Mad. 236 (1895)* appears to have taken the view that such delegation of authority is not authorised. Mr. Justice Subramanya Ayyar at p. 247 of his judgment says " It seems to me that the declaration made by the High Court is altogether outside the scope of the regulation of "practice" and "procedure" contemplated by sec. 652 of the CPC and the Statute 24 and 25 Vict., cap. 104 secs 15. The declaration is in my view a clear delegation of what is undoubtedly judicial power, exercisable by the Court itself, to the Registrar who is not constituted a Judge as to the matter of granting leave under cls. (a) and (c), sec. 18 of Act XV of 1862 while he is in regard to some others (see sec. 14 of the Act). Such a delegation of judicial authority, I should think, cannot take place except under express and specific statutory provisions such as are contained in sec. 33 of Act XV of 1882." This rule under consideration in that case was held by the High Court to be ultra vires and void.