
(1928) 07 AHC CK 0036
In the Allahabad High Court

Firm Ghure Ram-Nure Ram	Vs	APPELLANT
Firm Muhammad Yusuf-Bhola Nath and Another		RESPONDENT

Date of Decision : 26-07-1928

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 118, 13

Citation : 111 Ind. Cas. 686

Hon'ble Judges : Weir, J; Banerji, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This is a plaintiffs' appeal against the judgment and decree of the learned Subordinate Judge of Benares dismissing the suit.

2. The firm Ghure Ram-Nure Ram claimed Rs. 12,600 principal and Rs. 900 as interest from the defendant firm on the basis of six hundis, Exs. 1-6, said to have been executed by Bhola Nath on behalf of the defendant firm in favour of the plaintiff firm. Exhibit A proves that Sheikh Muhammad Yusuf and Bhola Nath, who have been carrying on a timber business in Benares, entered into a fresh partnership on the 5th September, 1922. The principal amount of money invested was contributed by Muhammad Yusuf. Two others, Baldeo Sahai and Lakshmi Saran, paid a sum of Rs. 2,500 more, and it was agreed that Bhola Nath, who had not paid in any money in cash, was to get one-fourth share of the profits for his labour, Baldeo Sahai and Lakshmi Saran were to get one eighth, and five eighths share of the profits was to be taken by Sheikh Muhammad Yusuf. The hundis in question six in number were executed between the 16th August and the 12th October, 1925. Plaintiff's case was that the money was borrowed for purposes of the business of the defendant firm by Bhola Nath who was the manager of the firm. The hundis were sold to different firms but when the amounts due under the hundis were not paid to the holders thereof by the defendant firm, the plaintiffs paid up the hundis and hence they claimed the amount against the defendants.

3. The summons in the case was duly served on Bhola Nath but he did not enter appearance, Baldeo Sahai, defendant in the suit, denied that the hundis were executed by Bhola Nath, and alleged that Bhola Nath was not empowered to draw the hundis, and that the partnership had come to an end on the death of Muhammad Yusuf on the 17th April, 1923. The learned Subordinate Judge framed the two following issues:

1. Did Bhola Nath execute the hundis in suit, for valid consideration?
2. If yes, had he any power and authority to borrow money and execute the hundis for the firm?

4. He found that Bhola Nath was not a partner, that Muhammad Yusuf died at Gorakhpur on the 17th April, 1923, and holding that no consideration had been paid by the plaintiffs for the hundis, and that the defendant firm had not been benefited by the debt, he has dismissed the suit with costs.

6. It is contended by the learned Advocate for the appellants that the finding of the learned Subordinate Judge that Bhola Nath was not a partner was erroneous. We have examined Ex. A and we are of opinion that in view of Section 239 of Act IX of 1872 the finding of the learned Subordinate Judge on this point is incorrect. The learned Vakil for the respondents admits that he cannot support the finding of the Subordinate Judge on this point. The next point urged by the learned Advocate for the appellants is that the hundis in suit were "negotiable instruments" and under the special rule of evidence laid down in Section 118 of the Negotiable Instruments Act (XXVI of 1881) the Court must presume, until the contrary was proved, that they were drawn for consideration. The learned Vakil for the defendants contests this and he has submitted that the hundis in suit were not "negotiable instruments" within the meaning of the Negotiable Instruments Act, and Section 118 of that Act did not apply to the facts of this case. We have come to the conclusion that the hundis in suit were "negotiable instruments." The hundis are what is known in the Indian Commercial Circles as "dhanijog" hundis and payable to bearer. Section 13 of the Negotiable Instruments Act seems to us to be clear and the definition of the Bill of Exchange, in our opinion, makes the hundis in suit payable to bearer. Section 5 defines what a Bill of Exchange is and a number of cases relating to shahjog hundis have been referred to by Mr. Harnandan Prasad. He further contended that in view of the provisions of Section 2, Clause (2) of the Stamp Act, which includes also a hundi, no hundi can be a Bill of Exchange. We are unable to accept this contention. We have, therefore, to see whether the Court contesting defendant has succeeded in proving that no consideration passed for the hundis in suit. The learned Advocate for the appellant has argued that in deciding the question we must look to the evidence adduced by the defendant only and that even if we come to the conclusion that the evidence of the plaintiff is unsatisfactory, that should not be taken into account in deciding this case as the burden of proof lay heavily on the defendant. No question regarding the burden of proof seems to have been, raised in the Courts below and we find no reference

to Section 118 of the negotiable. Instruments Act in the judgment of the Court below. We have to examine the evidence in this case.

7. The first point which we have to decide is whether the partnership entered into by Ex. A subsisted on the dates when these hundis were executed. Although the finding of the learned Subordinate Judge that Muhammad Yusuf died on the 17th April, 1923, has been challenged by the learned Advocate for the appellant yet we are unable to come to any other conclusion upon the evidence in this case than that Muhammad Yusuf died at Gorakhpur on the 17th of April, 1923. That Muhammad Yusuf is dead is admitted by Bhagwan Das one of the members of the plaintiff firm.

8. There can be no doubt that, the plaintiff firm did negotiate these hundis to various people and that the plaintiffs did pay to these people whatever was due. The question whether any consideration passed for these hundis as between the defendant firm and the plaintiffs has to be decided. The death of Muhammad Yusuf caused a dissolution of partnership. The learned Subordinate Judge has in the main accepted the sworn testimony of Baldeo Sahai. We have examined the evidence of Baldeo Sahai, and although there are certain statements by Baldeo Sahai which are incredible, he has sworn that no business was done by the firm as a firm after the death of Muhammad Yusuf. He said that he had never examined or caused to be examined the account books of the firm and that Bhola Nath was in charge of the money of the firm, but he has denied that there were any liabilities of the firm on the date of Muhammad Yusuf's death. The work of the shop was carried on after Muhammad Yusuf's death, but that was only to wind up the business. He has made an incredible statement that copies of Ex. A were hung up in all the shops belonging to the firm like notices in the Post Office. He was an ex-Post-Master and might well have invented this story, but the fact remains that the learned Subordinate Judge believed his statement and that of his witnesses which proved that no fresh partnership was entered into but that the partnership business was being wound up. We are of opinion that when one of the members of the plaintiff firm has given evidence in the case, the defendant is entitled to rely on that statement to prove his case, and the statement of Bhagwan Das is, in our opinion, incredible that any consideration passed for the hundis in suit, as he has stated in his examination in-chief; his cross-examination shows that he has made inconsistent statements. He states in cross-examination that he keeps no account-books. The amount which he paid to others in respect of the hundis in dispute were entered in the books relating to the tobacco business. The interest which he had to pay to mahajan is entered in the books relating to tobacco business. The plaintiff firm does business in hundis to the extent of Rs. 40,000 and all this is entered in the books relating to tobacco business. Further on he states "whenever interest is received it is entered in the account-books no matter if it is in respect of hundis or anything else. As regards the previous hundis of the defendant firm there are entries in the account books relating to tobacco business As regards the amount borrowed by the defendant firm under hundis after Baldeo Sahai had become their partner there is no entry

thereof in our books relating to tobacco business." We are of opinion that, taking the whole of the evidence into consideration, the finding of the Court below that the hundis in suit had not been executed for consideration is not incorrect. We are unable to hold that the defendant firm are liable for the hundis in suit though they had been executed by Bhola, Nath who was a partner.

9. The result is that the appeal is dismissed with costs.