
(1955) 09 BOM CK 0046
In the Bombay High Court
Case No : O.C.J. Suit No. 1379 of 1943

Madholal Sindhu

APPELLANT

Vs

Asian Assurance Co. Ltd. and Others

RESPONDENT

Date of Decision : 17-09-1955

Acts Referred:

Evidence Act, 1872 — Section 64, 67

Citation : AIR 1954 Bom 305 : (1954) 56 BOMLR 147

Hon'ble Judges : Bhagwati, J

Bench : Single Bench

Advocate : N.P. Enginner, General, M.M. Desai and K.A. Somjee, for the Appellant; M.C. Setalvad, G.N. Joshi, V.F. Taraporewalla, J.C. Bhatt, F.J. Coltman, Jamshedji Kanga, Y.B. Rege, S.D. Vimadalal and Ahmed Rahimtoola, for the Respondent

Judgement

1. Balkrishna Bhagwan Deshmukh, however, had no personal knowledge of the events that happened on or about July 10, 1940. He had been merely the sub-accountant in the head office of the bank at that time and was duly concerned with the writing of the books of account of the bank. An attempt was, however, made by Mr. Somjee to prove through this witness the various documents consisting of letters and documents executed by Jamnadas in favour of the bank and also the resolutions of the executive committee of the bank and the letters addressed by the bank to Nissim by proving the handwriting in which all the same purported to have been written. The attempt was obviously to prove the handwriting of these various documents without calling in evidence the persons who had written the same or who were acquainted with the contents thereof so that they might not be subjected to cross-examination at the hands of the counsel for the Official Assignee.

2. The witnesses who could have proved those documents and the contents thereof would have been Deshpande the managing director of the bank, Faranjape the secretary of the bank, Jamnadas and Nissim. Mr. Somjee, however,

tried his level best to avoid leading the evidence of these witnesses. Nissim was of course not available to him and was really under the control of the Official Assignee. If anybody should have called Nissim into the witness box it was the Official Assignee and the Official Assignee only. Jamnadas was appearing in this case through his counsel and was supporting the plaintiff. It was, therefore, open to the plaintiff to call him in support of his case. Deshpande and Paranjape were similarly the employees of the bank which also was supporting the plaintiff and were available for being called as witnesses in order to support the case of the plaintiff.

3. Mr. Somjee, however, tried his level best to avoid calling these witnesses, viz., Deshpande, Paranjape and Jamnadas, into the witness box in order to prove the various facts which were necessary for him to prove during the course of the hearing of this suit. The attempt was, therefore, made to see if the various documents which could be properly proved only through the evidence of Deshpande, Paranjape and Jamnadas could be put in by him by this indirect mode of asking Balkrishna Bhagwan Deshmukh whether he knew the handwriting of the persons who wrote those various documents. Balkrishna Bhagwan Deshmukh was evidently acquainted with the handwriting of Deshpande, Paranjape and Jamnadas. Questions were asked to him in respect of the said various documents which were thus sought to be proved by Mr. Somjee in his examination whether he knew the handwriting of the said respective parties.

4. Mr. Somjee argued that under the provisions of the Indian Evidence Act all facts except the contents of documents could be proved by oral evidence, that so far as the contents of documents are concerned, they could be proved either by primary or secondary evidence, that the primary evidence of the documents meant the documents themselves produced before the Court, and that if the documents were alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so much of the document as was in that person's handwriting need be proved to be in his handwriting. He, therefore, urged that the said various documents which he sought to prove before the Court need only be proved to be in the handwriting of the persons making the same and if he succeeded in doing so by calling the evidence of persons acquainted with the handwriting of the persons who signed or wrote out the said several documents, he was entitled to put them in and argued that the contents of the said documents were also proved by him.

5. This proposition sounded to me a novel one. I had in fact never heard any such argument before. Section 67, Evidence Act only permitted the proof of the signature or handwriting of the person signing or writing the document to be given and considered it to be sufficient in those cases where the issue between the parties was whether a document was signed or written wholly or in part by that person. It did not go so far as to say that even if it was proved that the signature or the handwriting of so much of the document as was alleged to be in the handwriting of the person, was in his handwriting, it would go to prove the

contents of that document. No doubt the proof in so far as it was sought to be given in the evidence of Balkrishna Bhagwan Deshmukh of the signature or handwriting of the said various documents could have established that those documents were signed or written in the handwriting of Deshpande, Paranjape or Jamna das but the matter could rest there and would carry the plaintiff no further.

It certainly could not prove that the contents of those various documents which were thus proved to have been signed or written by Deshpande, Paranjape or Jamnadas were correct, and unless the plaintiff succeeded in proving the correctness of the contents of those various documents, he would not advance any step towards proving his case. Mr. Taraporewalla for the bank and Jamnadas supported Mr. Somjee in his submission. He submitted that once the signatures were proved the letters as a whole were proved, though the Court might say that the contents thereof were not proved in the sense that they were true. He submitted that the Court could admit those documents in evidence with that reservation, a reservation which to my mind went to the root of the whole matter and deprived the documents of all value whatsoever even if they might be admitted by the Court in evidence.

6. Mr. Setalvad for the company contended that the documents could not be said to be proved and could not be admitted in evidence even though the signatures might be held to be proved by the Court. He relied upon a decision of our High Court reported in - "Reg v. Jora Hasji", 11 Bom H C R 242, where a plan of certain fields which was prepared before the chief constable who gave evidence in the case was sought to be proved by calling the chief constable without anything more. The person who made the measurements and prepared the plan was not called, and the only evidence which had been tendered there was the evidence of the chief constable who said that he saw the plan made before him. That plan had been admitted in evidence, and the appeal Court observed at p. 246:

"....A plan of fields which the Chief Constable says, he saw made before him, is admitted. To say that it was prepared in his presence and bears his signature is not a sufficient reason for admitting the plan. The witness did not depose that to his knowledge the plan was a correct one, and if he could not say this, the person who made the measurements and prepared the plan should himself have been called..... .but we mention the matter in order that our opinion regarding its non-admissibility in evidence may be known."

7. Mr. Setalvad on the strength of this authority urged that the documents which were sought to be tendered by Mr. Somjee through this witness Balkrishna Bhagwan Deshmukh could not be admitted in evidence without calling the signatory or the writer thereof who could be the only persons competent to depose to the truth of contents of the said various documents. Mr. Somjee replied urging that the usual mode of proving documents was by calling the writer or by the testimony of the persons who were acquainted with the handwriting of the persons in question and he was thus entitled to prove the

various documents which he sought to tender in evidence through this witness Balkrishna Bhagwan Desh mukh who was acquainted with the signatures or handwriting of the persons who signed or wrote the said various documents.

As I have already observed it was futile for Mr Somjee to merely prove the signatures or the handwriting of the persons who signed or wrote the various documents without calling the said persons who were the only persons who could depose to the correctness of the contents of those various documents. Whether Deshpande, Paranjape or Jamnadas signed or wrote the various documents, was not the only issue before me. If that had been the only issue, the proof of the signatures or the handwriting of Deshpande Paranjape or Jamnadas would have been enough. What was in issue, however, before me was apart from Deshpande, Paranjape or Jamnadas having signed or written those documents, whether the contents of those various documents were correct. This certainly could not be proved by Balkrishna Bhagwan Deshmukh who had no personal knowledge whatever about the contents of those various documents. It would have served no purpose whatever to admit those documents in evidence with the reservation as suggested by Mr. Taraporewalla. I was supported in this conclusion of mine by the remarks of the appeal Court in --11 Bom H C R 242", and I accordingly declined to admit in evidence the said various documents in spite of Balkrishna Bhagwan Deshmukh deposing before me that the said, various documents were signed by or were in the handwriting of Deshpande, Paranjape or Jamnadas. (The rest of the judgment is not material to the report.)