
(1936) 08 PAT CK 0021
In the Patna High Court

(Mahant) Ramkeshwar Das

APPELLANT

Vs

Baldeo Singh

RESPONDENT

Date of Decision : 05-08-1936

Acts Referred:

Evidence Act, 1872 — Section 145, 21

Citation : AIR 1936 Patna 588

Hon'ble Judges : Rowland, J;James, J

Bench : Full Bench

Judgement

James, J.—The appellant is the mahant of a math who on the death of his guru in 1928 found his entry into the math obstructed, so that he was forced into litigation for the assertion of his title. In this litigation he obtained the assistance of Babu Baldeo Singh who looked after his legal work for him. While the litigation continued the mahant executed a number of handnotes; and ultimately after four handnotes had been executed, a new handnote was executed for Rs. 2,100 in respect of the whole liability. The plaintiff sued the mahant for recovery of the amount due on this handnote. He sued also for two loans of Rs. 500 and Rs. 50 which he said had been made to the defendant without acknowledgment. The defendant in his written statement did not admit execution of the handnote; but he said that he had been made to put his thumb impression and signature on five blank sheets of paper under threats from the plaintiff whose position as his karpardaz enabled him to exert undue influence. When the case came on for hearing the Subordinate Judge treated this admission of signature and thumb impressions on blank sheets of paper as admission of execution; and he called upon the defendant to prove that consideration for the handnote in suit had not passed. When the defendant came to give evidence he admitted that in addition to his signature he had written at the plaintiff's instance acknowledgments of loans received on these five pieces of paper which in his written statement he had described as blank. The defendant's evidence to the effect that consideration had not passed was not believed by the Subordinate Judge, who also refused to believe the rebutting evidence which was given on behalf of the

plaintiff describing the place and the manner in which the loans had been made; but in an affidavit which had been filed before the District Judge on 15th November 1930 in the course of the probate case the defendant mahant had admitted that he had borrowed Rs. 2,100 from Babu Baldeo Singh and had executed a handnote. This admission was treated by the Subordinate Judge as sufficient evidence of the fact that the loan had been taken and that the handnote had been executed in consideration of it. He therefore decreed the plaintiff's claim so far as it was based on the handnote. For the two verbal loans of Rs. 50 and Rs. 500 respectively he did not believe the evidence which was adduced on behalf of the plaintiff to prove that the loans had been made; and he dismissed that part of the plaintiff's claim.

2. The defendant appealed to the District Judge and the plaintiff preferred a cross-objection against the dismissal of his claim based on the verbal loans; but both the appeal and the cross-objection were dismissed. Mr. Sushil Madhab Mullick on behalf of the appellant takes exception to the procedure which was adopted by the learned Subordinate Judge in the trial. By his order of 22nd August 1932 he directed that the plaintiff should first adduce evidence regarding the two verbal loans and also regarding the legal necessity for the loans in suit. Another defendant with whom we are not here concerned was then to give evidence regarding his case that he had not been surety for the two loans of which there was no written acknowledgment. The mahant was then to adduce evidence to prove that consideration had not passed for the handnote; that there was no legal necessity for the loans and in proof of the alleged undue influence and coercion. The plaintiff was then to adduce rebutting evidence on the points raised by the mahant. When the case was taken up the pleader for the mahant applied for time on the ground that his witnesses had not appeared; and when an adjournment was refused he withdrew from the Court. Later in the day he came forward to contest the suit when the Subordinate Judge directed that he should be permitted to cross-examine the plaintiff only regarding the question of legal necessity and the two verbal loans. The plaintiff was directed at the same time to present himself again for cross-examination after the close of the evidence of the mahant.

3. These orders so far as they placed upon the defendant on the effect of his written statement the burden of proving that consideration for the handnote had not passed were not correct, because in the written statement there had been no admission of the execution of the handnote, but merely an admission that the thumb impression and signature had been given on blank paper under coercion. But the order of the Subordinate Judge was ultimately justified when the defendant himself gave evidence, because he then admitted in cross-examination regarding the five blank papers on which he had given his thumb impression and signature, that he had written on the blank papers that so much had been taken by him as loan from the plaintiff, that is to say, he admitted execution of the handnote in suit, so that the burden was actually cast upon him of proving that consideration had not passed, because in the absence of evidence on the point

the presumption would be that the handnote was executed for consideration.

4. The defendant gave evidence on the point. The plaintiff in due course gave rebutting evidence and was cross-examined on behalf of the defendant. While the defendant was under cross-examination a document was tendered to him, an affidavit which he had sworn in November of 1930. He admitted his signature on this affidavit which was then marked as an exhibit. Mr. Sushil Madhab Mullick argues that the statements contained in this affidavit ought not to have been used as evidence against the mahant unless his attention had been specifically drawn to them when he was in the witness box. Section 145, Evidence Act, provides that the evidence of a witness may be contradicted by the production of a previous statement made in writing; but before such statements can be used to contradict his evidence, his attention must be drawn specifically to the statements which are to be so used. Mr. Mullick draws attention to the decision of the Privy Council on this point in *Bal Gangadhar Tilak v. Shrinivas Pandit* 1915 PC 7. In that case various letters written by the plaintiff had been produced in evidence, in order to contradict the evidence given by the plaintiff at the trial, which had led the High Court of Bombay to believe that the plaintiff in his evidence had committed perjury. Lord Shaw commented on the failure to observe the provisions of Section 145, since these documents had been produced for the purpose of contradicting the evidence which had been given by the plaintiff.

5. In the present case it does not appear to us that the provisions of Section 145, Evidence Act apply to this admission at all. This is not a document which becomes relevant by the provisions of Section 145, Evidence Act, and would otherwise be inadmissible. It is an admission which goes to the root of the case, which is relevant u/s 21, Evidence Act; and its relevancy is not affected by the question of whether the defendant may or may not have given evidence consistent with the statement contained in it. If it had been a document which had no relevancy apart from the fact that it contradicted statements made by the defendant when he was in the witness-box, it would have been necessary to observe strictly the provisions of Section 145 before the document could be used; but it was not a document of that nature and no irregularity was committed in the manner of admitting it into evidence and in the use which was made of it after it was admitted. Indeed from the discussion of the evidence by the learned Subordinate Judge it would appear that the document was actually superfluous. The learned Subordinate Judge has discussed the evidence of the witnesses for the defendant on the question of passing of consideration without attaching any value to the evidence. He afterwards discussed the evidence of the plaintiff's witnesses and came to the conclusion that the plaintiff's account of the time and manner in which the handnote was executed and that consideration was paid was not worthy of credit; but since execution had been actually admitted by the defendant in the course of his evidence the presumption u/s 118, Negotiable Instruments Act, would apply; and if the defendant failed to prove that consideration had not passed the discussion of the evidence on this

point which the plaintiff tendered became unnecessary. The District Judge in appeal relied mainly upon this affidavit of the mahant as substantive evidence of the fact that consideration had passed. It is a piece of evidence which may properly be treated in that way; and the judgment of the learned District Judge is not properly open to criticism on that account.

6. Mr. Mullick next objects to the finding of the learned Subordinate Judge which has been maintained on appeal that the loans for which the handnotes were executed were taken for legal necessity of the math. This point was raised by the defendant himself in his written statement, but no relief against the math was claimed by the plaintiff and there is no mention of the liability of the math in the decree. If the decree should be put into execution against the property of the math, it could apparently not be properly executed by attaching and selling any portion of the math property; and the proper course would be to appoint a receiver of the income of the math so that the decree-holder would in due course obtain the amount of his decree out of the surplus income.

7. The plaintiff has preferred a cross-appeal in respect of the loan of Rs. 50 which he alleges was taken by the mahant after the handnote had been executed. His ground is that since the bahikhata of the plaintiff's banker was not found to be a false document the Courts below erred in law in refusing to decree the plaintiff's claim. The account book of this so-called banker was proved by a witness who described himself as munib of the firm. The learned Subordinate Judge did not believe his evidence. The learned Additional District Judge on appeal criticised it by remarking that the munib who was examined to prove the entry was not in the service of the firm at the time when the entry was made and the person who made the entry had not been examined. Whether the entry was correct or not it was merely an entry to the effect that the mahant withdrew the sum of Rs. 50 on behalf of the plaintiff. As the Courts below have observed, this would not in itself be proof of the fact that the mahant took a loan from the plaintiff; and the plaintiff's evidence on the point has been disbelieved. There is no merit in this cross-objection, in dealing with which we are concluded by findings of fact. Subject to the remarks which have been made regarding the manner in which the decree should be treated in execution the appeal must be dismissed with costs. The cross-objection is also dismissed with costs.

Rowland, J.

8. I agree.