

(1928) 05 PRI CK 0001

In the Privy Council

Case No : Privy Council Appeal No. 112 of 1926

(Maung) Shwe Myo

APPELLANT

Vs

(Maung) Po Wa

RESPONDENT

Date of Decision : 18-05-1928

Acts Referred:

Citation : (1929) AIR(PC) 295

Hon'ble Judges : Lancelot Sanderson, John Wallis, Atkin, Viscount Sumner, JJ.

Advocate : Douglas Grant and Dold, E.B. Raikes, for the Appearing Parties.

Judgement

Viscount Sumner, J.

This is an ex-parte appeal by the plaintiff in the suit. The issue raised is purely one of fact, and, there being a very considerable amount of highly contradictory evidence on both sides, their Lordships' attention have been called by counsel to the evidence and they have given it the best consideration that they can.

The claim was by a person who had a certificate entitling him to collect the debts due to the estate of his deceased aunt. He also had a title of his own, because, though he and the defendant, who are both nephews of the aunt, were on intimate terms with her, they were not among her heirs, as she left two grandsons, and the plaintiff has, by a bargain made in a suit which is not now material, obtained from the grandsons, who are the heirs, a right of his own in the assets left by the aunt.

The claim relates to a sum of rupees 10,000 which the defendant deposited under a deposit note with the National Bank of, India at Mandalay. Whether the real claim is for payment by him of the Rs. 10,000 or for delivery to the plaintiff of the deposit note, with a declaration that he is entitled to the sum which it represents, is not material now and need not be discussed in the absence of the defendant.

The issue is, in effect whether the money which the defendant deposited in the

bank was his own money or his aunt's. The plaintiff says and he gives explicit evidence to that effect, that on the instructions of his aunt, shortly before she died he took out of money in his hands which belonged to her, rupees 10,000 and handed them to the defendant and that is the money which has been deposited in the bank and has not been repaid. The defendant says:

"Not at all; I had considerable funds of my own and that Rs. 10,000 was mine which I deposited in the bank on my own account."

Certainly the plaintiff's account is open to very severe criticism. Certainly the defendant's account is, even on admitted facts, a doubtful one. The trial Judge, who gave careful attention to the evidence, found in favour of the plaintiff's story. The Court of Appeal, somewhat singularly, took different lines; one Judge criticising very adversely the evidence of the plaintiff and rejecting it as not sufficient to discharge the onus of proof which rested on him in the first instance; the other Judge saying in explicit terms that he could not believe either side, but without criticising the actual evidence very closely.

The practical question, therefore, is whether the plaintiff had given such evidence as would discharge the burden of proof, if believed, and whether it was, on the face of it, fit to be believed. The trial Judge accepted it, and their Lordships think that if the plaintiff's evidence is acceptable at all, the defendant's evidence is subject to so many criticisms, his conduct was so inconsistent, and his tale has so much improbability about it that it would not be a sufficient answer to the story of the plaintiff, if once accepted. The plaintiff's story was explicit. It is quite true that he admitted that he had kept no account and made no entry relating to this sum of money that he handed over, and it is quite true also that no explanation is forthcoming why the aunt should want to hand to the younger nephew, to be kept for her, money which was already in the hands of the elder nephew, who was managing her property generally and with whom she does not appear to have had any quarrel of any kind. But those were matters proper to be considered by the trial Judge, and their Lordships do not think they prevent the plaintiff's story from being believed, as it was believed by the trial Judge. They therefore conclude that there was not sufficient material upon which the Court of Appeal should have interfered to discharge the original judgment.

In their Lordships' opinion, the result should be that the judgment appeal from be set aside and the decree of the trial Judge restored. Whether it is in their right form or not is a matter which the Lordships do not deal with and they will humbly advise His Majesty that this appeal be allowed with costs.