

(1933) 12 AHC CK 0057
In the Allahabad High Court

Mt. Shahzadi and Another

APPELLANT

Vs

Beni Prasad and Another

RESPONDENT

Date of Decision : 14-12-1933

Acts Referred:

Contract Act, 1872 — Section 70

Evidence Act, 1872 — Section 3, 67

Citation : AIR 1934 All 390

Hon'ble Judges : Bennet, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Bennet, J.—This is an application in revision on behalf of two ladies who were defendants against whom the Small Cause Court has granted a decree. The suit of the plaintiff was a claim for Rs. 100 principal and Rs. 53 interest on a loan to these ladies on 14th August 1930, within three years from the date on which the suit was brought, which was 11th August 1933. The plaintiff based his suit not only on the loan but also on a promissory note which he stated has been lost, but which was eventually filed. The promissory note purported to bear the thumb-marks of defendants 1 and 2 and to be signed by defendant 3, Wilayat Ali, the brother of defendant 1. Defendant 2 is the daughter of defendant 1. The plaintiff gave his evidence to the effect that the two ladies borrowed Rs. 100 from him through defendant 3, Wilayat Ali, and Wilayat Ali produced the promissory note in question purporting to bear thumb-marks and told him that the promissory note was executed by defendants 1 and 2 who were pardanashin ladies, and also tendered a receipt purporting to bear the same marks. The receipt also has the signature of defendant 3. The plaintiff says that Wilayat Ali told him that the money was required for the redemption of a mortgage-deed which the ladies had executed in favour of one Shadra Nath Misra. The plaintiff was supported by Gur Prasad, who was the scribe of the promissory note. Neither of these persons was present when the thumb impressions of defendants 1 and 2 were taken on the promissory note or the receipt. The defence produced only one witness, Anwar

Husain, the husband of one of the ladies, and he admitted in cross-examination that the house of Mt. Shahzadi had been mortgaged and that the mortgage was redeemed, but he stated that he advanced the money himself. He was asked if the redemption took place on 14th August 1930, the date on which the money was lent according to the plaintiff, and he said he did not know if redemption took place on that date. Wilayat Ali, defendant 3, was present in Court, but he did not give evidence in the witness-box. Defendants 1 and 2 did not give evidence either. Learned Counsel is not able to explain why these defendants 1 and 2 did not give evidence other than the usual statement that they were pardanashin ladies. It is quite possible for pardanashin ladies to give their evidence in pardah or on commission. But neither course was adopted. In revision two grounds have been taken. The first ground is that the finding on issue 1 is bad in law as there is no evidence on the record to support the finding. Issue 1 was : Whether the defendants had executed the promote and for what condition and on what terms? The argument of learned Counsel was that the Court below should not have found that the promissory note was executed when there was no direct evidence that it had been executed by defendants 1 and 2. The Court acted on the circumstantial evidence already set out that the money had been borrowed from the plaintiff by Wilayat Ali, and that he had told the plaintiff that it was required for the redemption of the mortgage debt which was due from these ladies, and the further admission of the defence witness, Anwar Husain that the mortgage was in fact redeemed. Learned Counsel alluded to the provisions of the General Clauses Act, Section 3(52) which states:

"sign," with its grammatical variations and cognate expressions shall, with reference to a person who is unable to write his name, include "mark," with its grammatical variations and cognate expressions.

2. He argued that this would apply to the Evidence Act. The sections in question are Sections 67 and 73. In Section 67 it is stated:

If a document is 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 is alleged to be in that person's handwriting must be proved to be in his handwriting.

3. I do not consider that the definition of "sign" in the General Clauses Act can be held to apply to Section 67, Evidence Act. Section 3, General Clauses Act, states:

Unless there is anything repugnant in the subject or context the definition given shall apply.

4. I consider that there is this much repugnant in Section 67 as the section deals with the proof of handwriting. Now if a mark is taken to cover a thumb impression in the definition of "sign," it does not appear to me that this can be extended to include the proof of a thumb impression being the same as the proof of handwriting. Be that as it may I do not think that the question of the proof of execution of the promissory note is of vital importance for the plaintiff in the

present case. The suit of the plaintiff was brought within three years of the loan in question. Therefore there was no need to refer to any term in the promissory note as to when payment was to be made to save limitation. It is sufficient for the plaintiff to prove that the loan was made and that the loan was to the two ladies. For this purpose there is no need to consider whether the promissory note is or is not proved. For the proof of the loan there is the evidence of the plaintiff that the money was given to Wilayat Ali to use for the redemption of a mortgage which had to be paid by these ladies, and there is the admission of the husband of one of the ladies that the mortgage was in fact redeemed. Taking these two facts together the Court has come to the conclusion that the money which the plaintiff gave into the hand of Wilayat Ali was used for the benefit of these ladies. Learned Counsel argued that this finding was a mere matter of conjecture. u/s 3, Evidence Act, the definition of "proved" is given as follows;

A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.

5. I consider the reasoning by which the lower Court arrived at its conclusion was reasoning which is admissible under this definition. There is another section to which reference might be made if the argument of the learned Counsel were accepted, that the evidence did not show that the ladies had any knowledge of the loan. This is Section 70, Contract Act, which states:

Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of or to restore the thing so done or delivered.

6. Under the section as the ladies had the benefit of the mortgage debt being paid with the money of the plaintiff, they are bound to compensate the plaintiff by repayment of the principal and reasonable interest, which has been decreed as 6 per cent per annum. The second ground which was urged was that on the pleadings and admissions of the plaintiff no decree could be passed against the appellants who are pardanashin ladies and entitled to the protection of the Court. I do not think that any further question arises on this ground. In the result I consider that no case has been made out for interference in revision and I dismiss the application.