

(1937) 02 PAT CK 0005
In the Patna High Court

Parsad Mahto and Others

APPELLANT

Vs

Mt. Jasoda Koer

RESPONDENT

Date of Decision : 12-02-1937

Acts Referred:

Bengal Tenancy Act, 1885 — Section 68

Citation : AIR 1937 Patna 328

Hon'ble Judges : Varma, J

Bench : Division Bench

Judgement

Varma, J.—These are a batch of second appeals arising out of 17 rent suits. The landlord was the plaintiff: he wanted to realise rent at a certain rate. The defendant-tenants raised a plea of payment. This plea of payment was accepted by the trial Court with the result that 11 of the suits were dismissed with costs and in 6 of them the plaintiff got only a modified decree. The lower appellate Court after discussing the evidence on the point and referring to the evidence of the handwriting expert has come to the conclusion that the receipts on the strength of which the plea of payment was based were not genuine. He also disbelieved the evidence of the defence witnesses who came to support the plea of payment and therefore came to the conclusion that the plea of payment must fail and passed a decree in favour of the plaintiff at the rates-claimed by her except in Suits Nos. 356, 359, 365, 366, 368, 369 and 373. In the latter cases he has fixed the rent at the rate shown in the old receipts. So far as damages and interest are concerned he has ordered that the plaintiff will be entitled to get damages at 25 per cent. or interest at 12½ per cent. per annum up to the institution of the suit whichever is greater. Mr. Nawal Kishore Prasad II, appearing on behalf of the appellants, urges that the oral evidence in the case has not been considered. I have only to quote the passage where the oral evidence has been mentioned to show how the lower appellate Court has disposed of the oral evidence and from this it will be clear that although there is not a long discussion of the oral evidence in the judgment, still it cannot be said that the oral evidence has not been considered. After having come to the finding

that the receipts were forged, the lower appellate Court says: "The oral evidence in support of payment is of no value, because these witnesses speak of the forged receipts as genuine". In view of this observation, I see no force in the contention. If a series of witnesses come and say that rents were paid and receipts taken and it is found that the receipts are forged, a Court can hold that the witnesses are not telling the truth.

2. The next point urged by Mr. Nawal Kishore Prasad II was that the Court was not justified in holding that the receipts were forged on the strength of the expert evidence alone, and in support of his contention he has cited a number of cases. The lower appellate Court looked at the evidence of Mr. Brewster and in the light of that evidence looked at the receipts themselves and found that Mr. Brewster's opinion with regard to the signature of Muneshar Lal, the patwari, on the receipts was correct inasmuch as it did not tally with the acknowledged signature and therefore the lower appellate Court came to the conclusion that, although he was not prepared to go so far as to hold that the signature of Chowa, who was the gomashtha, on each of these receipts was forged, he was prepared to accept the evidence of Mr. Brewster and hold that the signature of Muneshar Lal, the patwari, on each of the receipts was forged, with the result that each one of those receipts was found by him to be forged. Apart from the comparison of the handwriting there are other circumstances also on the strength of which the lower appellate Court has come to the conclusion that the receipts were forged. He says in his judgment "In addition to this there are other points which go to throw a doubt on the genuineness of the disputed receipts"; and in this connexion he refers to the date of printing of the forms on which these receipts appear. He then goes on to say "then there is the variation between the manuscript and the printed serial numbers that appear on the disputed forms".

3. The various decisions that have been referred to by Mr. Nawal Kishore Prasad II are Gobindjee Madhwajee and Co. Ltd. Vs. C.J. Smith and Another, ; Hari Singh v. Lachhmi Devi, AIR 1921 Lah 126 ; Baidya Nath Dutt Vs. Alef Jan Bibi and Others, ; Iswar Chandra Bistu Vs. Hariram Bistu and Others, and Jyotindra Mohan Chakrabarty and Others Vs. Kanai Mahto, , but the ratio decidendi of all these cases is that when there is only the evidence of the handwriting expert the Court has to exercise a certain amount of caution before basing its conclusion thereon. There is a decision of this Court in Uohab Santara v. Emperor (1922) 65 IC 426 where it was pointed out how the evidence of a handwriting expert is to be utilised. In the course of argument it was pointed out that the case of Barindra Kumar Ghose v. Emperor (1910) 37 Cal 467 was an authority for the proposition that the prosecution must produce an expert in handwriting when the case against the accused depends upon a comparison of the handwriting and the Court further observed that the Court should not take upon itself the responsibility of judging of the handwriting by making comparison itself unaided by the opinion of an expert. While referring to this argument Jwala Prasad, J. observed:

To my mind however this does not at all suggest that the Court is incompetent to use its own eyes for the purpose of deciding whether certain handwritings placed before it are similar or not. To do this would be to deprive the Court of the function for which it exists of deciding disputed facts placed before it. The opinion of experts is, only a piece of evidence. The opinion of the Judge, is the decision in the cage. A Judge has to be satisfied that he is entitled to take such assistance upon evidence as is available in the circumstances of each case.

4. This is exactly what the lower appellate Court has done in this case: he has looked at the receipts, taken the assistance of expert evidence in the case and has come to his own conclusion with regard to the genuineness or otherwise of the receipts. There was another point urged and that was that as the Court did not come to the conclusion that Chowa's handwriting on the receipts was forged therefore the Court should not have come to the conclusion that the receipts were forged. In that connexion I think I ought to mention that the receipts in question are supposed to bear the signature not only of Chowa but of Muneshar Lal also. If in the peculiar circumstances of the case it was not possible to express any definite opinion about the forged nature of the signature of Chowa, but if the signature of Muneshar Lal was found to be forged and the other circumstances led to the conclusion that the receipts were forged, I see no reason why the finding of the Court of appeal that the receipts were forged should be set aside. Mr. Rajani Kant Sinha in the absence of Mr. Nawal Kishore Prasad 2 raised the point that the Court was not justified in granting damages as well as interest because it offends against the provisions of Section 68, Ben. Ten. Act, but I am afraid this argument is based upon a misapprehension. The Court has ordered that the plaintiff is entitled to damages at the rate of 25 per cent. or interest at the rate of 12? per cent. per annum up to the date of the institution of the suit whichever is greater, that is to say it does not allow both damages as well as interest. It is for the office to find out which of these is greater and that has been granted by the Court. All these points having failed I am afraid that these appeals should be dismissed with costs. The cross appeals are not pressed; they are also dismissed with costs. Leave to appeal under the Letters Patent is refused.