
(1916) 07 AHC CK 0034
In the Allahabad High Court

Ram Chandar

APPELLANT

Vs

Ganga Saran

RESPONDENT

Date of Decision : 14-07-1916

Acts Referred:

Citation : AIR 1917 All 155 : (1917) ILR (All) 103 : 37 Ind. Cas. 89

Hon'ble Judges : Walsh, J;Sundar Lal, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Sundar Lal, J.—This is a suit by the plaintiff who is the mortgagee under a document, dated the 17th of February, 1913. The mortgage was for a term of ten years. The plaintiffs case is that under the circumstances mentioned in the plaint the defendant got hold of the original document from the plaintiffs custody and fraudulently endorsed the following note on the document:

Received Rs. 1,200, the 17th of February, 1913, up to the 19th of June, 1913. Principal, Rs. 1,144. Interest, Rs. 56-4.

2. The endorsement purports to bear the signature of Ram Chandar plaintiff, by the pen of Afzal Khan, and his thumb impression. The court of first instance tried the case and held that the endorsement was a forgery, and that no payment had been made in fact, and decreed the suit. The plea u/s 42 of the Specific Relief Act was raised in the court of first instance, which that court overruled for the reasons given in its judgement. The defendant appealed to the learned Judge, who, without going into the merits of the case, has held that the suit is barred by Section 42 of the Specific Relief Act, as the plaintiff could have brought a suit for the recovery of the amount due on the mortgage, in which the question of payment and the genuineness of the endorsement could have been tried. The plaintiff appealed to this Court, and, after hearing both the parties, Mr. Nihal Chand who appeared for the plaintiff appellant, was granted leave to apply for the amendment of the plaint. Mr. Nihal Chand has applied for the amendment of

the plaintiff. It is now after the amendment really a suit for cancellation of the endorsement fraudulently put upon the mortgage-deed by the defendant. The suit is of the nature indicated in Section 39 of the Specific Relief Act. The endorsement by itself is a document and it is similar to the several parts of a document indicated in Section 40 of the Act. In any case the provisions of the Specific Relief Act under which a plaintiff may sue for the cancellation of the document are not exhaustive. I think that Section 42 of the Specific Relief Act is not applicable to this case. I would set aside the decree of the court below and remand the case to that court with directions to restore the appeal to the file of pending cases and to hear and dispose of the same according to law under Order XLI, Rule 23, of the Civil Procedure Code. Costs here and hitherto will abide the result.

Walsh, J.

3. I agree. I am glad that we have been able to come to the conclusion that Section 42 of the Specific Relief Act does not apply, because the second sub-section, if it had applied, undoubtedly created a difficulty. And it seems to me that the law would be in an unsatisfactory state if a person could commit such a gross trespass as is alleged in this case, and then force the victim of it to a remedy which he was not otherwise disposed to adopt. Inasmuch as the appellant has taken a reasonable course and amended what undoubtedly was an unsatisfactory plaint, it is not necessary for us to decide anything beyond the circumstances of this particular case. But for my own part I am not prepared to hold that, although such a claim is unusual and possibly un-paralleled in any reported case, a man who has suffered an injury like the endorsement is alleged to be in this case as a result of a tort, could not get it removed through the machinery of a declaration, with the addition of a consequential relief for its cancellation. There are many instances to be found in the recognized books of pleading where the main cause of action is a tort like forgery, and the prayer for relief is wound up by a claim, for the delivery up of the document or its destruction. However, it is not necessary to decide this, and it may be that it is desirable before giving a final opinion upon it to hear further argument. I agree with my learned brother.

4. By the Court.-The order of the Court is that the appeal is allowed, the decree of the court below is set aside, and the case is remanded to the court below under Order XLI, Rule 23, of the CPC with directions to restore the appeal to the file of pending cases and to hear and dispose of the same according to law, Costa here and hitherto will abide the result.