
(1960) 04 AHC CK 0001
In the Allahabad High Court
Case No : Civil Revision No. 1226 of 1952

Ram Jatan

APPELLANT

Vs

Chandra Bali and Another

RESPONDENT

Date of Decision : 21-04-1960

Acts Referred:

Evidence Act, 1872 — Section 92

Citation : AIR 1960 All 746

Hon'ble Judges : R.N. Gurtu, J

Bench : Single Bench

Advocate : J.N. Chaterji, for the Appellant; C.B. Misra, for the Respondent

Final Decision : Dismissed

Judgement

R.N. Gurtu, J.—In this case a pronote was executed in favour of the applicant. It was a demand pronote. In answer to the suit thereon the defendants alleged that collaterally to the advance of the money and the execution of the promissory note there had been an agreement whereunder it had, in effect, been agreed that payment would slot be upon demand, but that the sum advanced would be liquidated out of the usufruct of certain plots which were to be handed over by the defendants to the plaintiff. The learned Small Cause Courts Judge has come to the conclusion that the consideration of the pronote has been discharged out of the usufruct of the plots which were put in possession of the plaintiff for three years.

2. The learned counsel for the applicant has urged before me that oral evidence in respect of the collateral agreement was inadmissible, because the effect o? admitting that evidence is that the terms of the pronote, which is the basis of the suit, would stand varied. Before I deal with this argument I must point out that this is not a case where the plaintiff is suing upon the promissory note and the defendants are alleging that by a collateral agreement the promissory note could only be satisfied in a particular way. This is a case in which the plaintiff is suing upon the promissory note and the defendants have pet up the defence that they

have already satisfied the promissory note in the way agreed upon by the collateral agreement.

It is therefore not a case where by setting up the plea of a collateral arrangement the defendants are seeking to evade liability under and in accordance with the promissory note but this is a case where they are explaining how the liability came to be discharged. "There is a difference in the two positions. It is true that inter alia u/s 92 of the Evidence Act, save and except as provided by proviso (3), no oral evidence contradicting, varying, adding to or subtracting from the terms of a written contract is admissible. Thus it has been held that an oral agreement that the note was not to be enforced unless an incumbrance on property was discharged was not within proviso (3) of Section 92 of the Act as it would alter the legal effect of the instrument--See Vishnu Ramchandra Joshi Vs. Ganesh Krishna Sathe, .

3. It is true that proviso (3) clearly presupposes that the contract, grant or disposition itself remains intact and if the condition pleaded nullifies entirely the effect of the instrument, the proviso cannot apply. Thus an oral agreement that a pronote was not to be enforced but that its amount was to be adjusted in the making up of partnership accounts cannot be proved as it entirely nullifies the pronote--See Chhaganlal Kalyandas Shah Vs. Jagjiwandas Gulabdas, .

4. On the other hand, a collateral or contemporaneous agreement suspending the coming into operation of the contract until some condition is fulfilled may be upheld but it must not be a collateral or contemporaneous agreement in defeasance of the contract. Therefore the learned counsel is right that a collateral agreement which would have the effect of compelling the plaintiff to recover money under a demand pronote in some other "way than by receiving a payment on demand could not be enforced. But here the position is slightly different. Although the defendants say that there was the collateral agreement when the pronote was executed, they are not now pleading that the plaintiff should be compelled to recover the pronote consideration in a period of three years out of certain plots.

In effect what the defendants are saying is that there has been a repayment of the pronote consideration. It is possible to look at this case in this way. Just prior to the plaintiff entering into possession of the three plots, the plaintiff must be deemed to have made a demand for payment of the entire sum and agreed to accept thereafter the repayment of the pronote amount in this way that he would take the usufruct of the three plots for three years and then the pronote amount would be deemed to have been fully discharged. There is nothing in law to prevent an agreement for the repayment of a demand pronote after the pronote has matured and the demand made.

Any such subsequent agreement would not vary the terms of the pronote, but it would be in enforcement of the terms of the pronote that the demand for immediate payment would be made and thereafter it would be open to the

plaintiff, who was immediately entitled to the pronote consideration, to say that he was prepared to agree that the amount should be paid up in a particular way over the course of three years. There is nothing to prevent a subsequent agreement to pay, of this kind. The only question is whether there was this second agreement, because the plaintiff pleaded this mode of payment by way of a collateral agreement.

But in my view once the plaintiff, on a date subsequent to the date of the execution of the pro-note, entered into possession of these, three plots and started to collect the usufruct thereof, it must be assumed that he agreed to this way of payment by an agreement subsequent to the demand for payment of the pronote. In the circumstances of this case it must be held that a demand was in effect made after the execution of the pronote for the payment of the amount and when the plots" were put into the possession of the plaintiff in July, the mode of discharge of the pronote was agreed upon, the agreement being subsequent in point of time to the demand for repayment.

The plaintiff could have enforced the pronote according to its terms. But there was nothing to prevent the plaintiff from demanding payment under the terms of the pronote and yet subsequently agreeing to receive payment in some other way, for instance by instalments or as here by taking the land and receiving its usufruct for three years. In my view there is nothing to prevent the introduction of evidence which will show how a pro-note has been discharged in contradistinction to producing evidence to show how a pronote ought to be discharged under the terms of a collateral agreement which being contrary to the terms of the pronote would be inadmissible u/s 92 of the Evidence Act.

5. In my view there is also a place for the application of equitable principles in a situation like this, where the case is that the debt has been paid not by a lump sum payment when the demand was made, but in some other way and the fact of the payment can be proved to show that the promissory note has been discharged even though it is stated that the terms of the discharge constituted a collateral agreement. The terms of the discharge as a collateral agreement would not be available for the purpose of altering the tenor of the document so as to serve as a defence and limit the right of repayment stated in the promissory note itself. But where the case is that the bond has been discharged, evidence may be let in to prove satisfaction of the bond.

6. In my view therefore upon the finding of the learned Small Cause Courts Judge that the debt has been fully satisfied the suit was rightly dismissed. The revision is therefore dismissed. No orders as to costs.