

(1937) 03 PAT CK 0012
In the Patna High Court

Shyam Lal

APPELLANT

Vs

Raghunath Marwari

RESPONDENT

Date of Decision : 16-03-1937

Acts Referred:

Contract Act, 1872 — Section 59, 60, 61

Citation : AIR 1937 Patna 432 : 170 Ind. Cas. 480

Hon'ble Judges : Wort, J

Bench : Single Bench

Judgement

Wort, J.—This is an appeal by the plaintiff in an action for the redemption of certain ornaments to secure a debt owed by the plaintiff to the defendant. The Judge of the trial Court decided that Rs. 300 had been paid towards the debt and that Rs. 150 which the plaintiff alleged had been paid had not been paid. As regards the latter point, the Appellate Court expresses no opinion and -I am not in a position now to know whether the point was argued or not. I do not propose to encourage litigants to argue these questions in this Court when this Court has no materials upon which to decide whether as a matter of fact the point was argued or not. It may very well be in this case that the finding of the first Court (the Criminal Court's decision was not evidence) and the finding of the trial Court in this action were so clear that the parties did not think it wise or necessary to go into this matter. I, therefore, leave that point. The other question was to which debt of the plaintiff the sum of Rs. 300 admittedly paid was to be appropriated. It is quite clear that, there was no express appropriation by the plaintiff and I think it is equally clear from the finding of the lower Appellate Court that in the books of the plaintiff at any rate the payment was appropriated to some debt other than that secured by the deposit of the ornaments. The learned Advocate who appears on behalf of the plaintiff-appellant contends that the learned Judge has misapplied S. 61, Contract Act. It appears that the Court has appropriated in the absence of appropriation by the parties. The contention is that Section 60 applied and the Judge not only had to come to the conclusion whether there had been express appropriation or not but

had to consider whether there were any circumstances from which it could be inferred that it was intended by the debtor to appropriate the payment to a particular item. I think that is sufficiently answered by the statement of the Judge. It is impossible to say that the Judge was not aware of the sections of the Act because he points out that his attention was invited to Sections 59, 60 and 61 and then, adds:

There is nothing to show that at the time of the payment of Rs. 300 the appellant stipulated that it should be placed for the redemption of the pledged ornaments in preference to any other dues.

2. The contention of the Advocate is that the Judge was directing himself to a question of express stipulation whereas the section indicates that there may be evidence of intention other than express Stipulation. The words are those:

Where the debtor has omitted to intimate and there are no other circumstances indicating to which debt the payment is to be applied, the creditor may apply it at his discretion to any lawful debt actually due and payable.

3. I have read the section from which it is quite clear that although the stipulation may put the matter beyond doubt, the Court has got a further duty to see whether there was any intention of the parties to appropriate it to a particular debt. Rather there are instances indicating to which debt the payment is to be applied and from some points of view, there is a slight variation of the Common Law. At Common Law an appropriation may be held to have taken place although the proof of an express appropriation might be wanting. But in any event it would be necessary at Common Law to prove the actual appropriation whereas the section rather indicates something short of that. It is contended here that the fact that the plaintiff demanded back the ornaments at the time of the payment of Rs. 300 is the circumstance from which it might be inferred that the plaintiff was appropriating the Rs. 300 to a particular debt. That is quite possible; and whether there are any other circumstances in the case I am quite unaware although the learned Advocate has not pointed out any to me at the moment.

4. I think in all the circumstances of the case the matter must go back for the determination of these questions. At first I felt that the Judge was stating quite clearly that there were no such circumstances. But the words actually used by the learned Judge are "there is nothing to show that the appellant stipulated" from which I gather he means that there was no express intimation by the defendant. As regards the Rs. 150, whether that has been paid or not, has not been decided by the Judge. It is contended by Mr. Mazumdar that the point was not argued. As the matter has to go back on the other point the Judge in the Court below will consider the question whether this point as to the payment of Rs. 150 was argued by the appellant before him. If it was not, the matter will not be further considered; if it was, the Judge will come to a finding on that question. The case will be remanded to be heard on these two points and the

costs of this appeal will abide the result of the hearing in the Court below.