

(1952) 08 GAU CK 0011
In the Gauhati High Court
Case No : First Appeal No. 17 of 1950

The Tripura Modern Bank Ltd.

APPELLANT

Vs

Sushil Chandra Dutta and Others

RESPONDENT

Date of Decision : 21-08-1952

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 13 Rule 2

Citation : AIR 1953 Guw 40

Hon'ble Judges : Ram Labhaya, J;Deka, J

Bench : Division Bench

Advocate : K.P. Bhattacharjee, for the Appellant; S.C. Das, for guardian-ad-litem, for the Respondent

Final Decision : Allowed

Judgement

Ram Labhaya, J.—This is an appeal from the judgment and decree of the learned Additional Subordinate Judge, Upper Assam Districts by which plaintiff's claim was decreed in part with proportionate costs. The decree was against defendant 1 personally and against the Estate of Girija Kanta Roy, deceased, in the hands of defendants 2, 5 and 6. The suit was dismissed against defendants 3, 4 and 7 daughters of Girija Kanta Roy. Plaintiff has appealed to this Court.

2. The suit was for recovery of a sum of Rs. 15,306/11/-. The claim included interest and incidental charges. The case for the plaintiff bank (The Tripura Modern Bank Ltd., Dibrugarh) was that Sushil Chandra Dutta, defendant 1 and Girija Kanta Roy, deceased predecessor-in-interest of defendants 2 to 7, had separate personal accounts with the plaintiff bank. Both needed money for their business as forest contractors and asked for accommodation on an overdraft basis. The joint overdraft account was opened on their request. On the day the account was opened, a sum of Rs. 13,072/8/9 was debited to the joint account. This debit came from the separate personal accounts of defendant 1 and Girija Kanta Roy, deceased. Thereafter both defendant 1 and Girija Kanta Roy operated on the accounts. On the date of the suit the amount due from them was said to be

Rs. 15,306/11/.. The defendants not only denied liability. They denied every single allegation contained in the plaint and resisted the suit on several grounds.

3. The Court after considering the evidence that was adduced granted plaintiff a decree for a sum of Rs. 2,234/2/8 with proportionate costs. The learned Judge did not allow the sum of Rs. 13,072/8/9 which was debited to the joint account on the date the joint account was opened. This amount was disallowed on the ground that the liability of defendant 1 and Girija Kanta to the extent of Rs. 13,072/8/9 on the basis of their previous accounts has not been substantiated. What happened was that the true copies of the ledger had been produced by the bank from the date the joint account opened. Copies of accounts showing items due from defendant 1 and Girija Kanta, deceased, on the separate account on the date the joint account opened, were not placed on the record. On the date when evidence was being recorded, the agent of the bank offered to put in the statements of separate accounts in the names of defendant 1 and Girija Kanta Roy, deceased. Defendants objected to the admission of the documents at that stage. The learned Judge declined to take these documents into evidence under Order 13, Rule 2 holding that the explanation given for the failure to put in these documents earlier was entirely false. In the absence of these documents the learned Judge found that the liability to the extent of Rs. 13,072/8/9 had not been proved.

4. The learned counsel for the plaintiff-appellant has not made any serious attempt to show that there was sufficient cause for the failure of the bank to put in the documents bearing on the liability of defendant 1 and Girija Kanta on their personal accounts, earlier. In spite of this he urged that the learned Judge of the trial Court has not exercised the discretion which vested in him under Order 13, Rule 2, Civil P. C., according to recognised judicial principles. The result has been that there has been no proper trial of the case, important evidence bearing on the bulk of the claim having been completely excluded from consideration.

Under Order 13, Rule 2 documents which should be produced at the first hearing of the case may be permitted to be produced at a later stage on good cause being shown. It appears that the importance of documents not filed at the first hearing was not fully realised at that stage. They were sought to be put in when the Court commenced recording evidence. It appears to be a case of an inadvertent omission but it has no trace of mala fide. The documents sought to be put in had undoubtedly a very important bearing on the question at issue before the Court. There was no ground for supposing that they had been fabricated. No such objection was raised. In these circumstances the appropriate course for the Court was to allow the production of the documents which were tendered on behalf of the plaintiff.

In *Jagdish Pandey v. Mt. Taibunnissa Jagdish Pandey and Others Vs. Mt. Taibunnissa and Others*, it was held that in admitting a document produced at a late stage the Court should lean to an interpretation which advances justice rather than to a contrary interpretation. It was further held that where the

document sought to be put in has an important bearing on the question at issue and there is no ground for supposing that it has been fabricated, the Court should not reject it. In *Naraini Koer v. Gena Missir Musammat Naraini Koer and Others Vs. Gena Missir and Others*, it was held that the-only function of the Court of facts is to do complete justice between the parties; and the Court should not reject documents as to the genuineness of which there could be no possible room for doubt on technical grounds. We entirely agree with the views expressed in these cases.

The plaintiff offered to put in previous accounts showing the transfer of debit items to the extent of Rs. 13,072/8/9 from separate accounts to the joint account of defendant 1 and Girija Kanta Roy, deceased. The claim to this extent has been disallowed for want of these very documents. Even at this stage it has not been suggested by the learned counsel for the respondents that there is any reason to suppose that the accounts, copies of which, are sought to be put in were forged or fabricated. We think the learned trial Judge erred in the exercise of his discretion when he rejected these documents. This appeal is therefore allowed. The decree of the Court below is set aside and it is ordered that the case shall be remanded for retrial. The learned Judge shall permit the plaintiffs to produce documents bearing on the alleged liability of defendant 1 and Girija Kanta Roy, deceased on their previous personal accounts. Defendants-respondents also shall be permitted to produce any documents they wish to rely on. The case shall be tried de novo and disposed of according to law.

Deka, J.

5. I agree.