

Major Mistri Vs. Mt. Binda Debi

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Court : Allahabad

Decided On : Feb-20-1945

Reported in : AIR1946All126

Appellant : Major Mistri

Respondent : Mt. Binda Debi

Judgement :

Braund, J.

1. This is an appeal which has come before us as a Pull Bench. The facts are simple. In 1935, the plaintiff lent a sum of four hundred rupees to the defendant. Simultaneously with the loan, the defendant gave the plaintiff an ordinary promissory note. In 1938, at the moment of the expiration of the period of limitation the plaintiff brought a suit before the Munsif of Mirzapur claiming her money with interest. We shall refer to the form of the plaint in a moment. In the meanwhile it suffices to say that the plaintiff did not exhibit the promissory note to the plaint and the learned Judges in the Courts below have found as facts first that, in certain somewhat unusual circumstances, the note is, or must be presumed to be, still in the possession of the plaintiff and, secondly, that it was insufficiently stamped. In those circumstances, by a judgment of 24th April 1939, the Munsif, acting, we think, on a cause of action based on the debt, gave judgment for the plaintiff for principal and interest. The plaint is a simple one. By paragraph 1 it alleged:

The defendant borrowed four hundred rupees in cash from the plaintiff, executed a handnote and receipt dated 13th October 1935, in favour of the plaintiff and stipulated to pay the aforesaid amount on demand to the plaintiff with interest at the rate of Re. 1-4-0 per cent, per month.

2. In his written statement the defendant by paragraph admitted that 'a sum of Rs. 400 was borrowed from the plaintiff...', and that a promissory note payable on demand and receipt had been executed. In addition to this, by paragraph 3 of the written statement, the defendant expressly pleaded to a claim on the debt, as distinct from a claim on the promissory note, by saying:

Nor can any suit be filed on the said promissory note, nor is any claim for cash with regard to the transaction relating to the aforesaid debt entertainable due to deficiency in stamp...

3. The latter portion is a plea in defence specifically addressed to the cause of action founded on the debt as opposed to a cause of action founded on the promissory note. The learned Civil Judge in his judgment construed the pleadings as raising a case based on the debt, as well as on the promissory note, saying:..moreover, paragraph 1 of the plaint will show that the plaintiff has claimed relief on the loan itself, and he has not sued only on the basis of the promissory note...

The Munsif of Mirzapur, following the Full Bench case in this Court in *Nazir Khan v. Ram Mohan* : AIR1931 All183 held, if we have rightly understood the judgment, that, if the case had been one in which the only evidence in support of the. cause of action on the debt had been the promissory note itself, he would have had difficulty in permitting the promissory note to be looked at for any purpose or in allowing the debt to be proved from it, in view of the fact that it had been already held by him to be insufficiently stamped, and. thus incapable of being 'acted upon' under Section 35, Stamp Act. He escaped, however, from this difficulty by finding that it was unnecessary to rely on the promissory note, because there was an independent admission in the pleadings of the borrowing and of the debt apart altogether from the promissory note. Moreover, the rate of interest was proved by the defendant's own admission in the witness-box. We do not think that it is

necessary for us to say whether the learned Munsif was right or wrong as the law in this Court then stood. Since then there has been another Full Bench decision of this Court Sheo Nath Prasad v. Sarju Nonia : AIR1943 All220 This is a five Judge case in which, one of the learned Judges dissenting, it has been held that, in the case of a promissory note executed contemporaneously with a loan, the plaintiff on failure on his cause of action based on the promissory note, cash fall back on the independent cause of action in debt, assuming, of course, that the particular circumstances of the transaction admit of an independent cause of action on the original debt still surviving. Moreover, the Full Bench decided that, for the purpose of ascertaining whether the promissory note embodied the whole contract on which the original debt was founded, it might be looked at notwithstanding Section 85, Stamp Act. In the case before us it seems that there can be no difficulty, in view of this Full Bench decision, in holding that, in a case of simultaneous loan and promissory note, where the plaintiff's cause of action on the promissory note fails, his cause of action in debt, in the absence of special circumstances, survives. The plaintiff-respondent to this appeal does not contend that she could now succeed on the cause of action based on the promissory note. On the other hand, the defendant-appellant in view of the later Full Bench case, has found it impossible to argue that, provided the matter is open on the pleadings, he could resist the conclusion that the promissory note can be looked at for the purpose of seeing whether it constitutes the sole contract between the parties. No question arises in the present case of proving the debt from the promissory note, since it has been proved by the pleadings and by the evidence. We have before us in the pleadings and in the evidence admissions which prove the transaction of loan quite independently of the promissory note. For these reasons, having regard to the judgment to which we have referred in the Full Bench case which has intervened between the reference and the hearing of this case, we have no alternative but to dismiss the appeal with costs.