

Bhoore Singh and ors. Vs. Karan Singh

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Court : Allahabad

Decided On : Oct-30-1934

Reported in : AIR1935All142

Appellant : Bhoore Singh and ors.

Respondent : Karan Singh

Judgement :

ORDER

Bajpai, J.

1. The plaintiff brought a suit for the recovery of a sum, of money on the basis of a promote, said to have been executed by Bhurey Singh, and Rup Ram. Rup Ram is dead and his two sons, Beni Ram and Charan Singh, were arrayed as defendants legal representatives of Rup Ram, the deceased-executant. Bhurey Simgli is also one of the sons of Rup Ram. The pronote purported to bear the thumb impressions of Bhurey Singh and Rup Ram. Bhurey Singh denied the thumb impressions on the promissory note to be his or of his father, Ram Ram. The other two sons of Rup Ram also denied the thumb impression of Rup Ram and said that no money had been taken by Rup Ram. The promissory note along with certain other documents, containing the admitted signatures of Bhurey Ram and Rup Ram were sent to the thumb impressions expert in the office of the Deputy-Inspector-Ceneral of Police, C.I.D., U.P., and his report was that the promissory

note did bear the thumb impression of Bhurey Singh, defendant.

2. The case was then taken up on 22nd November 1933 and the plaintiff was examined. An attempt was made to prove the report of the thumb impression expert by the evidence of the plaintiff. The plaintiff by his own evidence proved the promissory note and said that Rup Ram also had put his thumb-mark on the document. Beni Ram, defendant 2, one of the sons of Rup Ram, also entered the witness-box and he said that neither his father nor his brother had taken any loan from the plaintiff. The learned Judge by his judgment dated 22nd November 1933 decreed the suit against Bhurey Singh and against the assets of Rup Ram in the hands of defendants 2 and 3. In his judgment he refers to the report of the thumb-impression expert; he says that one of the thumb-marks has been proved to be of defendant 1 but the thumb-mark of Rup Ram could not be deciphered as it was too much blurred. In an earlier part of his judgment, the learned Judge observes : 'The plaintiff says the pronote was executed by Bhurey Singh and Rup Ram' and towards the end the learned Judge says:

I believe the plaintiff and hold that Bup Ram and his own son, Bhurey Singh, executed the pronoto.

3. It is argued by learned Counsel for the defendants-applicants that the report of the thumb impression expert was inadmissible in evidence and the learned Judge should not have relied upon the report. It is argued by learned Counsel for the plaintiff-opposite-party that the learned judge relies upon the evidence of the plaintiff and even if the report of the expert be ignored, there was the evidence of the plaintiff, proving the promissory note and the Court below has said that he believes this evidence. There cannot however be the slightest doubt that the judgment of the Court below is influenced to a great extent by the report of the expert and which report, it is conceded, is inadmissible in evidence. It is not possible for me in revision to say to what extent the mind of the learned Judge was influenced by inadmissible evidence but that it was is influenced, there cannot be any question. If a Court wishes to rely upon the report of an expert, then he should be produced and his evidence tested by examination and cross-examination in open Court and unless it is done, the report does not by itself become evidence in

the case.

4. I therefore allow this application, set aside the decree of the Court below and send back the record to that Court with directions to try the suit afresh; paying due regard to the observations contained in this judgment. If the Court wishes to admit in evidence the report of the expert, then the Court should insist that the plaintiff should call the expert as a witness in the case in order that his examination and cross-examination be conducted in open Court. If however the plaintiff is not able to deposit the expenses for the summoning of the expert, then the Court below should scrupulously leave out of consideration the report of the expert. It will, of course, be still open to the Court below to believe the plaintiff implicitly. Costs here and heretofore will abide the event.

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