

Adikanda Behera Vs. Daini Krishna Murthy Patra and anr.

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SooperKanoon Citation : sooperkanoon.com/527999

Court : Orissa

Decided On : Apr-11-1983

Reported in : AIR1983Ori238

Judge : B.K. Behera and ;R.C. Patnaik, JJ.

Acts : [Negotiable Instruments Act, 1881](#) - Sections 118; [Registration Act, 1908](#) - Sections 58(1), 59, 60 and 60(2)

Appeal No. : First Appeal No. 55 of 1972

Appellant : Adikanda Behera

Respondent : Daini Krishna Murthy Patra and anr.

Advocate for Def. : P.V. Ramdas, Adv.

Advocate for Pet/Ap. : R.C. Misra and ;R.K. Patra, Adv.

Disposition : Appeal allowed

Judgement :

Patnaik, J.

1. This is an appeal by defendant 1 against a joint decree passed against him and defendant 2 on a promissory note executed by them in favour of the plaintiff for a sum of Rupees 5,000.00.

2. The plaintiff alleged that defendants were his friends and being in need of money for household expenses, they approached him for a friendly accommodation. The plaintiff advanced a sum of Rs. 5,000.00 on the basis of a promissory note dated 7-8-1967. The amount was received before the Sub-Registrar, Khallikotem and the document was registered. An endorsement to that effect was made by the Sub-Registrar. The defendants having failed to pay back in spite of repeated demands, the suit was filed for the principal with interest. The plaintiff alleged that he was not a registered money-lender and the advance was by way of an accommodation. The defendants (the appellant and respondent 2) filed a joint, written statement. Their plea was one of denial of receipt of the consideration. They admitted execution; but pleaded that the document was a nominal one. They alleged that the plaintiff at the relevant time was serving as Supervisor in the Berhampur Central Co-operative Bank and was in charge of Beguniapada Circle. Beguniapada Service Co-operative Society, Borida Service Co-operative Society and Lachhipur Service Co-operative Society were under his jurisdiction. His duty, inter alia, was to receive loan applications from individual members of primary societies for sanction of loan by the Central Bank for ultimate disbursement to them through the primary societies. A primary societies to secure a fresh advance was required to repay the outstanding advances. The modus operandi of the plaintiff was to secure private loans for the societies under his charge for payment of arrears so that the societies could be enabled to secure fresh loans. When loans were advanced by the Bank to the society he used to recover the amounts advanced by him privately to such societies. Thereby he used to make some personal gain for himself. Such advances to the societies were being done in collaboration with some friends, one of whom was Chaitana Panda, the Secretary of Beguniapada Service Co-operative Society.

Borida Service Co-operative Society was in default. In order to be able to secure fresh loan, it had to clear up the outstanding. Towards the last week of June, 1967, the society obtained an accommodation loan of Rs. 13,000.00 from one Chaitana Panda, The understanding was that the said amount would be returned after collection of the arrear loans from individual members of the society. Sometime later, the plaintiff received, an order of transfer to Chikiti circle. He gave out of Rs. 13,000.00 advanced as loan to Borida Service Cooperative Society, Rs. 8,000.00

was really advanced by Sri Chaitana Panda and the balance Rs. 5,000.00 was in fact contributed by him. Defendant No. 1 was working as the Secretary of Borida Service Co-operative Society at that time. As the plaintiff was apprehensive that he might not get back the amount advanced by him, he insisted on a security from defendant 1 and his brother. In view of his authority, the defendants agreed to execute a nominal promissory note. Though it was agreed that defendant 1 would execute the document for and on behalf of the society, he learnt next day that the document purported to have been executed by them in their personal capacity. The document had not been read over and explained to them and they had subscribed their signatures to and executed the document in good faith. Having discovered the mischief, they approached the plaintiff who gave an undertaking in writing on 8-8-1967 to the effect that really no money was advanced, under the promissory note. It was really a document to ensure realisation of Rs. 5,000.00.

3. The plaintiff examined himself alone. Defendant 1 examined himself as D. W. 1. The scribe of the promissory note was examined as D. W. 2. Chaitana Panda who was also an attester was examined as D. W. 3. The learned Subordinate Judge decreed the suit holding that the promissory note was supported by consideration and the defendants were liable.

4. Mr. R. C. Misra, the learned counsel for defendant 1-appellant, strenuously urged that the learned Subordinate Judge was right in his initial approach of throwing the burden on the defendants; but he was in error in his appreciation of the facts and circumstances. His trump card was Ext. A which, according to him, falsified the plaintiff's case and substantiated, that of the defendants.

5. The defendants have admitted execution of the promissory note Ext. 1, but they have pleaded that the document had not been read over and explained to them and the execution was not in their personal capacity. In short, their plea is a denial of due execution. They have also denied receipt of consideration. We may, however, observe that the defendants have not been able to establish that they were not aware of the contents. But it seems to us that the learned Subordinate Judge laid too great a stress on the execution of the document by the defendants and the endorsement of the Sub-Registrar regarding payment of consideration

while at the same time, he made a short shrift of the document Ext. A executed by the plaintiff on 8-8-1967.

6. The defendants having admitted execution of Ext. 1, a presumption is available to be drawn under Section 118(a), Negotiable Instruments Act, that it was for consideration. Under Section 58(1)(c) read with Section 59, Indian [Registration Act, 1908](#), the Registering officer shall make an endorsement on every document admitted to registration of any payment of money and any admission of receipt of consideration, in whole or in part, made in his presence in reference to such execution and shall affix the date and his signature to such endorsement. Under Section 60, the certificate of registration is admissible for the purpose of proving that the facts mentioned in the endorsement have occurred as therein mentioned. The certificate is admissible to prove payment of money mentioned, in an endorsement made under Section 58. The endorsement is merely prima facie evidence of the fact. The admission, however, is not conclusive proof of receipt of consideration. The burden lies on the person who challenges the certificate to disprove the endorsement and/or the admission.

There is a presumption that the facts mentioned in the endorsement referred to in Section 59 have occurred as therein mentioned, (see *Nainsukhdas v. Go-wardhandas*, AIR 1948 Nag 110; *Ali Khan Bahadur v. Indar Parshad*; (1896) ILR 23 Cal 950 (PC); *Parmanand Misir v. Gur Prasad*, (1936) ILR 11 Luck 393: (AIR 1935 Oudh 500) and *Mt. Mangala v. Mahadeo Prasad*, (1938) ILR 13 Luck 455 : (AIR 1987 Oudh 443).

7. In this case, on the proof of Ext 1 the balance tilted in favour of the plaintiff. So, the burden was on the defendants to upset the tilt by rebuttal evidence. They attempted by examining three witnesses and proving amongst other documents Ext. A.

8. Ext. A being their most vital document, it is worthwhile to consider the same and find out if that pro barbailises the defence story. Ext. A was executed by the plaintiff in favour of the defendants on 8-8-1967, i.e., the day after execution of the promissory note, The document is styled, as an agreement though it was executed by the plaintiff alone. It is recited therein that for the payment of outstanding loan

of Borida Service Co-operative Society, a sum of Rs. 8,000.00 was borrowed from Chaitana Panda, the Secretary of Beguniapada Service Co-operative Society and Rs. 5,000.00 from the plaintiff and the loan was cleared up and a receipt for Rs. 13,000.00 was granted in favour of Chaitana Panda. Chaitana Panda, however, had given to the plaintiff in writing that he had advanced Rs. 8,000.00 only. The said document was with the plaintiff. However, as defendant I was looking after the affairs of the Borida Service Co-operative Society on behalf of the President and the plaintiff was under orders of transfer, he had for the sum of Rs. 5,000.00 obtained a promissory note registered in the office of the Sub-Registrar, Khallikote. When the amount of Rs. 5,000.00 advanced by the plaintiff^ would be paid back, he would return the document executed by Chaitana Panda and Hadu Behera, the President of the Society and the promissory note executed by the defendants.

9. The plaintiff has admitted execution of Ext. A. He has offered no explanation. In fact, the document was even admitted without objection. The document unequivocally shows that the plaintiff had advanced a sum of Rupees 5,000.00 towards repayment of loan by Borida Service Co-operative Society and as security, the plaintiff had obtained a document from Chaitana Panda, the Secretary and Hadu Behera, the President of the Society, When he received the order of transfer, by way of additional security he took a promissory note for the selfsame Rs. 5,000.00 from the defendants who are brothers (as defendant 1 was looking after the affairs of the society on behalf of the President). One fact is clear. The recitals in Ext. 1 are incorrect. The recitals in Ext. 1 as to the necessity is untrue. There was no independent payment under it. There was no payment before the Sub-Registrar. The admission of receipt of consideration is proved to be untrue. The presumption arising under Section 118(a) of the Negotiable Instruments Act has been rebutted. The prima facie proof of the fact from the endorsement stands demolished. It was open to the plaintiff to explain his admission in Ext. A, An explanation was due. But there is none. Ext. A, therefore, in our /oainion. demolishes the total structure based on the plaint, evidence of the plaintiff, the presumption arising under Section 118(a). Negotiable Instruments Act, and the prima facie proof under Section 60(2) read with Sections 58(1)(c) and 59, Indian Registration Act. This would be enough to throw the plaintiffs' case away.

However, let us examine the oral evidence.

10. The defence suggested to the plaintiff that Ext. 1 was executed by defendant 1 on behalf of the Borida Service Co-operative Society. He denied the suggestion. D. W. 1 denied- receipt of consideration. D. W. 2 is the scribe. He stated that no amount was paid before him. His evidence is, therefore, of not much assistance it being the plaintiff's case that the amount was paid before the Sub-Registrar, and to that effect is the recital in Ext. 1. D. W. 3 is Chaitana Panda, the Secretary of the Borida (Beguniapada) Service Co-operative Society and an attester to Ext. 1. He supported the version of the defendants namely, Rs. 5,000.00 out of Rupees 13,000.00 advanced as loan to Borida Service Co-operative Society belonged to the plaintiff and the balance was his. Hadu Behera and he had executed a document in favour of the plaintiff undertaking to refund Rs. 5,000.00 to the plaintiff. For the selfsame amount the defendants executed a registered promissory note in favour of the plaintiff. He was an attester. No amount was paid by the plaintiff or received, by the defendants under Ext. 1 before the Sub-Registrar. To a question put by the court, he stated that after execution of Ext. 1 by the defendants, he asked the plaintiff to return the plain paper document executed by Hadu Behera, the President, to him; but the plaintiff had not returned the same,

11. The learned Subordinate Judge deflected from the course by giving emphasis to irrelevant statements. He thereby missed the salient feature of the case, namely, the unequivocal and positive statement of the plaintiff in Ext. A that his advance of Rs. 5,000.00 was towards repayment of the outstanding loan owed by Borida Society. Towards the said advance he had taken a plain paper document from Chaitana Panda and Hadu Behera; and also a registered promissory note from the defendants when he received order of transfer. There was no independent advance under Ext. 1, We fail to understand what further the defendants could have proved by way of rebuttal and, of discharging the burden. Admission of the plaintiff was the best evidence on which the defendants could rely on when the plaintiff did not make any attempt to prove that the admission contained in Ext. A was not true. So, the balance which was tilted initially in favour of the plaintiff by reason of the presumption under Section 118(a), Negotiable Instruments Act, and the presumption under Section 60 (2) read with Sections 58

and 59, Registration Act, was finally tipped in favour of the defendants.

12. We hold that there was no payment under Ext. 1 to the defendants and the plaintiff's case is bound to fail. In the result, the judgment and decree passed by the learned Subordinate Judge are reversed and the appeal is allowed with costs throughout.

B. K. Behera, J.

I agree.

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