

**Balakdas Vs. Shivnarain and anr.**

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**Court :** Rajasthan

**Decided On :** Jul-18-1975

**Reported in :** 1975WLN(UC)267

**Judge :** V.P. Tyagi, J.

**Appeal No. :** S.B. Civil First Appeal No. 78 of 1973

**Appellant :** Balakdas

**Respondent :** Shivnarain and anr.

**Disposition :** Appeal allowed

**Judgement :**

**V.P. Tyagi, J.**

1. This is plaintiff's appeal against the judgment and decree of the learned District Judge, Alwar dated 19th January, 1973 dismissing the suit of the plaintiff for the recovery of Rs. 10,840/- on the basis of a pronote and the receipt executed by the defendant respondents.

2. The case of the plaintiff was that he was a Pujari of a temple situate in between the two villages Jaitpur and Hudia. The defendants borrowed Rs. 8,000/- from the plaintiff after executing a pronote and a receipt which were scribed by PW 2 Ramavtar. The receipt had the thumb impressions of the two witnesses PW 3

Jagram and PW 4 Ghisa. Since the pronote did not contain the prescribed value of the stamp, therefore it was not found by the court below admissible in evidence. On the basis of the receipt and the oral testimony adduced by the plaintiff, the decree was sought by the appellant but the learned lower Court dismissed the plaintiff's claim disbelieving the statements of the plaintiff and his witnesses.

3. Both the defendants are real brothers. Their defence was of complete denial. They came out with a plea that the receipt and the pronote were forged documents. Defendant No. 1 however pleaded that the plaintiff bore ill-will against him because his son used to help the persons of Jaitpur with whom the plaintiff had litigation. Defendant No. 2, however, did not assign any reason for putting up this false claim by the plaintiff. The defendants also pleaded alibi on the date of the execution of the pronote and the receipt and stated that they were working in Madhya Pradesh on the day of the execution of the said documents and therefore the documents could not be signed by them.

4. The learned trial Judge did not believe the defendant's plea of alibi. The learned Counsel for the respondents did not press that point before this court also.

5. The trial court gave various reasons for disbelieving the statements of the plaintiff and his witnesses which I would deal one by one while discussing evidence of each witness.

6. Balakdas PW 1 has stated that he resides in a temple situate between the two villages. Both the defendants Shivnarain and Ramchandra came to the temple and borrowed a sum of Rs. 8,000/- after executing the pronote and the receipt. These documents were scribed by PW 2 Ramavtar who according to plaintiff came to this temple to inquire about the auspicious date for the construction of his house. As regards PW 3 Jagram, the plaintiff's case was that he came to the temple to make an offer of curd whereas Ghisa PW 4 who is Nambardar of village Jaitpur, was brought by the defendants themselves to the temple to play the role of witness of the transaction of lending money to the defendants.

7. Balakdas's statement is rejected by the trial Court mainly on the ground that he was inimical towards the defendant as Shivnarain's son used to help those

persons of village Jaitpur who were indulged in litigation with the plaintiff. In the written statement the name of the son of Shivnarain has not been disclosed by the defendants. When Balakdas entered the witness box, a question was put in cross-examination by the counsel of defendant No. 1 that defendant Shivnarain's son Balbir refused to appear as a witness on behalf of plaintiff and, therefore, he bore an ill-will against him. Cause of enmity which was disclosed by the defendant in the written statement was altogether changed when the plaintiff was cross-examined by him. It is also significant to note that the defendant did not ask the plaintiff as to in which case he wanted to produce Shivnarain's son Balbir as a witness and he refused to do so. It cannot escape nay attention that no question regarding enmity between Shivnarain and the plaintiff was put in cross-examination to any other witness who entered in the witness box on behalf of the plaintiff. PW 4 Ghisaram was the resident of village Jaitpur and, therefore, be was a natural witness to know about the strained relations between the plaintiff and defendant Shivnarain.

8. There is no plea of enmity between Balakdas and Ramchandra If the plaintiff was actuated only by a spirit of enmity to forget the document on which the suit was based, then there was no reason why the documents would have been forged as if they were executed by the two brothers Ram Chandra and Shivnarain when there was an enmity between Ramchandra and plaintiff Balakdas.

9. Two hand writing experts have come in the witness box: one on behalf of the plaintiff and the other on behalf of the defendants and both of them have supported the plea of their clients. With the assistance of the learned couns<sup>1</sup> for the parties, I went through the statements of these two hand writing experts & the reports which contain detailed reasons for giving their opinion were perused by me. Instead of taking the Court to the right conclusion the testimony of these two expert witnesses has created a confusion and, therefore, I find it safe to scrutinise the evidence of the eye-witnesses with care in the light of the comments of the trial Court to find out whether acurally the transaction of advancing of Rs. 8,000/ by the plaintiff to the defendants had taken place or not.

10. Ramavtar PW 2 is the scribe and he is resident of village Sujapur which is said to be located at a distance of 1 1/2 miles from Jaitpur. The distance between the temple at Sujapur is not in evidence but it appears that village Sujapur is not far off from the temple where the plaintiff used to live. The testimony of Ramavtar PW 2 has been rejected by the trial Court by dubbing him as a chain witness. Ramavtar has stated that he went to the temple for Darshan and for making inquiries from the Mahant about the auspicious day for starting construction of his house. No cross-examination has been directed on this point whether the house was actually constructed by PW 2 near about the time when he scribed the document. If a witness has gone to a particular place with particular purpose then he cannot be described as mere chance witness and on that ground the testimony of the witness cannot be thrown out. The learned trial judge did not place reliance on the evidence of this witness on account of the other reason that in a suit filed by the plaintiff against some other person the scribe of the document was Ramavtar and that was also written by him when he came to the temple for making inquiries about the auspicious day for starting the digging of his well. Learned Counsel in his memorandum of appeal has specifically stated that the suit of the plaintiff based on the document scribed by Ramavtar PW 2 in another case was decreed which shows that Ramavtar was found to be scribe of that document which was found to be genuine by the Court in the other case. It can be a coincidence that the purpose for a visit of the temple may be identical on both the occasions when Ramavtar was asked to scribe the document by the plaintiff. But it is possible that on the first occasion when he wanted to dig his well he went to make inquiry about the 'Mahurt' for the well and on the second occasion when he wanted to construct his house he went to find out the 'Mahurt' for starting the construction of the house. Ramavtar has not been cross-examined on this point by the defendants whether he did construct well and the house near about the time when he went to make inquiries about the auspicious 'Mahurt' for these two constructions. This ground in any opinion is not sufficient to reject the testimony of PW 2 Ramavtar.

11. Learned Judge advanced another reason for disbelieving Ramavtar's testimony and it is that there were many literate persons in village Jaitpur and, therefore, there was no reason why Ramavtar's services should have been employed by the plaintiff to get the documents scribed specially when the

defendants are also literate persons. While advancing this argument the learned Judge perhaps forgot that the document was not written in village Jaitpur and it was written at the temple which is 1 1/2 miles away from Jaitpur and, therefore, this reason was not available to the Court to throw the testimony of Ramavtar.

12. As regards the fact that the defendants were themselves literate persons, this question was never agitated by the defendants in their written statements that they did not require the service of any other literate person for the execution of the document. More-over sometimes even the literate persons do employ the service of other persons for the execution of the documents. Mr. Rastogi's argument is that his clients in the absence of a specific plea that the defendants were really literate persona, have been handicapped to prove whether the plea was correct or not. In my opinion this ground is not sufficient to throw the evidence of Ramavtar PW 2.

13. Jagram PW 3 is an attesting witness on the receipt. He is an illiterate person. He, therefore, put his thumb mark on the receipt. The reason for his presence at the temple at the time of execution of the receipt was that he went to the temple to make an offer of curd to the deity. Learned Judge did not believe his statement on the ground that there was no special occasion for making such an offer to the deity. It is not necessary that the offer is made to the deity of the temple on special occasions and, therefore, his presence was not possible at the temple only on the day when the receipt Ex. 1 was executed. I have very carefully gone through the entire statement of Jagram who has been subjected to cross-examination by the learned Counsel for the defendants. The tenor of his statement does not show that his testimony suffers from any infirmity which may warrant the rejection thereof by the Court.

14. Ghisaram PW 4 is the resident of village Jaitpur and he was a Nambardar of that village. According to him, he was brought to the temple by the defendants themselves to witness the transaction of loan to be advanced by the plaintiff to the defendants. If this version of Ghisaram's testimony is believed, (and I find no reason to disbelieve it,) then he cannot by any stretch of imagination be dubbed as a chance witness. A person who had purposely gone to witness a transaction with

the defendants, cannot be a chance witness and on that ground the credibility of the witness cannot be doubted. No doubt he is also an illiterate man but being a Nambardar of the village he could safely be trusted both by the plaintiff and the respondent for playing the role of a witness to such a transaction.

15. It was pointed out by the learned Counsel for the respondents that PW 4 Ghisa Ram was an interested witness as his son was in the employment of the plaintiff who used to drive the jeep of the plaintiff. But it is not clear on the record as to for which period the son of PW 4 Ghisa Ram was employed by the plaintiff. A doubt has been cast by the trial Court on the credibility of Ghis Ram on the ground that he refused to have made a statement Ex. A. 1 in some other case. But Ex. A. 1 was not relevant in any manner for the purpose of proving the transaction in question. In his statement Ex. 1 he did admit that he was in service of the plaintiff at intervals but it does not throw any light whether at the time when he witnessed the transaction, he was in service of the plaintiff or not. The denial of an earlier statement by the witness by itself is not sufficient to declare him as totally incredible witness.

16. After having carefully gone through the statements of all the witnesses produced by both the parties, it can safely be laid down that the plaintiff has succeeded in proving his claim against the defendants. It may also be noted here that the pronote and the receipt were executed simultaneously. If the plaintiff really wanted to forge the document then he would not have forged two documents to afford opportunities to the opposite party to detect this forgery. Only one document was sufficient to saddle the liability on the defendant respondents. All these circumstances go to show that the transaction evidenced by the document Ex. 1 receipt passed in favour of the plaintiff by the defendants shows a genuine transaction and the plaintiff was entitled to get a decree against the defendants-respondents.

17. Result is that the appeal is allowed and the judgment and decree of the trial Court are set aside. A decree of Rs. 10,810/- is passed against the defendants-respondents. The amount shall bear interest 4% from the date of the institution of the suit till it is paid. The costs of the suit as well as of the appeal are decreed

against the defendants.

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