

Bhika Lal Vs. Ratia

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Court : Rajasthan

Decided On : Oct-18-1977

Reported in : 1977WLN(UC)484

Judge : S.N. Modi, J.

Appeal No. : S.B. Civil Revision No. 313 of 1976

Appellant : Bhika Lal

Respondent : Ratia

Disposition : Application allowed

Judgement :

S.N. Modi, J.

1. This is a revision application by the plaintiff in a suit for recovery of money on the basis of a promissory note accompanied with a receipt. Both the courts below have dismissed the suit on the ground that the promissory note and the receipt have been materially altered and as such they are void and inadmissible in evidence under Section 87 of the Negotiable Instruments Act.

2. The plaintiff came with the case that the defendant Ratia was the 'Karta' of the Joint Hindu Family consisting of himself and his sons Rama, Chela and Sakia and that the defendant Ratia borrowed a sum of Rs. 501/- from the plaintiff and

executed promissory note and receipt on April 23, 1969. It was also alleged by the plaintiff that though in the promissory note as well as in the receipt the names of the sons of Fatia were mentioned but both these documents were executed by the defendant Ratia alone. The defendant Ratia in his statement denied both the execution as well as consideration. He also denied that there was and Joint Hindu Family consisting of himself & his sons at the time when the promissory note is alleged to have been executed by him. According to him his son Rama separated from him long ago and his son Chela expired in Samvat year 2015. He also said that on the date of the promissory note his son Sakia was a minor. The defendant took several other pleas in defence. One of them was that the promissory note and the receipt were materially altered as there was apparent over writing in the promissory note and the receipt. It was further pleaded that the ink used in filling up several blank spaces in the printed promissory note and receipt was different. The trial court on the pleadings of the parties framed as many as 11 issues. On consideration of the evidence led by the parties the trial court decided all the issues in favour of the plaintiff except issue No. 7 which runs as under:

7. The defendant has failed to prove that the promissory note and the receipt were materially altered as there was apparent over writing in the promissory note and the receipt. It was further pleaded that the ink used in filling up several blank spaces in the printed promissory note and receipt was different. The trial court on the pleadings of the parties framed as many as 11 issues. On consideration of the evidence led by the parties the trial court decided all the issues in favour of the plaintiff except issue No. 7 which runs as under:

The burden of this issue was put on the defendant. It appears that no evidence was led by the defendant in respect of issue No. 7. It was however, argued before the trial by the learned Counsel for the defendant that material alterations in the promissory note and the receipt were apparent on bare perusal of the said documents and as such in view of Section 87 of the Negotiable Instruments Act the promissory note was inadmissible in evidence. The learned Counsel of the plaintiff in reply so this argument referred to the statement of the plaintiff Bhika Lal. The relevant portion of his statement runs as under:

1. The defendant has failed to prove that the promissory note and the receipt were materially altered as there was apparent over writing in the promissory note and the receipt. It was further pleaded that the ink used in filling up several blank spaces in the printed promissory note and receipt was different. The trial court on the pleadings of the parties framed as many as 11 issues. On consideration of the evidence led by the parties the trial court decided all the issues in favour of the plaintiff except issue No. 7 which runs as under:

gqbZ Fkh A igys eS bZ0 ,DI0 2 jlhn fy[kk o fQj izksuksV fy[kk A bZ0 ,DI 2 ls ,Q es ^;k^ rd fy[kus ds ckn eq>s igyh Nhd gqbZ bZ0 ,DI0 1 es ,Q es ^;k^ rd fy[kus ds ckn Nhd vk;h FkhA nwljh Nhd vkus ds 15&20 feuV ckn es bZ] ,DI2 es , ls ch bckjr fy[kh A dksbZ dke djrs gh Nhd gks tk;s rks mls vi lqxu ekurs g SA

The explanation for overwriting furnished by the plaintiff was disbelieved by the trial court and it was held that the overwriting appearing between E to F in the promissory note as well as in the receipt amounted to material alteration and as such the promissory note was inadmissible in evidence. The portion between E to F on which overwriting appears on the promissory note as well as on the receipt runs as under:

Hkakch] jRrks] jkfe;ks] psfy;ks] lafd;ks] csVk iksrjk eksrhth jk tkrs ckslh;k A

Since the trial court held that overwriting on the aforesaid words appearing in the promissory note and receipt amounted to material alteration, it dismissed the suit.

3. The plaintiff preferred an appeal against the judgment and decree of the trial court, but without any success. The appellate court also found that the explanation given by the plaintiff how the overwriting occurred in portion E to F in the promissory note and the receipt was true. According to the appellate court this overwriting was material alteration.. The plaintiff has now preferred this revision application against the judgment and decree of the appellate court.

4. I have heard learned Counsel for the parties and gone through the record of the case. The plaintiff in his statement explained the cause for existence of overwriting in portion E to F in the promissory note and the receipt. By furnishing this explanation the plaintiff wanted to show that this overwriting was made prior to signing of the said documents by the defendant. Since both the courts below have disbelieved his explanation it is not open for me in revisional jurisdiction to take a contrary view. I have carefully examined the promissory note and the receipt particularly portion E to F in both these documents, and I find that there is overwriting in the sense that the words already appearing between E to F in the promissory note and receipt were rewritten over the same words. Since the plaintiff has failed to prove that the said overwriting was made before the

execution of these documents and with the consent of the defendant Ratia, a presumption arises that overwriting in these documents was made after the execution of the said two documents by the defendant.

5. Section 87 of the Negotiable Instruments Act provides that any material alteration of a negotiable instrument renders the same void as against any one who is a party there to at the time of making such alteration & does not consent there to unless it was made in order to carry out the common intention of the original parties. The question that arises for determination in this revision petition is whether the over writing existing in portion E to F in the promissory note and the receipt is an alteration and if so whether it is material alteration within the meaning of Section 87 of the Negotiable Instrument Act. There is no suggestion on behalf of the defendant that the words appearing between E to F in the promissory note and the receipt are in any way different from those appearing at the time when these two documents were originally executed by the defendant. In other words it is words appearing between E to F in the promissory note or the receipt was made after the said documents were executed.

6. Under Section 87 of the Negotiable Instrument Act it is not any alteration which renders a negotiable instrument to be void. In order that a negotiable instrument be rendered void it is necessary that there must be some material alteration in the negotiable instrument. The question arises what is meant by material alteration. The law on this point was summarised in *Gour Chandra Das v. Prasanna Kumar Chandra* I.L.R. 33 CAL. 812 in these words.

Any change in an instrument, which causes it to speak a different language in legal effect from that which it originally spoke, which changes the legal identity or character of the instruments either in its terms or the relation of the parties to it, is a material change, or technically, an alteration, and such a change will invalidate the instrument against all parties not consenting to the change. This is a wholesome rule founded on sound policy and may be defended on two grounds, namely, first that no man shall be permitted, on grounds of public policy, to take the chance of committing a fraud without running any risk of loss by the event when it is detected, and, secondly, that by the alteration, the identity of the

instrument is destroyed, and to hold one of the parties liable under such circumstances would be to make for him a contract, to which he never agreed. See *Lee v. Butler* I.L.R. 33 Cal. 812. The question, to what extent the identity on an instrument must be changed in order that its legal effect will be altered so as to bring the case within the terms of material alteration vitiating the instrument, must depend upon the nature of the alteration in each particular case. The test is not necessarily, however, whether the pecuniary liability of one of the parties has been increased by the change; it is of no consequence, whether the alteration would be beneficial or detrimental to the party sought to be charged on the contract. The important question is whether the integrity and identity of the contract have been changed. It is to prevent and punish such tampering as changes the identity of contract, that the law does not permit the plaintiff to fall back upon the contract as it was originally, or in the language of Swayne J., 'in pursuance of a stern but wise policy, the law annuls the instrument as to the party sought to be wronged.

This case has been followed in numerous cases. I need not refer to all those cases. Suffice to say that their Lordship of the Judicial Committee in *Nathu Lal and Ors. v. Mst. Gombi Kaur and Ors.* A.I.R 1940 P.C. 160 observed:

A material alteration is one which varies the rights liabilities, or legal position of the parties ascertained by the deed in its original state or otherwise varies the legal effect of the instrument as originally expressed, or reduces to certainty some provision which was originally unascertained and as such void, or may otherwise prejudice the party bound by the deed as originally executed.

Bearing in mind the above principles, can it be said that the over writing in the portion E to F in the promissory note and in the receipt varies the rights, liabilities or legal position of the parties ascertained by the deed in its original state. As already pointed out above there is no allegation much less proof that the promissory note and the receipt were in any way different from what they originally existed. On the contrary the evidence of the plaintiff and his witness PW 2 Pukhraj shows that at the time of execution of the promissory note and the receipt the name of all the persons mentioned in portion E to F of the promissory note and the receipt were written at the time of execution of both these documents. On the

record there is not an iota of evidence that the portion E to F in the receipt and the promissory note, the name of any person was changed, altered or added in these circumstances, even if the overwriting was made subsequent to the execution of the promissory note and the receipt, it does not lead to the conclusion that by overwriting the lights liabilities or legal position of the parties ascertained by the deed in its original state were altered. A bare perusal of the promissory note and the receipt would show that the letters written between E to F in the promissory note as well as in the receipt were simply written. I am, therefore, of the opinion that the overwriting appearing between E to F in the promissory note and the receipt is not a material alteration I am further of the opinion that the very appearance of the two documents goes to show that this overwriting must have been made antecedent to their execution. It is true that the explanation furnished by the plaintiff was found to be untrue, but merely on that account it cannot be inferred that the overwriting was made after execution of the documents without the consent of the execution. It may be mentioned here that it is not necessary for the plaintiff to show by positive evidence that the alteration was made antecedent to the execution of the document and the presumption that it was made after execution of the document can be rebutted even from the appearance of the document itself.

6. In the Privy Council case the material alteration was in respect of the date on which the document was executed but the document also recited corresponding date of the Indian calendar. Their lordships took into consideration the date of Indian calendar and came to the conclusion that it corresponded with the interpolated or altered English date in the document. A bare look of the portion E to F appearing in the promissory note and the receipt shows that the overwriting must have been made antecedent to their execution by the defendant.

7. There is yet another aspect of the case. The only alteration attributed is overwriting in the portion E to F in the promissory note & the receipt. Overwriting simpliciter cannot be termed to be an alteration in the strict sense of the word much less a material alteration.

8. The learned Counsel for the respondent vehemently contended that no revision lies in the present case in as much as the case does not fall within the purview of the three clauses of Section 115 of the Civil Procedure Code. In this connection he cited 1967 RLW 320 AIR 1958 Gujarat 236 and : [1970]2SCR368 and A.I.R. 1962 S.C. 645.

9. Suffice it to say that the present case squarely falls within the purview of Clause (c) of Section 115 of the Civil Procedure Code. In the present case the court has acted, illegally in the exercise, of its jurisdiction in arriving to the conclusion that on account of material alteration the promissory note is inadmissible in evidence without any evidence to support that conclusion. It is well settled that where the lower court decides a case without considering materials placed before it or in disregard of the evidence a revision is maintainable under Clause (c) of Section 115 of the Civil Procedure Code.

10. In the result I allow this revision application, set aside the decrees of the courts below and pass a decree in favour of the plaintiff and against the defendant for a sum of Rs. 501/- The plaintiff is not entitled to any interest as he did not claim interest in the plaint. The plaintiff shall however get costs of all the three courts.