Chandi Charan Dhar Vs. Boistab Charan Dhar

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Court : Kolkata

Decided On : Sep-03-1903

Reported in : (1904)ILR31Cal284

Judge : Henderson, J.

Appellant : Chandi Charan Dhar

Respondent : Boistab Charan Dhar

Judgement :

Henderson, J.

1. This application raises a question of (sic) able importance not only to the plaintiff in this ease, but also to the public. The suit was one for the administration of the estate of Kissendoyal Dhar, deceased, and on the 31st January 1901 a reference was made to the Registrar to take certain accounts and make a number of enquiries. Permission was given to raise at the reference the following issues which had been raised at the hearing of the suit, namely, (i) whether the sum of Rs. 5,000 deposited with Anderson, Wright & Co., formed part of the estate of the deceased; and (ii) whether the Government paper for Rs. 5,000 deposited with Graham & Co., formed part of the same estate. These issues arose in this way: It was said that Kissendoyal had deposited with Anderson, Wright & Co. a Government promissory note No. 110550 of the 4 per cent loan of 1842-43 for Rs. 5,000 by way of security for the father discharge of the duties of one of his sons,

Kanai Lal Dhar, the father of the defendants Boistab Charan and Natobar Dharj Lal Dhar died on the 14th December 1891, leaving him surviving the two sons just mentioned, and these sons are still employed in the firm of Anderson, Wright & Co. in the place of their father Kanai Lal Dhar. The Government promissory note is said to have been renewed and to be still in the possession of Anderson, Wright & Co, as security for the defendants Boistab Charan Dhar and Natobar Dhar. It is said further that Kissendoyal deposited three other Government securities, namely, 047809 of the 41/2 per cent, loan of 1872 for Rs. 1,500, No. 009496 of the same loan for Rs. 2,000, No. 072083 of the 4 per cent, loan of 1835-36 for Rs. 1,500 with Graham & Co. for the due discharge of the duties of another, son named Subal Chandra Dhar, who was then employed there. These notes were produced by Graham & Co. and were renewed by conversion into the following, namely, 000947 of the 3 per cent, loan of 1879 for Rs. 2,000, 007182 of the same loan for Rs. 1,600 and 028569 of the, 84 per cent, loan of 1865 for Rs. 1,500, and the renewed papers remained with Graham & Co., until recently. The note 000947 of 1879 appears from a receipt, which I shall presently mention, to have been converted into No. A044703 of 1889.

2. Subal Chandra died on the 17th April 1898, leaving the defendant Makhan Lal Dhar and his brothers, who ore also defendants, and on his death the sons were brought upon the record as his representatives.

3. On the 1st July Makhan Lal Dhar, without notice to the plaintiff, applied for and obtained Letters of Administration to the estate of his father Subal Chandra, and in doing so, he included in the schedule of assets belonging to the estate of his father the Promissory Notes Nos. A0447.03 of 1889 for Rs. 2,000, 007182 for Rs. 1,500,028569 of the loan of 1,865 for Rs. 1,500, and, these were stated to be in the possession of Graham & Co.

3. On the strength of the Letters of Administration granted to him Makhan Lal Dhar took over from Graham & Co. the following Government securities for Rs. 5,000, namely, one for Rs. 2,000, No. AO44703/00947 of 1889 (the lower figures showing that there had been a conversion), 007182 for Rs. 1,500 and 028569 of 1865 for Rs. 1,500, and these notes were included in. the receipt which he gave

on the 19th July 1901, as having been lodged with Graham & Co. by his late father. Subal Chandra, Dhar.

4. The present application is made under the following circumstances: On the 31st July 1901, the day on which the order was made for the reference, the plaintiff's attorneys wrote to the Secretary Treasurer of the Bank of Bengal, Public Debt Office Branch, giving notice on behalf of the plaintiff that Makhan Lal Dhat, one of the defendants, was attempting to deal with the Government securities, which have been last mentioned and they pointed out that these notes belonged to the estate of Kissendoyal Dhar having been deposited by him with Graham & Co. as already stated On the 5th February 1903, after the notes bad been taken over by Graham & Co., the plaintiff's attorneys applied for a subpoena against the Bank for the production of the (Public-Debt-Office Loan Register, but before issuing a subpoena against the Registrar directed them to enquire whether the Bank had had any objection to produce the Register. The Bank at first offered to furnish certified copies of the Register and on the 13th February 1903 an order was made by this Court directing the Bank to private and produce certified copies of the entries in the Loan Register showing the different numbers to which the Government Promissory Notes produced by Messrs. Graham & Co. were renewed by conversion and showing the names of the persons by whom they had been converted and the names of the present holders thereof and also to prepare and produce certified copies of the entries in the Resister, showing the different numbers into which the Government Promissory Notes which was produced by Anderson, Wright & Co. was converted from time to time and the present number of the said Government Promissory Note and the names of the persons, by whom it had been presented for conversion and the present owners thereof. This order is the subject of the present application. It was served on the 2nd day of March 1903 and so far the Bank has not complied with the order. In the course of the reference the Registrar required the plaintiff's. attorneys to produce proof regarding the conversion of the notes alleged: to have been deposited with Anderson, Wright & Co., and Graham & Co., respectively, in order that it might be seen whether the note or notes now in the possession of Anderson, Wright & Co., and representing the original deposit is or are renewals of the note No. 110350 of 1842-43 and whether similarly the notes made over to Graham & Co. by MakhanLal Dhar are

renewals of the notes said to have been made over to Graham & Co. by Kissendoyal Dhar.

5. In reply to the letter written by the plaintiffs attorneys on the 6th February last to the Secretary and Treasurer, Bank of Bengal, the Deputy Secretary and Treasurer of the Bank of Bengal on the same day stated that the Loan Registers could not be produced at all as they were public documents' under Section 74 of the Evidence Act, but he stated that a certified extract was obtainable on payment of Re. 1 and was admissible in evidence-under Section 77 of the same Act. Subsequently on the 3rd March 1908 the Secretary and Treasurer of the Bank informed the Registrar that the Bank had, been advised, that the Banker's Books Evidence Act under which the order of the 13th February 1903 had been made was not applicable, to the Loan Register, and that the Bank's proper course, has to give notice to show cause against the order under Section 6, Sub-section 3 of the Act mentioned. He also stated that had been pointed out to the Bank that it was questionable whether the records of the Public Debt Office Were open to public inspection and whether accordingly the Bank was at liberty to grant extracts or copies in. the manner suggested in his previous letter. Under these circumstances he requested that the Bank, might be, afforded an opportunity of showing cause against the order. On the 23rd April 1903, the plaintiff's attorneys wrote to the Registrar suggesting that, if the Bank had any objection to, or any cause to show against, the order of the 13th February 1903, it should come before him on a day to be fixed and take his decision in the matter. On the 4th May 1903, however, it was suggested of behalf of the Bank that the question raised should be decided by the Court itself.

6. It would appear that in consequence of the non-compliance, with the order of the 13th February 1903 it had been impossible to go on with the reference and it has had to be adjourned from time to time. The position which has been taken up by the Bank has been taken up on principle and from no desire to obstruct the plaintiff in the proof of his case before the Registrar. So far as I know the question now raised has never before been raised, at all events in this form, and I feel bound to say, the Bank has always hitherto shown their readiness to produce in Court certified copies of the Loan Register when required, and from the

correspondence to which reference has already been made, it would appear that at one time the Bank was prepared in this case to produce certified copies. The ground-upon which the abjection of the Bank is based appears to be that the Register relates not only to the transactions of the Government of India, hut also to matters which relate to the titles of holders of Government securities, and that that being so the Bank, subject to certain exceptions, is not at liberty to give inspection of, or make, public, the contents. Moreover, it is contended that the Bank in so far as it is concerned with the management of the Public Debt Office on behalf of Government, is not a Banker within the meaning of the Banker's Books Evidence Act, and that' the Loan Register is not a Banker's book within the meaning of the same Act.

7. On the 8th August last the plaintiff gave notice of the present application which is for an order that the Secretary and the Treasurer of the Bank of Bengal, Public Debt Office, do comply with the order made by this Court on the 13th February 1903, or for such order as the circumstances of the case may require.

8. Having so far cleared the ground I shall now proceed to deal with the question raised. In the first place it seems to me that the Loan Register is a public document within the meaning of Section 74 of the Indian Evidence Act, and that is the view which was at first put forward by the Bank itself in regard to this matter. As to the right of the plaintiff to a certified copy it is necessary to consider whether under Section 76 of the same Act he is a person having a right to inspect the Loan Register. It is not denied that the claim he has put forward in this suit, namely, that the Promissory Notes in question formed part of the estate of Kissendoyal Dhar was made bond fide. He has, in my opinion, made out a prime facie case and more specially with regard to the promissory notes which were made over to, Makhan Lal by Messrs. Graham & Co. The facts alleged, in the petition on which the application is based have not been denied.

9. Section 76 of the Evidence Act provides that of 'every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees there for, together with a certificate written at the foot of such copy that it is a true copy of such

document or part thereof, as the ewe may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorized by law to make use of a seal, and such copies so certified shall he called certified copies.'

10. I agree with the opinion expressed by Mr. Justice Shephard in Queen-Empress v. Arumugam (1897) I.L.R. 20 Mad. 189, 196 that 'it might be inferred that the Legislature intended to recognize the right generally,' (that is, the right to inspect public documents) 'for all persons who can show that they have an interest for the protection of which it is necessary that liberty to inspect such documents should be given.' Here, there can be no doubt that the plaintiff has shown prima facie evidence that he has an interest for the protection of which it is necessary that liberty to inspect should be given. In Mutter v. The Eastern and Midlands Railway Co. (188) L.R. 38 Ch. D. 92, 106 referred to by the Full Bench in the Madras case, Lord Justice Lindley made the following remarks: 'When the right to inspect and take a copy is expressly conferred by Statute, the limit of the right depends on the true construction of the Statute. When the right to inspect and take a copy is not expressly conferred, the extent of such right depends on the interest which the applicant has in what he wants to copy, and on what is reasonably necessary for the protection of such interest. The common law right to inspect and take copies of public documents is limited by this, principle, as is shown by the judgment in Rex v. Justices of Staffordshire (1837) 6 Ad. & E. 84, 99, 101.' In the case which is mentioned by Lord Justice Lindley, Lord Denman, Chief Justice, observed that for the persons interested 'every officer appointed by law to keep records ought to deem himself for that purpose' (for the production of documents) 'a trustee.'

11. Here, so far as I am aware, no statutory right is given Section 76 of the Evidence Act deals with the case where there is a right to inspect in the person demanding a certified copy. As I have said, there can be no doubt that the plaintiff is personally interested in the public document in question and it would seem, therefore that in the absence of a right conferred by statute, he has a common law right to inspect it. If he has a right to inspect it becomes necessary to see what is the extent of his right to inspection. It is dear that, if persons not having an interest were allowed to inspect the Loan Register, this would give rise to consequences of

a very serious character. With regard to the Bank Mr. Garth has pointed out what the practice has been hitherto. It is said that the practice has always been to give inspection to any person, who can snow that he is either in himself, or as representing an estate, entitled to a particular Promissory Note, but only so far as he himself or the estate is concerned. Where there is an endorsement showing that a particular note has been transferred to a third person, it is only on giving an indemnity that he is allowed to see the endorsement, the object being to protect subsequent, holders of securities. Mr. Garth has also pointed out that the notes Nos. 000947 of 1879, 007182 of 1879 and 028569 of 1865, or at all events some of them, do not now exist, but have been consolidated with other notes, and not renewed separately. If this be so, the consolidation must have been effected after Graham & Co. had handed over the notes in deposit with them to Makhan Lal Dhar, for we have a list of these notes given in Makhan Lal Dhar's receipt.

12. For the purpose of the plaintiff I gather that it is not necessary to entire into the present title of these notes. All that the plaintiff is concerned with is to see, whether the notes which were made over by Graham & Co., and which are mentioned in the receipt given by Makhan Lal are renewals of notes which were deposited with Graham & Co. In my opinion the plaintiff has the right to inspect all the entries in the Loan Register up to the transfer by Graham & Co. to Makhan Lal Dhar.

13. As to the note No. 110550 said to have been deposited with Anderson, Wright & Co., by Kiseendoyal Dhar, it is said, it is still in the hands of that firm, either in its original or in a renewed form. The plaintiff it is said has been unable to obtain full information with regard to the present numbers of the note or notes into which it has been converted. The note being a note of the year 1842-43, it is safe to assume that it has been converted. The plaintiff further has not been able to ascertain whether the original note or the notes into which it may have been converted is or are still in the possession of Anderson, Wright & Co. Assuming, however, as alleged that the note has been renewed, and the renewed note or notes is or are still in the name of Anderson Wright & Co., and in their possession, I am of opinion that the plaintiff is entitled to inspect the entries in the Register with regard to it and its conversion. If they have been endorsed to any one else by Anderson Wright & Co., then I do not think that the plaintiff has any right to see the

entries subsequent to the endorsement. Here again it would seem to be sufficient for the plaintiff's purpose if he is allowed to see the' entries in the Loan Register of any conversions tip to the transfer, if any, from Anderson, Wright & Co. and in my opinion, he is entitled to have certified copies of the entries.

14. In the order of the 13th February last the Bank was asked to give certified copies of entries beyond those to which I have held the plaintiff entitled. The order directed the Bank to prepare and produce certified copies of the entries in the Register showing the different numbers into which the Promissory Notes Nos. 047809, 009496 and 033083 were from time to time renewed by conversion, and showing the names of the persons by whom the said Promissory Notes were converted and the names of the present holders thereof, and it gave similar directions with regard to the note No. 110550.

15. The order goes beyond what I think the plaintiff is entitled to. I am inclined to think that the order was in fact too wide, but with regard to this I express no definite opinion. It is sufficient to say that the plaintiff in content with the order in the form, in which I propose to make it.

16. I direct that the Bank of Bengal do give inspection, if required, of all entries in the Loan Register relating to Promissory Note Nos. 110550 of the 4 per cent, loan of 1842-43 for Rs. 5,000 down to the present time, if the note or notes into which it may, have been converted be still in the name and in the possession of Anderson, Wright & Co., and if it has been transferred by them to a third person, than down to the date of the transfer. And similarly with regard to notes Nos. 047809 of the 41/2 per cent, loan of 1872 for Rs. 1,500; 009496 of the same loan for Rs. 2,000; 072083 of the 4 per cent. Loan of 1835-36 for Rs. 1,500. The Bank must allow inspection if required of the entries in the Loan Register and give certified copies of all entries in respect of all renewals up to the transfer from Graham & Co. to Makhan Lal Dhar.

17. The other question which has been raised as to whether the Loan Register is a Banker's book within the meaning of the Banker's Book Evidence Act, it is unnecessary to decide, as I have already held, that the Register is a public document and that the plaintiff in this particular case is entitled to inspection, at

least to the extent specified, and to certified copies of the entries, which have been specified. I may mention that in Suits Nos. 127 of 1900, and 682 of 1896 a somewhat similar order to that of the 18th February last was made under the Bankers' Books Evidence Act and was complied with by the Bank.

18. The only question remaining is the question of costs. As far as the Bank of Bengal is concerned, I am not at all certain that they were not quite right in asking to have this question determined.

19. Mr. Woodroffe. The Bank should pay the costs. They hate not shown cause.

20. Mr. Garth (contra). As regards the Bankers' Books Evidence Act, the Court has not decided that point.

21. This is an application which arises out of a reference in an administration suit. I direct that each party should pay his own costs.

22. Mr. Woodroffe. We are to have certified copies with regard to each of these notes, and we ask for costs of the reference.

23. I think you ought to get your coats in the same way. I should be inclined to make them costs of the issue before the Registrar.