

Ghino Ram Vs. Kanhya

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Court : Himachal Pradesh

Decided On : Sep-08-1956

Reported in : AIR1957HP35

Judge : Ramabhadran, J.C.

Acts : Oaths Act, 1873 - Section 11; ;[Negotiable Instruments Act, 1881](#) - Section 87; ;[Code of Civil Procedure \(CPC\) , 1908](#) - Section 34

Appeal No. : Second Appeal No. 12 of 1955

Appellant : Ghino Ram

Respondent : Kanhya

Advocate for Pet/Ap. : Thakar Das, Adv.

Disposition : Appeal dismissed

Judgement :

Ramabhadran, J.C.

1. This second appeal, by a defendant, arises out of a suit for the recovery of a sum of Rs. 1,941 on the basis of a pronote dated 23-11-1949. The trial Court (Senior Subordinate Judge, Mahasu) dismissed the suit, holding that the pronote was void under Section 87 of the Negotiable Instruments Act., i.e., because it had been altered, otherwise than in order to carry out the common intention of the

original parties.

On an appeal being taken by the plaintiff, the learned District Judge of Mahasu, differing from the view of the trial Court, came to the conclusion that the alteration in the pronote had been made by the defendant himself. He further expressed his view that, in any case, it was open to the plaintiff to fall back upon the original consideration and a decree could be passed in favour of the plaintiff, without an amendment of the plaint.

As regards the amount to be decreed in favour of the plaintiff, the lower appellate Court was of the opinion that the plaintiff could be awarded a decree for only Rs. 1,000 plus interest thereupon at 12 per cent. per annum. As regards the balance of Rs. 471, the plaintiff had offered to be bound by the statement of the defendant on special oath, that offer was accepted by the defendant and he made a statement on special oath, as desired by the plaintiff.

Consequently, the District Judge considered that the plaintiff would have to forego his claim in respect of Rs. 471. In the result, the District Judge granted the plaintiff a decree for Rs. 1,000 plus interest at 12 per cent. per annum, amounting to Rs. 320. It is against this decree that the defendant has come up in second appeal.

2. Mr. Thakur Das for the appellant urged the following points:--(A) The lower appellate Court has erred in holding that the alteration in the pro-note had been made by the defendant. (B) In view of the alteration On the pronote--which, according to the appellant, was made without his consent--the suit was liable to be dismissed in toto. (C) It was not open to the plaintiff-respondent to fall back upon the original consideration after the pronote had been held to be void.

3. The learned counsel for the respondent, on the other hand, maintained that the findings of the lower appellate Court on these points were correct and in accordance with law.

4. For reasons to be stated shortly, I am of the opinion that the decree of the lower appellate Court must be upheld.

5. I shall deal with the above points seriatim.

6. (A). The trial Court (Senior Subordinate Judge, Mahasu) was apparently inclined to hold that the defendant himself had made the alteration in the pronote, because when he was asked to write out the figure 1,000 and alter the digits to 1,471, he declined to do so. The learned District Judge has pointed out that the handwriting expert examined by the defendant (Mr. Shanti Sarup Jain) merely expressed his opinion that the figure 1,000 had been altered to 1,471.

He has not said that the alteration was not in the handwriting of the executant, i.e., the defendant. D. W. 1, Nikru, admittedly is illiterate and, therefore, no reliance can be placed on his statement to the effect that the defendant executed a pronote for only Rs. 1,000. One another witness, Anant Ram, alleged to have been present at the time the bond was executed, was given up during the trial, although he had been summoned and was present in Court.

Another circumstance, which goes against the appellant, is that when a notice was sent by the plaintiff to the appellant, claiming the amount of the pronote, i.e., Rs. 1,471, no reply whatsoever was sent by the latter. It was obviously open to him to write back and protest that the amount of the pro-note was only Rs. 1,000 and not Rs. 1,471.

7. Mr. Thakur Das urged that on the offer made by the plaintiff (respondent), the defendant (appellant) had, on special oath, deposed that pronote, as executed by him, was for Rs. 1,000 and not for Rs. 1,471. Mr. Thakur Das urged that the legal implication of this Statement was that the plaintiff should be deemed to have made the alteration himself. Reliance was placed, in this connection, on the provisions of Section 11 of the Oaths Act.

A perusal of the proceedings dated 27-9-1954 in the trial Court merely shows that the plaintiff had made an offer that if the defendant made a statement on special oath to the effect that he had not altered the figure of Rs. 1,000 in the pronote to Rs. 1,471, then he (the plaintiff) would forego his claim in respect of Rs. 471. Accordingly, the defendant, as already mentioned, stated on special oath that he had not executed a pronote for Rs. 1,471, but only for Rs. 1,000.

I agree, under the circumstances, with the view of the learned District Judge that the plaintiff nowhere undertook that his remaining claim, i.e., in respect of Rs. 1,000 also, would be determined by the defendant's statement on special oath. The learned District Judge has referred to Ranganatha Aiyar v. Jayavelu Mudaliar, AIR 1940 Mad 627 (A), where King, J., indicated that:

"The primary meaning of Section 11 must be that the evidence given in any proceeding in which a challenge has been made and an oath has been taken shall be in that proceeding conclusive proof of the matter stated. It cannot automatically be evidence at all except in the proceeding in which it is actually being received."

On the same analogy, it can be said here that the offer made by the plaintiff and the statement made by the defendant, on special oath, would relate only to the claim of Rs. 471, which had been denied by the defendant.

8. Under these circumstances, I agree with the lower appellate Court that, as the record stands, the alteration in the pronote appears to have been made by the defendant and nobody else. There is nothing to show that the alteration was made by the plaintiff-respondent.

9. (B). In view of my finding at (A) above, I fail to see how the suit can be dismissed in toto. All the arguments advanced by the learned counsel for the appellant on this point took it for granted that the alteration had been made by the plaintiff-respondent. Similarly, the rulings cited by the learned counsel for the appellant would be relevant only when it is shown affirmatively that the alteration had been made by the plaintiff--which is not the case here.

For instance, in Gogun Chunder Ghose v. Dhuronidhur Mundul, ILR 7 Cal 616 (B), the facts were:

"A person, who had a bond executed in his favour by one of three brothers, forged the signatures of the other two brothers to the bond, and brought a suit upon it in its altered form against the three brothers. The forgery having been established, the Court of first instance dismissed the suit as against all the three defendants, and this decision was affirmed on appeal."

Under those circumstances, it was held by the Calcutta High Court in second appeal:

"That the decision was correct, as a material alteration in a bond is, if fraudulently made, sufficient to render the bond void.

A party, who has the custody of an instrument, made for his benefit, is bound to preserve it in its original state, and any material alteration of it will vitiate the instrument.

Where a person brings a suit upon a document which, when produced in evidence, is found to have been fraudulently altered to the knowledge of the plaintiff, no Court ought to allow an amendment to enable him to succeed upon it in its original state."

As already remarked, this ruling has no applicability to the facts of the present case, because it has not been established here that the alteration was made by the plaintiff.

10. The same remarks apply to *Christacharlu v. Karibasayya*, ILR 9 Mad 399 (FB) (C), cited by Mr. Thakur Das. There, too, it was found that the plaintiff had fraudulently altered the terms of the bond. Under those circumstances, it was held by a Full Bench of the Madras High Court that the suit must be dismissed. For reasons already stated, this ruling will not be applicable here.

11. (C). In view of my earlier findings, it is of mere academic interest as to whether the plaintiff could fall back upon the original consideration. In answering this question in the affirmative, the learned District Judge has relied upon *Gulabgir v. Nathmal*, AIR 1932 Nag 23 (D); *Lalbahadur Singh v. Ghulam Yasin*, AIR 1933 Nag 57 (2) (E); *Kasturchand Jiwaji v. Manekchand Devchand*, AIR 1943 Bom 447 (F) and *Jyoti Prosad Bandopadhyaya Lal v. Jahor Lal*, AIR 1945 Cal 268 (G). *Dula Meah v. Abdul Rahaman*, AIR 1924 Cal 452 (H), cited by learned counsel for the appellant, supports the view of the lower appellate Court. Therein Newbould, J., remarked that:

"I can find no decided authority that the material alteration of a written contract destroys the original debt, if the debt is not merged in the written contract."

Bindeshry Singh v. Pergas Singh, AIR 1939 Pal 255 (I), cited by Mr. Thakur Das for the appellant, is not applicable here, because, there, the facts were that a hand-note, executed in satisfaction of a previous hand-note, had been altered by the promisee. Consequently, it was held by a learned Judge of that High Court that the promisee was not entitled to sue on the basis of the original consideration. The facts, here, are totally different.

In his written-statement, the defendant had clearly admitted having executed a pronote for Rs. 1,000. He claimed to have repaid a sum of Rs. 600 to the plaintiff and contended that only a sum of Rs. 400 was outstanding. Learned counsel for the respondent cited, inter alia, Krushnacharana Padhi v. Gourochandro Dyano Sumanto, AIR 1940 Mad 62 (J), where a learned Judge of that High Court observed that:

"Even if a promissory note, which has been altered materially by a stranger, may be declared to be void under Section 87, Negotiable Instruments Act, it does not become inadmissible in evidence as would have been the case, if the document were not duly stamped.

A subsequent alteration in the document by a stranger would not deprive the person, who had advanced the money or to whom the money had become payable subsequently, on account of the promisee's death, of his remedy to bring a suit for the money advanced to the defendant by way of loan. In other words, the drawee or promisee or their representatives in interest can maintain an action on the original consideration."

My attention was also invited to Zulfiqar Ahmad v. Robert Elliot, AIR 1925 Oudh 486 (K), where Dalal, J. C., held that:

"A material alteration, which renders a pronote void, does not discharge the maker from all liability. Where a pronote becomes void owing to a material alteration, but the executant admits the loan, the executant is not entitled to be entirely

discharged from the liability to return the loan but is bound to do so to the extent to which he has admitted the same."

12. It does not appear necessary to pursue the matter any further, since, as already pointed out, it was not proved that the alteration had been made by any one other than the defendant. In his written statement, the defendant clearly admitted that a sum of Rs. 400 was outstanding against him. He pleaded payment in respect of the balance of Rs. 600.

The trial Court found, on facts, that payment of Rs. 600 was riot established. This finding was not challenged before the lower appellate Court or even here during arguments.

13. In view of all that has been said above, I hold that the lower appellate Court was justified in granting the plaintiff a decree for Rs. 1,000, principal, plus interest amounting to Rs. 320/- upto the date of the institution of the suit. In *Bijai Ram Kanshi Ram v. Jai Ram Ganga Ram*, AIR 1955 Him P 57 (L), I held, following *Sewak Ram v. Municipal Board, Meerut*, AIR 1937 All 328 (M), that:

"Where the plaintiff has been kept out of his money for a considerable time by the conduct of the defendant, it is only fair and proper that the defendant should pay a reasonable rate of interest upon the sum awarded by the Court."

The pronote was executed on 23-11-1949. The suit was instituted on 13-9-1952, It was dismissed by the trial Court on 13-10-1954. A decree was granted by the District Judge on 23-3-1955. Even if we allow interest at six per cent. per annum from the date of the loan till the date of the District Judge's decree, the amount of interest would not be less than Rs. 320, i.e., the sum allowed by the District Judge as interest. Consequently, the interest allowed by the learned District Judge cannot be regarded as excessive. He has allowed interest at the rate stipulated in the pronote.

14. In view of all that has been said above, I see no reason to interfere with the decision of the lower appellate Court.

ORDER

15. I dismiss the second appeal with costs.

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