

(1990) 06 GAU CK 0010

Gauhati High Court

Case No: Second Appeal No. 156 of 1981

Bhawrilal Goenka

APPELLANT

Vs

Shyampada Das

RESPONDENT

Date of Decision: June 26, 1990**Citation:** (1990) 2 GLJ 161**Hon'ble Judges:** J.M.Srivastava, J**Bench:** Single Bench**Advocate:** A.R.Paul Majumdar, S.K.Sen, A.C.Sharma, Advocates appearing for Parties

Judgement

1. This is plaintiff's appeal against the judgment and decree dated 11.3.1951 passed by the learned District Judge, Goalpara, Dhubri.

2. The plaintiff had filed suit for recovery of Rs. 6,000/with interest against the defendant on the allegations that on 15.4. 1975 the defendant had borrowed Rs. 6,000/ from the plaintiff, had agreed to repay the loan amount on demand and had executed a promissory note. The defendant did not make any payment despite demand. The defendant had denied that any loan was taken and pronote had been executed. The learned trial Court by its judgment dated 29.3.1980 held that the plaintiff's case was correct and accordingly the suit was decreed. In appeal by the defendant the learned appellate Court below by its judgment impugned in this appeal hold that it was not proved that the defendant had executed the pronote. Accordingly, the appeal was allowed and the suit was dismissed.

3. The plaintiff has come in appeal and Shri A. R. Paul Mazumdar, learned counsel appearing on his behalf has submitted that the learned trial Court had compared the admitted signature of the defendant on the written statement, his statement before the Court as D. W. 1 and the dispute signature on the pronote and had come to the conclusion that the signature on the pronote was that of the defendant, but the appellate Court below had come to different conclusion. Shri Paul Mazumdar has also contended that the proper course was to refer the disputed signature to a

Hand Writing Expert. The learned counsel for the appellant has accordingly submitted that the matter should be remanded to the trial Court for the aforesaid purpose.

4. Shri A. C. Sarma, learned counsel for the plaintiff appellant has not raised any objection.

5. The defendant respondent had denied execution of the promissory note and signature thereon. The plaintiff's witness had said that he was not present when the defendant had signed the pronote. There was only the plaintiff statement in support of his case. The defendant had deposed in support of his version. The learned trial Court had made comparison of limited and disputed signature of the defendant. The learned appellate Court below too made the comparison and came to a different conclusion. While as a general rule it should not be said that the Court may not make comparison of disputed signature with admitted signature as necessary in my opinion, where the matter rested only or even substantially on such comparison, the Court should not make their own opinion the basis of finding on the disputed signature because as in the present case but for the opinion of the learned Courts below there is hardly any other material as may be examined to determine as to whose opinion should be accepted.

6. In this view of the matter the suit has to be remanded to the trial Court to enable the parties to produce evidence of Hand Writing Expert in regard to the disputed signature.

7. For the aforesaid reasons, this appeal is allowed. The judgment and decree of the learned Courts below are set aside. The suit is remanded to the learned trial Court for hearing and decision afresh in the light of the observations above and in accordance with law.

8. The parties shall bear their own costs.