(1881) 02 PRI CK 0001

Privy Council

Case No: None

Sudisht Lal		APPELLANT
	Vs	
Mussummat Sheobarat Koer		RESPONDENT

Date of Decision: Feb. 4, 1881

Citation: (1881) 8 IndApp 39

Hon'ble Judges: Barnes Peacock, Montague E. Smith, Robert P. Collier, Richard Couch, JJ.

Judgement

Montague E. Smith, J.

1. This is an action brought by Sudisht Lal, a mahajun carrying on his business at Mozufferpore, against Mussummat Sheobarat Koer, to recover a sum of Rs. 23,470 and interest upon the footing of a stated and settled account. The plaint is based entirely upon an account which, it alleges, had been settled, not by the Defendant herself, but by her husband, Ajudhya Pershad, who, it is said, had authority from her to state and settle accounts. In the outset it may be noticed that no evidence was given of the items of the account so as to establish an indebtedness independently of the account stated. This omission seems to have been intentional, for the Plaintiff himself, and two of his gomashtas, who might have given evidence if a debt really existed, were called.

2. The circumstances which preceded the action may be shortly stated. Ram Dyal Misser, who is now dead, carried on a banking business in the same place as the Plaintiff, at Mozufferpore. He died in the year 1857, leaving a widow and two daughters, of whom the Defendant is one. His widow died in the year 1860. The elder sister, whose name is Sheoraj Koer, had married Durga Persad Tirbaidi. The Defendant had married the person already named, Ajudhya. The banking business of Misser was carried on by the widow during her lifetime, and there is some evidence that it was also carried on after her death by the two daughters, the Defendant being at her mother''s death a minor, and the husband of the elder sister, Sheoraj, carrying on the business on her behalf and on that of her infant

sister. The Defendant, Mussummat Sheo harat, became of age in February, 1869, and shortly after her coming of age it appears that the banking account was separated ; whatever may have been due at that time from the two sisters to the Plaintiff''s firm was divided, and one half carried to the debit of each of the sisters. Although there is some evidence that the sisters carried on banking business, there is really no satisfactory evidence that such a business was carried on by the Defendant alter the separation, and certainly none that it was carried on with her knowledge and authority. However, it is alleged on the part of the Plaintiff that such a business was carried on, and was managed by Ajudhya, her husband, and the account which is sued on is said to have been signed by him as the adjustment of a banking account. The account so signed is set out at length in the record, and begins with this item : " Credit. Former balance, principal and interest, as per former chitta, for the year 1280, Rs. 21,933. 14a. Op." There are other items and interest, and some items on the other side of the account, resulting in a balance of Rs. 23,405. 13a., the amount for which the action is brought, plus a sum of Rs. 50, as to which no evidence whatever exists. The Plaintiff''s claim to recover this sum rests entirely upon the admission which was made by Ajudhya, the husband, in settling this account. Not only is there no proof of indebtedness independently of the account, but there is not sufficient evidence to satisfy their Lordships that a banking business was carried on by the Defendant; whilst there is some evidence that Ajudhya was carrying on business with the Plaintiff''s firm on his own account, and that he had purchased with the Plaintiff a saltpetre property which they were working together.

3. In this state of the evidence it is plain that no authority can be inferred from the fact that a banking business was carried on to the knowledge of the Defendant. The authority, therefore, upon which the Plaintiff must rely as having been supplied to Ajudhya, depends entirely upon the mooktarnama which has been given in evidence; indeed, that is the authority on which his case has been rested. This mooktarnama is said to have been executed by the Defendant shortly after her coming of age. Their Lordships desire to observe that there is no satisfactory evidence that this mooktarnama was explained to the Defendant in such a way as to enable her to comprehend the extent of the power she was conferring upon her husband. In the case of deeds and powers executed by purdanushin ladies, it is requisite that those who rely upon them should satisfy the Court that they had been explained to, and understood by, those who execute them. There is a want of satisfactory evidence of that kind in the present case. But their Lordships do not desire to rest their decision upon this ground. They are disposed to look at the mooktarnama which was received by the Subordinate Judge, and was construed by the High Court, although that Court expressed some doubt as to whether, if it ought to have been construed differently from the , view they took of it, they should have acted upon it. This instrument is said by the High Court to be very nearly in the terms of the ordinary mooktarnama given to mooktars to transact business and to

bring and defend suits. Undoubtedly there is much in its language which is of the ordinary kind ; but there are some special powers conferred by it, and it is upon them that the Plaintiff most relies for the authority of the husband. The document begins with a recital: " Whereas often cases connected with monetary transactions, as loans, purchase and sale of properties, atanamas, hebanamas, ticca pottahs with zurpeshgi and without zurpeshgi, and realisation of decretal money, in which sometimes I, the declarant, am Plaintiff, and sometimes Defendant, remain pending decision, and may be instituted in future in the Civil, Revenue, and Criminal Courts, as well as in the Calcutta High Court; that is, whereas I, the declarant, am under the necessity to attend to all business, such as monetary transaction, purchase and sale of property, preparation of deeds of gifts and grants, leases with or without zurpeshgi, and execution of deeds of absolute sale and recovery of decretal money, viz., all the village and court affairs--filing answers in appeal cases and taking out execution of decrees in the Courts"--enumerating them--" by engaging pleaders and mooktars when required in the cases instituted in the Civil Courts,"--this is very much the language of an ordinary mooktarnama. It goes on: "As also realizing decretal money, and the money covered by bonds from debtors, by executing receipts and acquittances on behalf of me, the declarant, according to the account of the mahajuni shop, saltpetre godown, and zemindari villages." The words, " according to the account of the mahajuni shop," do not necessarily import a statement that she was then carrying on that business. She was entitled to a share of whatever was due to the old business, and if it became necessary to sue for such debts the mooktar would be empowered to sue for them and to give discharges to the debtors. Then the operative part of the instrument is: " I, the declarant, therefore, of my own free will and accord, appoint my husband, Ajudhya Persad Sukul, my general mooktar,"-the generality of that language, "appoint my husband my general mooktar," must be construed, and if necessary controlled, by what comes afterwards,--" and declare to the effect that all acts done by the said mooktar, such as giving and taking loans to and from others; executing on my behalf, getting executed in my favour, deeds of absolute sale," and so on, " shall be accepted by me." The words that are most relied on are: " and declare to the effect that all acts done by the said mooktar, such as giving and -taking loans to and from others." If it had been proved that the husband had contracted loans and obtained advances on behalf of his wife, it may be that under this power of attorney she would be bound by his acts, as being within the scope of his authority. But it would have to be shewn, not only that he borrowed the money, but that it was borrowed for her. If it had appeared that it was taken for his own purposes and the Plaintiff who advanced the money knew it, the wife could not be charged with it. In the present case, without any proof that money had been borrowed at all, and certainly with none that it had been borrowed on her account, the Defendant is sought to be fixed with a large debt by a mere statement of account. Their Lordships think upon the construction of the mooktarnama that the husband, Ajudhya, had no authority to bind her by such a statement, whatever authority he might have had to bind her by an actual

borrowing of money on her account. This is the view taken by the High Court.

4. Their Lordships must not be supposed to lay down that, when an agent is appointed to manage a banking business, and is invested with the powers of a manager of that business, a statement of account made by him in the regular and ordinary way of business would not be evidence against his principal; that question does not arise on this record. It is enough for them to say that in this case, there is no sufficient proof that the business was carried on with the Defendant''s knowledge and by her authority and therefore no implication founded on the course of business can arise. The evidence of express authority also fails.

5. Their Lordships will humbly recommend Her Majesty to affirm the judgment under appeal, and to dismiss this appeal with costs.