

(1890) 03 PRI CK 0003

Privy Council

Case No: None

Ram Lall

APPELLANT

Vs

Mehdi Husein and others

RESPONDENT

Date of Decision: March 13, 1890

Citation: (1890) 17 ILRPC 883

Hon'ble Judges: Macnaghten, B. Peacock, R. Couch, JJ.

Judgement

Macnaghten, J.

1. The suit in which this appeal is brought was instituted by the appellant, Ram Lal, as plaintiff, to recover moneys alleged to have been advanced by him to the first respondent, Saiyid Mehdi Husain, as agent for a lady who has died during the progress of the litigation, and who is now represented by the last two respondents. A sum of about Rs. 30,000 was claimed as due on a bond dated the 13th and registered on the 19th September 1883. A further sum of about Rs. 9,000 was claimed as having been advanced in various amounts between the 20th September 1883 and the 25th December in that year.

2. The lower Court allowed the whole amount claimed as due on the bond. The Judicial Commissioner disallowed Rs. 4,000. That disallowance forms one of the grounds of appeal.

3. In support of his claim to the Rs. 9,000 the appellant relied, first, on oral evidence of a promise to repay the amount; both Courts rejected this evidence. Secondly, he relied on certain accounts which he produced; both Courts rejected those accounts. Thirdly, he relied on an alleged receipt purporting to be signed by Mehdi Husain, and to be dated the 26th December 1883. The respondent on oath denied that the signature was his. The lower Court rejected this receipt for want of a stamp. The Judicial Commissioner remanded the case for further evidence as to the genuineness of the document. When the case came back he rejected the alleged receipt on the merits. And so the claim failed in both Courts.

4. It was contended by the learned Counsel for the appellant that the case as regards the Rs. 9,000 does not fall within the ordinary rule applicable to two concurrent findings of fact, because the lower Court had not an opportunity of considering, and did not consider, the evidence as to the genuineness of the receipt of the 26th December 1883. Their Lordships are not prepared to hold either in this particular case or as a general rule, that the mere fact that a part of the evidence in the suit has not been considered by the lower Court prevents the ordinary rule from applying when both Courts have arrived at the same result. In the present case, however, as the whole of the evidence has been brought to their Lordships' notice, they think it right to add that in their opinion the Judicial Commissioner could not have come to any other conclusion.

5. When the case was remanded the appellant did not think proper or was unable to produce any evidence as to the genuineness of the receipt on which he relied; but for some reason or other the respondent, Mehdi Husain, called the appellant, and in cross-examination by his own pleader the appellant said that the receipt was signed by Mehdi Husain. There was no corroborative evidence on the point, The appellant, in regard to other statements of his, was held to be a person on whose uncorroborated testimony the Court could not safely depend. Under these circumstances, though it would have been more satisfactory if the Judicial Commissioner had referred to the appellant's assertion, their Lordships cannot say he was wrong in treating it as unworthy of notice.

6. As regards the Rs. 4,000, there are not two concurrent findings of fact. Here the position of the parties is reversed. The respondent, Mehdi Husain, relies on an acknowledgment or rukka which the appellant says is not genuine. The Judge of the lower Court decided against Mehdi Husain principally on two grounds. One was that the rukha, if genuine, ought to have been mentioned to the Registrar when the bond was registered; the other was that the respondent in another suit had made a statement with regard to the advance of the money which the learned Judge considered, "if not false, certainly to be misleading." Their Lordships cannot attach any significance either to the fact that the rukka was not mentioned to the Registrar, or to the statement in the other suit which appears to their Lordships not to be inconsistent with the respondent's present case.

7. Having listened to the evidence, their Lordships find themselves unable to dissent from the finding of the Judicial Commissioner. There is very great difficulty in determining, if it is possible to determine, on which side the truth lies in this part of the case; and the learned Counsel for the appellant has not satisfied them that the Judicial Commissioner was wrong.

8. In the result their Lordships will humbly advise Her Majesty that the appeal ought to be dismissed; the appellant will pay the costs of the appeal, but there will be only one set of costs between the respondents.