

Ram Balak Singh and Another Vs Ambika Singh

None

Court: Patna High Court

Date of Decision: Feb. 5, 1929

Acts Referred:

Negotiable Instruments Act, 1881 (NI) " Section 80

Citation: AIR 1929 Patna 365

Hon'ble Judges: Chatterji, J

Bench: Division Bench

Judgement

Chatterji, J.

This Civil Revision case arises out of a suit based on a hand note and two chithis alleged to have been passed by the father of the defendants-in favour of the plaintiff.

2. The learned Small Cause Court Judge held that the hand note and the two chithis are genuine and for consideration and were executed for the

purposes of the joint family and passed a decree allowing interest at the rate of Rs. 1-8-0 per cent per month. It is contended by the learned

advocate appearing for the applicants that no decree should have been passed, inasmuch as there could be no loan transaction between members

of a joint family. It appears that the loans under the handnote and chithis were taken in 1925, whereas a suit for partition had been brought by one

of the members of the joint family in 1924. The filing of a plaint; claiming partition shows a clear intention of separation.

3. In the written statement it is alleged that there was separation from before the execution of the alleged document. It is abundantly clear that there

was a severance of the coparcenary right so as to enable one coparcener to enforce a loan taken by another from him. In my opinion the

contention is not wellfounded.

4. It is next urged that there should have been no personal decree passed against the defendants who were sons of the executant. In view of the

fact that the Court held that the loans had been taken for the purposes of the joint family the sons are bound under law to pay the same and have a

personal liability in the matter. This contention also fails. The last point urged is that the two chithis did not carry any stipulation for payment of

interest and the learned Judge is in error in having allowed interest at the rate of Re. 1-8-0 per cant, per month on the amount covered by them.

There is no dispute that the chithis provide for no rate of interest and that there was as stated in the judgment no evidence to show that chheddi had

agreed to pay interest for the money due under the two chithis. The interest Act 32 of 1839 makes the following provision about allowance of

interest:

It is hereby enacted that upon all debts or sums certain, payable at a certain time or otherwise, the Court before which such debts or gums may be

recovered may, if it shall think fit, allow interest to the creditor at a rate not exceeding the current rate of interest from the time when such debts or

sums certain were payable, if such debts or sums be payable by virtue of some written instrument at a certain time, or if "payable otherwise then

from the time when demand of payment shall have been made in writing so as such demand shall give notice to the debtor that interest will be

claimed from the date of such demand until the term of payment.

5. Thus where the debt or sum is not payable at a certain time then interest is payable from the time when demand of payment shall have been

made in writing. It is conceded that in the present case no demand of payment was made, therefore, no interest can be recoverable from the date

of the loans. The position would have been otherwise if there was a stipulation for payment of interest because the Act would have no application

in such a contingency. An agreement to pay interest cannot also be implied in the present case because it was a transaction between the members

of a Hindu family and if really these amounts were chargeable with interest there is no reason why this would not have been provided for, especially

when provision is made for it in the handnote executed.

6. It is urged on behalf of the opposite party that he is entitled to interest at the rate of 6 per cent per annum from date of the document and a

reference is made to Bishun Chand v. Audh Behari Lal [1917] 2 Pat. L.J. 451. That was a case based on a hand-note payable on demand but

which did not provide for the payment of interest. It was held that by reason of the provision of Section 80, Negotiable Instruments Act, this

interest was payable on the handnote in question.

7. The case here is based on two chithis not payable on demand hence this case has no application. The principle governing a case like this is to be

found in the Interest Act. It could not be said that the defendants had notice that interest would be charged when no demand was made and when

there was neither an express nor any implied undertaking to pay the same. The institution of, this suit, however, affords a clear intention to charge

interest. I think, therefore, that the opposite party is entitled to charge interest from the date of the institution of the suit. The rate as provided in the

interest Act, will be the current rate of interest.

8. The learned Judge of the Court below has found current rate of interest to be Re 1-8-0 per cent per month and allowed interest at the same

rate. Hence the opposite party is entitled to interest at this rate from the date of the suit till the date of the decree. Thereafter the decree shall carry

6 per cent interest per annum till realization. The opposite party shall get proportionate cost on the amount of decree. There shall be no order as to

costs in this Court.