
(1869) 07 CAL CK 0011

Calcutta High Court

Case No: Special Appeals No. 392 of 1869

Ram Baks Lal

APPELLANT

Vs

Kishori Mohan Shaha
and Others

RESPONDENT

Date of Decision: July 7, 1869

Judgement

@JUDGMENTTAG-ORDER

Loch, J.

I think this case must go back to the first Court. It appears that when the case WAS first tried, the defendants, the respondents before us, were not present, and the case was decided ex parte. The respondents subsequently prayed for a re-hearing. Their prayer was granted, and the Subordinate Judge, after taking evidence, found that Gyanath was the gomasta of the defendants, respondents; that the cotton had been made over to them through Gyanath; and that part-payments had been made by defendants by means of hundis, and therefore the plaintiff was entitled to receive the balance from the defendants, respondents. On appeal the Judge rejected, and very properly, the evidence taken in the absence of the defendants, respondents; and with regard to Gyanath, he held that even if the evidence were sufficient to prove that Gyanath was the mokhtar gomasta of the defendants, yet it would be necessary for him to have a special power from his principals to enable him to purchase goods such as cotton, etc., on their account; that there was no proof taken after the order for re-hearing, as to the delivery of the cotton and part-payment by the defendants, respondents; and that the most the evidence on which the lower Court rested its judgment went to prove was, that Gyanath acted as agent for the defendants for the transaction of a business in hundis, and that the plaintiff failed to make out that Gyanath had general power to act for the defendants.

2. I think the case must go back, because, when it was re-tried, the evidence which was taken in the absence of the defendants should not have been used against them, but the Court should have allowed the plaintiff an opportunity to produce those or other witnesses, and have permitted the defendants to cross-examine them.

3. With regard to the position of the gomasta, I think the Judge has taken a wrong view, in considering that it was necessary for the agent to have special powers from his principals to purchase certain kinds of goods; and the view he has taken appears to have had some effect on his judgment. If the evidence goes to show that the party said to be the agent was really a general agent, and did transact business of various kinds for his principal, no special power was required for him to transact this particular business.

4. This case will go back to the first Court, who will send for the witnesses who were first examined, and allow the respondents to cross-examine them; and the Court will allow both parties to adduce further evidence if they think proper to do so; and the Judge, after hearing the evidence, will dispose of the case.

5. By consent of the plaintiff's pleader the suit remains dismissed as against Gyanath, and the suit will be proceeded with only against the other defendants, respondents.

6. The costs of this appeal will follow the final result of the case.

Macpherson, J.

7. I concur, I wish to add that even if the Courts shall be of opinion that Gyanath Shaha was, as he was found to be by the Subordinate Judge, a mokhtar gomasta of the defendants, still there will remain to be decided upon the evidence the question what his powers as such mokhtar gomasta were. Whether he was mokhtar gomasta or not, it must be proved as a fact that he had authority to bind the defendants so as to make them liable for contracts entered into by him. The extent and nature of the powers vested in an agent are not so much matter of law as matter of fact to be decided in each case in which a question of agency arises. In the present instance, supposing that Gyanath had no written power of attorney or mokhtarnama under which he was carrying on the defendants' business, if it shall be proved that he acted ordinarily as the agent to the defendants in buying and selling other articles of merchandize, the fact of his not being proved to have previously purchased cotton, will not necessarily operate against the plaintiff's case that he purchased the cotton on account of the defendants. If, on the other hand, there is no evidence of Gyanath Shaha having bought and sold goods on account of the defendants, and of his acts having been recognized and adopted by the defendants, or by those who, for the time being, were the members of the firm at Mirzapore, now represented by the defendants; and if this purchase of cotton was the first transaction in the buying of merchandize that was entered into by him, then, in the absence of evidence that the defendants actually received or paid for the cotton, it may be difficult to hold it proved that Gyanath acted as the defendants' agent, so as to bind them by what he did. But the Courts in deciding the question of agency must look to the general evidence on the record as to the mode of dealing pursued by Gyanath and by those whom he alleged to be his principals. The Subordinate Judge says that it is proved that certain part payments, on account of this cotton, were made by the defendants. It seems doubtful whether the Subordinate Judge intended to say more than that payments on account were made for

the defendants by Gyanath. How this may really be, I cannot say: but it is evidently most important that it should be ascertained with the utmost accuracy and distinctness, how and by whom and when those payments on account of the cotton purchased by Gyanath, were made. If payments were made by the defendants direct, as if they sent hundis to the sellers of the cotton, it would go far to prove their liability. If, on the other hand, the payments were merely made by Gyanath, and it is not proved that they were made with the defendants' cognizance or by their order, it would prove nothing as against them. The case is one of some nicety and importance in itself, and the Court must try it with care and accuracy. The parties should be allowed to adduce further evidence, if they desire to do so.