Bhairo Prosad and Another Vs Gojadhar Prosad Sahu and Others

Court: Calcutta High Court

Date of Decision: April 8, 1914

Judgement

Coxe, J.
This appeal arises out of a suit on a hatchitta, instituted on the 10th November 1904. The suit was dismissed on some preliminary

point, but was remanded by the Court for trial on the merits. The learned Subordinate Judge has disbelieved the hatchitta, but has given the

Plaintiffs a decree on the hatchitta of the previous year, and holds that the suit is saved from limitation by reason of certain acknowledgments. The

learned pleader for the Respondents has attempted to support the decision of the Court below by contending that the hatchitta sued upon, i.e., the

hatchitta of 1308 ought to be believed. This contention however is quite unsustainable. As the plaint originally stood, the cause of action was stated

to have arisen on the 21st October 1901, the date of the last signature entered in the hatchitta. The sentence is very ungrammatical, but that is the

meaning that any plain man would attach to the passage. It was not till four years later, after the suit had been remanded for re-hearing, that the

Plaintiffs realised that the suit was barred by limitation, and they then amended the plaint by altering the date of signature to October 1903.

Obviously an alteration made more or less under compulsion four years late must excite suspicion, and this is enhanced by the fact that Mr. Hind-

marsh who verified the original plaint gives no explanation why the wrong date was entered. He says indeed that he satisfied himself that the

allegations in the plaint were true. He does not depose that the hatchitta was signed in 1903. All that he can say is that, as far as he recollects, the

accounts were adjusted during his managership, which began in September 1903. But, as prior to being manager, he had been receiver of the

Plaintiffs" firm, his recollection five years after the institution of the suit may well have been uncertain, and does not outweigh his sworn verification

in 1904. Several letters are put in, but none of them refer to the hatchitta of 1908, and the only evidence that the hatchitta was signed about

October 1903 is the bare word of the Plaintiff"s gomastha. This is corroborated to some extent by a statement of Mr. Smith, that after September

1902, the Defendant asked that the account of 1308 might be left open. Copies of two lists are put in, dated the 28th September 1903 and the 9th

October 1903. The first shows that the Defendant had not then signed the chitta for 1308, and the second shows that in the meanwhile he had

done so. These lists might have been good evidence, but they are not really proved at all. The originals were filed, but were taken back and are

then said to have been lost. They are not put to Mr. Hindmarsh at all, and certainly in the circumstances of the case no value whatever can be

attached to copies.

2. Another fatal defect in the Plaintiffs" case is that although the Subordinate Judge has come to a clear finding against them that the hatchitta sued

upon is a forgery, and although they have tried to support his decree in their favour by contending that this part of the decision is wrong, they do

not produce the hatchitta that has been removed by them from the record, and although this appeal was instituted in January 1910, has not been

returned. The Subordinate Judge says--"" The test of handwriting also shows in no indecisive manner, that Earn Manohor Sahu could not have

signed the hatchitta for 1308 after accounts were adjusted and the balance struck. He admittedly signed the hat-chitta for 1307 (see Ex. 3A). If his

admitted signature and writing be compared with his so-called signature and writing on the receipt stamp for 1308, it will be abundantly clear that

they could not have been written by one and the same hand."" To ask us to reserve this finding, while the hatchitta is withheld, seems to me idle.

3. I therefore hold that these materials are quite insufficient to justify any interference with the Subordinate Judge"s finding that the hatchitta in suit

was not genuine.

4. The learned Subordinate Judge however has given the Plaintiffs a decree on the hatchitta of 1307. This he says was signed admittedly on the

24th Assin 1308. I cannot trace the admission, but the witness Radha, Kishen deposes that it was signed about a week before the Dasserah day in

1309, and that would be more than three years before suit. The Judge however holds that limitation is saved by the letter (Ex. 4C), which he

regards as an acknowledgment under sec. 19 of the Limitation Act. The letter is dated the 29th September 1902.

5. I do not think that this decision can be maintained. The suit was brought on an account stated and not on an open account. It was found that the

account stated was a forgery. I do not think that in these circumstances the suit could be altered to one on the account stated in the previous year.

In any case, it ought not to have been done with retrospective effect. The plaint ought to have been amended, and then there could have been no

question that the suit was barred by time. Nor do I think that the letter (Ex. 40) is an acknowledgment under sec. 19 of the Limitation Act. In the

first place, the letter relates to a hatchitta that "" will be barred by limitation on the 12th October 1902 "". That cannot possibly be the hatchitta of

1307. Next, the letter merely save that the writer after looking into the account will sign it. That is not in my opinion an acknowledgment of liability

on an account stated. The Judge relies on the case of Moniram Dutt v. Seth Rupchand ILR 33 Cal. 1047 (1906). That was not a suit on an

account stated, but a suit on an open and unsettled account between the parties. And the letter (Ex. 4C), assuming that it is an acknowledgment of

liability to pay whatever may be found due when accounts have been properly taken between the parties, is certainly not an acknowledgment of

liability to pay the amount stated to be due in the hatchitta of 1307. In this connection, reference has been made to the case of Andrappa Chetty v.

Dvaragulu Naidu ILR (sic) Mad. 68 (1911) which is clearly in point.

6. In my opinion the suit ought not to have been altered to one on the hatchitta of 1307, and, even if so altered, it is barred by time. I would decree

the appeal, and dismiss the suit with costs throughout.

Imam, J.

I agree.