
(1871) 05 CAL CK 0014

Calcutta High Court

Case No: Special Appeal No. 2554 of 1870

Lachmi Bibi

APPELLANT

Vs

Indur Chandra Dugar

RESPONDENT

Date of Decision: May 9, 1871

Final Decision: Allowed

Judgement

Paul, J.

In this case the facts are very few and very simple. It appears that the plaintiff, on the 6th day of the dark side of the moon in Jaishta 1926 Sambat (31st May 1869) obtained a hundi for Rs. 1,000 from the defendant's firm at Baluchar, drawn upon his firm at Calcutta. The plaintiff alleged that that hundi was lost, and on representation of that fact to the defendant, he granted the plaintiff a second hundi drawn by his said firm at Baluchar upon his said firm at Calcutta; and in the body of this duplicate it was stated that, if the original be found accepted, the duplicate shall become null and void. It appears on the evidence that, when the duplicate hundi was presented to the defendant's firm at Calcutta, the original had already been accepted, and the result was that the Calcutta firm declined to accept the duplicate, stating at the top of it that they had already accepted the original hundi presented by one Haranand Roy Dowlat Ram, the defendant No. 2 in this case. In doing this they allege that they followed the terms of the duplicate hundi. Thus, the plaintiff brings this action in one of two ways, either for the non-acceptance of the duplicate hundi, or to recover money had and received on the ground that the original consideration failed.

2. It is quite clear that the non-acceptance of the second hundi was in accordance with the strict terms of that hundi, and this circumstance of refusal cannot give the plaintiff any cause of action.

3. As to the plaintiff's seeking to recover the amount of the original hundi, on the ground that the consideration failed, it appears to me that the plaintiff must lose her suit also. I think the consideration had not failed, for it is admitted by the plaintiff herself that the

original hundi had been accepted by the defendant's firm at Calcutta before the duplicate was presented, and that, on due date of the original hundi, the amount thereof was paid by the acceptors. Under these circumstances it cannot be said that the consideration failed.

4. But an element of confusion has been imported into the case by the evidence of some witnesses as to custom. That alleged custom cannot possibly override the plain terms of the contract, as is evident from the clear language of the second hundi; but besides that, the evidence in this case seems only to go to the extent of showing that, in the event of both the original and the duplicate being presented for payment by persons of equal respectability, some further proceedings should be taken by the production of a triplicate, and the payment stopped until the dispute is settled. That custom therefore does not affect the present case before us. If the custom, however, does not amount to that, but amounts to what the plaintiff contends for, viz., that notwithstanding the payment of the original hundi, the duplicate must also be paid for on presentation, all that I can say is that such custom is irrational, absurd, and contrary to the principles of equity and good sense, and cannot be sustained as a custom in a Court of Justice. If the plaintiff had only been guided by the ordinary principles of honesty and justice she would have refrained from bringing the suit in this case. The suit in fact seems to be a sort of oppression attempted to be committed on the defendant, for nothing but a pure act of grace and courtesy could render it obligatory on the defendant to grant the duplicate hundi to the plaintiff, on the bare allegation of the loss of the original. The defendant was not bound to grant her the duplicate until she fully guaranteed him against any future demand. The result is that the honesty of the motive by which the defendant was actuated has been very ill recompensed by the proceedings which the plaintiff has taken against him in the present suit. I think that the suit against defendant No. 1 must fail for all these reasons, and that the suit against defendant No. 2 must equally fail, for there is no evidence that the original hundi was really lost, and had not passed into the hands of this defendant bona fide by sale and purchase.

5. The result is that this appeal must be allowed, and the plaintiff's suit dismissed with all costs.

Bayley, J.

6. I think it is not necessary in this case to go into the question of custom, for the duplicate hundi and the endorsement upon it show the one distinct condition that no acceptance of the duplicate should be made if the original were once accepted, and the other that the original hundi had been accepted. The payment of the duplicate therefore by the very terms of that document is not due on the duplicate. The first hundi once accepted was an acceptance of all liability to the total amount of the bill, viz., Rs. 1,000, and this suit by the plaintiff is only an attempt to make the defendant twice liable for one and the same amount. The duplicate was given by the defendant, on the mere representation of the loss of the original, as an act of grace. I agree in reversing the

judgments of the lower Courts with costs.