

## Lila Singh vs Chajju Singh on 4 March, 1952

**Equivalent citations: AIR1952ALL877, AIR 1952 ALLAHABAD 877**

### JUDGMENT

Malik, C.J.

1. This revision under Section 25, Provincial Small Cause Courts Act (IX [9] of 1887) has been filed by the plaintiff.

2. The plaintiff filed a suit in the Court of Small Causes at Moradabad to recover Rs. 980-8-0.

The allegations in the plaint were that on 23-8-1944, the defendant borrowed from the plaintiff a sum of Rs. 900 in cash and it was agreed between the parties that the amount would be repayable on demand and would carry interest at Re. 1 per cent. per month. That the defendant had paid a sum of Rs. 80 only and the claim was for the balance. The plaintiff alleged that a promissory note and a receipt were executed but the promissory note was misplaced and it could not, therefore, be filed. The receipt was filed in Court.

3. The defendant denied the execution of the promissory note or the receipt. He further denied that he had borrowed any money from the plaintiff.

4. At the trial a suggestion was made to the effect that one Tori Singh might have handed over a blank paper bearing one anna stamp with defendant's thumb mark on it which the plaintiff might have utilised in making out the receipt which he had. filed. The receipt was sent to the Finger Print Bureau, Allahabad, but the report was that the thumb impression was not clear and so no definite opinion could be given.

5. The lower Court has come to the conclusion that a sum of Rs. 900 was borrowed by the defendant from the plaintiff and the defendant had executed a promissory note and a receipt. The lower Court was, however, of the opinion that the promissory note being insufficiently stamped the plaintiff had deliberately suppressed it and had filed the suit on the false allegation that it had been lost. Relying on the decision of a bench of this Court in Ram Nath v. Bhagwati Prasad, A. I. R. 1946 ALL. 150 the lower Court dismissed the plaintiff's suit.

6. In this revision it has been urged by learned counsel for the plaintiff-applicant that on the finding recorded by the lower Court that a sum of Rs. 900 was borrowed by the defendant from the plaintiff, the plaintiff was entitled to claim repayment of the sum even if the promissory note was not admissible in evidence as being insufficiently stamped and had for that reason not been filed by the plaintiff. Under Section 35, Stamp Act if a promissory note is not duly stamped it is not admissible for any purpose. It may be that it was on that account that the plaintiff had suppressed the

promissory note as has been found by the lower appellate Court.

A promissory note has been defined under Section 4, Negotiable Instruments Act as an instrument in writing (not being a bank note or a currency note) containing an unconditional undertaking, signed by the maker, to pay a certain sum of money only to or to the order of, a certain person, or to the bearer of the instrument. By reason of Section 91, Evidence Act this unconditional undertaking to pay the amount could only be proved by the production of the instrument in writing. In a case where the payment of money is admitted by the defendant the question might arise whether from the mere fact of the receipt of the money the Courts should not presume that the money was repayable and place the burden on the defendant to prove the contrary, see *Major Mistri v. Binda Debi*, A. I. R. 1946 ALL. 126 (F.B.).

Even on this point there is still some difference of opinion. Where, however, the receipt of the money is not admitted the plaintiff, before he can succeed, must prove that he had lent the money to the defendant and the money was, therefore, repayable. Section 91, Evidence Act is relevant in this connection. It provides that when the terms of a contract have been reduced to the form of a document no evidence shall be given in proof of the terms of such contract except the document itself. Explanation 3 to this section is as follows :

"The statement, in any document whatever, of a fact other than the facts referred to in this section, shall not preclude the admission of oral evidence as to the same fact."

Illustration (e) refers to this explanation and is to the effect that if A gives B a receipt for money paid by B and oral evidence is offered of the payment the evidence is admissible. It would be seen that in the Explanation and the illustration oral evidence is admissible merely of the fact that payment was made. The terms on which the payment was made are covered by the provisions of the section itself and require production of the document. In view of the provisions of Section 91, Evidence Act and the various decisions of this Court on the point it is not possible to hold that even in the event of non-production of a promissory note the Courts can either allow proof of the fact that there was an unconditional undertaking to repay or presume to the same effect. The decision of the lower Court was, therefore, right and this revision must fail.

7. In view, however, of the fact that the lower Court has found that the money was actually paid to the defendant I direct the parties to bear their own costs in all the Courts.