Allahabad High Court
Kadher Mal vs Kunwar Sheo Narain on 14 October, 1942
Equivalent citations: AIR 1943 All 90
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JUDGMENT Bajpai, J.

1. This is an appeal by the defendant. The plaintiff Kunwar Sheo Narain brought a suit against the defendant Kadhar Mal, for the recovery of Rs. 2400 together with costs and pendente lite and future interest (alleging?) that he had advanced to the defendant on 15th June 1935, a sum of Rs. 1800 and the defendant had executed a promissory note promising to pay the said amount together with interest at the rate of 1 per cent, per mensem. The defendant pleaded that he did not borrow any money from the plaintiff, nor had he any necessity to borrow money and that he did not execute any promissory note in favour of the plaintiff. It was further pleaded that the defendant was born on 18th February 1919, and he was, therefore, a minor on 15th June 1935. In 1935 the defendant used to pay Government revenue of about Rs. 3000 and an income-tax of Rs. 500. But the plaintiff was given to drinking and gambling and the defendant was induced by certain persons to go to the place of the plaintiff and there he got the habit of drinking and gambling and the plaintiff and his friends might have obtained some writing on some paper from the defendant while he was under the influence of drink. It was said that the plaintiff had filed an application under the Encumbered Estates Act but had not shown therein the debt in question. The trial Court struck four issues in the suit:

1. Did the defendant execute the promissory note in suit? 2. Was the consideration of the said promissory note paid to the defendant or was his signature obtained "while he was intoxicated? 3. Was the defendant minor on the date of the promissory note in dispute? 4. To what relief is the plaintiff entitled?

2. On the question of minority the trial Court came to the conclusion that the defendant had failed to prove his minority on the date of the promissory note in suit. It also held that the promissory note was duly executed but on the other issues the trial Court came to a conclusion adverse to the plaintiff. The learned Additional Munsif thought that the evidence led by the plaintiff on the question of consideration was very doubtful. The plaintiff himself was indebted to the extent of Rs. 80,000 and the debt had come down to him from the time of his grandfather and he himself had added to it. The plaintiff made no enquiry about the fact whether the defendant was joint or separate with his father and it was not possible that a man who was himself indebted to the extent of Rs. 80,000 would advance Rs. 1800 to a young man without getting some assurance about the safety of his money. The learned Additional Munsif laid the burden of proof, under the circumstances of the case, on the plaintiff and held that although the plaintiff may have made some small advances to the defendant or the sum might be due on account of losses of gambling or price of wines but it was not possible that hard cash to the extent of Rs. 1800 could have been advanced under the circumstances of the case.

3. The story of the defendant that he might have executed the promissory note when he was under intoxication was not believed by the learned Additional Munsif who thought that the promissory

note was executed by the defendant in his full senses, but at the same time the plaintiff had failed to discharge the burden that Rs. 1800 actually passed from the plaintiff to the defendant. In this view of the matter, the learned Additional Munsif dismissed the plaintiff's suit, but as the defendant had been guilty of raising many false pleas the defendant was deprived of his costs.

4. There was an appeal before the lower appellate Court by the plaintiff and cross-objections by the defendant. The appeal was in respect to the dismissal of the suit and the cross-objections were in respect to the order of costs. The learned civil Judge held the view that inconsistent defences had been raised by the defendant and the plaintiff, although he was himself indebted to the sum of Rs. 80,000 and although he had made no enquiries and taken no security from the defendant, was entitled to a decree inasmuch as the burden of proof lay upon the defendant to show that the written receipt could not be true for certain definite reasons and not out of mere presumptions.

5. The lower appellate Court took notice of the fact that the plaintiff was indebted and that he had not shown this sum in his application under the Encumbered Estates Act, but at the same time the plaintiff was a fairly big man inasmuch as he paid about Rs. 1200 as land revenue and it was not at all unlikely that he should have some cash in his house. As regards the application under the Encumbered Estates Act the learned Judge felt that this was a matter which concerned his creditors rather than his debtors and the plaintiff was not bound under the Encumbered Estates Act to show all his assets in order to legalise the debt due to him.

6. In the result, the appeal was allowed and the cross objections were dismissed and the plaintiff's suit was decreed with full costs in the trial Court as well as in the Court of first appeal. In second appeal, on behalf of the defendant, it is argued that the Court below has taken an exaggerated view of the presumption laid down in Section 118, Negotiable Instruments Act, and has not approached the case in its true perspective. The admitted facts are that the plaintiff, although he is a fairly big man, is heavily indebted and he has not been able to liquidate his debts although they have come to him from the time of his grand-father; what to speak o! liquidating the debts, the plaintiff has added to his debts. The defendant was a young man who had just emerged out of his minority, who was joint with his father and who had really no necessity to borrow any money. From what the plaintiff and the defendant said in the trial Court, it is clear that no amount could have been advanced by the plaintiff to the defendant for the purpose of starting any business as is set down in the promissory note and the receipt. It is also clear that the plaintiff was given to taking wine and to indulging in nautches and jalsas and gambling. The defendant a young man such as has been described above was introduced to the plaintiff and joined the plaintiff, in gambling, nautch and drinking and although the defendant has failed to prove that the promissory note was executed at a time when he was not in possession of his senses being under the influence of drink, we have grave doubts about the actual passing of consideration in the shape of hard cash. The question of burden of proof in cases of this kind always presents some difficulty. But we think that the correct principles have been laid down by Farran C. J. in Moti Gulab Chand v. Mahomed Mehdi Tharia Topan ('96) 20 Bom. 367 and these principles with certain variations can be made applicable to the facts of the present case. The learned Chief Justice in that case observed as follows :

... we desire to state how the onus of proof in a case like this, irrespective of the order in which the evidence is given, substantially lies. The defendant, when he executed the notes sued upon, was a young man who had only attained his majority nine months previously. He appears to have been of an extravagant and reckless character. He was entitled to a large amount of property under the will of his father, the late Sir Tharia Topan of Zanzibar, but had not come into possession of it, as on account of family disputes it was, in common with the rest of the family estate, in the hands of a receiver appointed by this Court. The plaintiffs are a Marvadi firm who are by profession money-lenders.

These facts being admitted (apart from the technical rule laid down in Section 118, Negotiable Instruments Act) the ordinary presumption that a negotiable instrument has been executed for value is so much weakened, that the allegation of the young man that he has not received full consideration is sufficient to shift the burden of proof and to throw upon the money-lender the obligation of satisfying the Court that he has paid the consideration in full. This is, we think, the practical effect of illustration (c) to Section 114, Evidence Act, and its explanation. Where the plaintiff in answer to such a defence affirms that he has paid the consideration in full, and is corroborated by his books and witnesses (if any), the onus again shifts. The strength of the case to be rebutted will depend upon the credit to be given to the testimony adduced by the plaintiff as tested by cross-examination, the weight to be attached to his books arising from the manner in which they are kept, and the presence or absence of suspicious circumstances in connexion with them, and upon its inherent probability. When these circumstances concur in the plaintiff's favour, a heavy onus is thrown upon the defendant which can only be met by a perfectly truthful and harmonious statement which the Court feels able to rely upon with confidence. In the absence of this, the ordinary presumption laid down in Section 118, Negotiable Instruments Act, must prevail.

7. The facts of the present case are very similar to the facts of the Bombay, case. The defendant, as we said before, was a young man who had just attained his majority. He was joint with his father (who died shortly after the execution of the promissory note in question, and who for aught we know was well advanced in years and likely to die soon with the result that a large estate was likely to come into possession of the defendant). The defendant stood in no need of any money because, as we have shown above, the allegation of the plaintiff that the money was required for carrying on some business is patently wrong, and no security whatsoever except the written note of hand was taken from the defendant; nor were any inquiries made by the plaintiff from the defendant's father. It is true that the principles which were laid down by Farran C. J. were not rules of law and were stated only as guides and although there is one striking difference between the Bombay case and the case before us in the fact that in the Bombay case the plaintiff-creditor was a professional money-lender and in the case before us the plaintiff is not a professional money-lender but a landlord paying Government revenue, but the plaintiff in the present case fills another capacity. He indulges in certain vices or at any event in habits which are regarded as vices, namely drinking and nautch parties. He is a fairly senior man and he got the defendant --a very much younger and inexperienced man -- in his control and we have not the slightest doubt that the plaintiff initiated the defendant into the mysteries of wine and women.

8. The principles enunciated in the Bombay case therefore apply with equal and perhaps with greater force in the present case. The presumption laid down by Section 118, Negotiable Instruments Act, undoubtedly applies in favour of the plaintiff but that presumption is considerably weakened by the circumstances which we have enumerated above and when there is a clear denial on the part of the defendant, then the circumstances of which notice ought always be taken shift the burden on to the plaintiff and although the plaintiff in the present case as he is not a money-lender cannot produce his books because he keeps none in support of his case, the burden nonetheless lies on him and the burden has not been discharged by him and we are satisfied after an examination of the record that the view taken by the learned Additional Munsif was correct, namely, that the plaintiff might have made small advances to the defendant or the sum might be due on account of losses of gambling or price of wines, but hard cash to the extent of Rs. 1800 did not pass from the plaintiff to the defendant.

9. We think the circumstances of the case duly demand a consideration of the evidence on the record irrespective of the order in which the evidence was given and a consideration of the evidence leads us to the conclusion that the greater portion of the consideration of Rs. 1800 consisted in the plaintiff supplying to the defendant with wine and with fun in the shape of nautches and jalsas. The defendant might have been well advised in admitting honestly and straightforwardly that some sums of money were actually spent by the plaintiff for the benefit of the defendant and to that extent a Court of law might well have passed a decree in favour of the plaintiff. We have discussed this aspect of the matter with learned Counsel for the parties and from what they have said and from what we ourselves have gathered, we have come to the conclusion that the equities in the case will be well met by holding that Rs. 900 out of the consideration of the promissory note in question actually did pass. We therefore allow this appeal to this extent that we pass a decree in favour of the plaintiff for a sum of Rs. 900 and interest thereon will run from the date of the promissory note, namely, the 15th June 1935 to the date of the suit at the rate of 6 per cent, per annum simple and thereafter till the date of realization at the rate of 3 per cent, per annum. The parties will bear their own costs of this appeal, and in the Courts below the defendant will bear his own costs and the plaintiff will get one-third of his costs.