Gopal Das vs Ghisalal on 11 December, 1956
Equivalent citations: AIR 1957 Raj 264
Author: Bapna
Bench: Bapna

JUDGMENT Bapna, J.

1. This is a second appeal by the defendant in a suit for recovery of money.

2. Respondent Ghisalal instituted the present suit on 25th August 1951, against the appellant Ma-hant Gopal Das on the allegation that the said Ma-hant Gopal Das borrowed Rs. 1,475 from the plaintiff on 15th September 1948, for the purpose of providing Bhog Kharach lor the temple of Shri Janki Ballabhji, of which the defendant was the Mahant, and promised to repay the same on the 14th of January 1949, but as he failed to pay the same, the suit had to be instituted for recovery of the principal amount of Rs. 1,475 and interest Rs. 258-2-0, total being Rs. 1,733-2-0.

3. The defendant denied "the execution of the ruqqa or the taking of the loan, and pleaded that one Kan Das was the Adhikari of the temple, who had been turned out and the ruqqa had been fabricated with his assistance. The defendant specifically raised the issue how the defendant was personally sought to be made liabie when the purpose of the loan was stated to be the provision of Bhog Rag of the temple. The plaintiff made it clear through his Advocate on more than one occasion that the suit was against the defendant in his personal capacity, and no claim was sought to be enforced against the property of the temple.

4. The trial Court, after evidence, dismissed the suit, but on appeal the learned District Judge of Sikar by judgment of 8th August 1952, held that the execution of the document Ex. P-2, the ruqqa, dated 15-9-48 by the defendant, had been duly proved. He also held that the consideration of the ruqqa had been paid to the defendant. He accordingly gave a decree for the amount sued against the defendant personally, and it was mentioned that it would not take effect upon the property of the temple. The defendant has come in second appeal.

5. It was contended by learned counsel for the appellant that the lower Court had committed an error of law in holding that the document had been proved to have been executed by the defendant when there were no signatures of the defendant affixed on the document. The document Ex. P-2, leaving out surplusage, may be translated as under:--

"Benedictions by Mahant Maharaj Gopal Das to Ghasilal. Whereas Rs. 1,475 have been taken on loan for the purpose of meeting Bhog expenses (of the temple of Shri Janki Ballabhji) at 6 p.c. per annum, and this money will be repaid on Pos Sudi 15, Samwat 2005. Dated Bhadwa Sudi 12, Samwat 2005 (15-9-48).

Sd. Kalyan Baksh (Scribe) as per orders of Mahant Maharaj.

Sd. Pokar Das (witness) as per orders of Mahant Maharaj."

6. At the top of this document is the word 'sahi', and there is a seal 'May Shri Janki Ballabhji protect, Sevag Mahant Gopal Das.'

7. P.W. 4 Kalyan Baksh, scribe, said that he was an employee or the defendant during the year Samwat 2004-2005, and executed Ex. P-2 the ruqqa on instructions of the defendant, and the defendant himself scribed the word 'Sahi' on the document. In cross-examination he said that he used to write the account books of the temple, and this money of the ruqqa may have been entered in the account books of the temple. Kan Das, P.W. 5, said that he was present at the time when the plaintiff gave Rs. 1,475 to the defendant, and on instructions of the defendant Kalyan Baksh wrote out Ex. P-2. The defendant by his own pen wrote 'Sahi' on top of the document, and affixed his seal on it.

Pokar Das, P.W. 2, said that he was an employee of the defendant. He attested Ex. P-2, but did so on instructions of Kan Das. The document did not bear 'Sahi' or the seal at the time. He did not know the plaintiff, as he had not seen him before. Fateh Mohammad, P.W. 3, stated that he was present at the time of the transaction between the parties. The plaintiff gave Rs. 1,475 to the defendant, and the defendant himself affixed his sahi and seal on the document Ex. P-2, which was written by Kalyan Baksh on instructions of the defendant. On behalf of the defendant two witnesses, Ram Dev and Ramnath were produced to the effect that the defendant Mahant was literate. There were no signatures of the defendant on the document Ex. P-2, and that Kan Das was turned out because he had mismanaged certain affairs of the temple.

The defendant did not enter witness-box. The learned Judge on this evidence held that the evidence of Pokar Das was not reliable, when he said that he had attested the document not at the request of the defendant as written on the ruqqa, but at the request of the plaintiff. On the other evidence the learned Judge held that it was proved that Kalyan Baksh scribed the document on the request of the defendant, and the word 'Sahi' on the top of the document was written by the pen o£ the defendant himself, and that the seal had also been affixed by him.

8. Learned counsel for the appellant's contention is that a proper execution of a document would require signatures of the defendant, but in this case no signatures were affixed, and, therefore, the document cannot be said to have been properly executed. Learned counsel relied on the definition of 'sign' appearing in the General Clauses Act, which is as follows:--

" 'Sign', with its grammatical variations and cognate expressions, shall with reference to a person who is unable to write his name, include 'mark' with its grammatical variations and cognate expressions."

It was urged that a mark can only be made by an illiterate man in order that it may be taken to be his signature. But if the alleged executant was literate, any mark, including the one in dispute, viz., 'Sahi' should not be taken to amount to signatures.

9. The definition in the General Clauses Act 1st neither exhaustive nor complete. The meaning of the word 'signature' in the Shorter Oxford English Dictionary is "The name (of special mark) of a person written with his or her own hand as an authentication of some document or writing."

In the present case, the document bears the seal of the defendant and according to the evidence it was affixed by the defendant himself. Instead of scribing his own name, the defendant thought fit to scribe 'Sahi'. It is not uncommon in this part of the country for people of high rank to refuse to scribe their own names, but instead to write the word 'Sahi'. The real test is what was intended by scribing a particular word on a document.

In the present case the evidence is that the document was written on instructions of the defendant, and in token of his own execution he wrote the word 'Sahi' and affixed his seal. In the circumstances the scribing of the word 'Sahi' at the top of the document coupled with the affixation of the seal amounts to an authentication of the document as one executed by the defendant himself. The contention raised, therefore, had no force.

10. It was next contended that the passing of consideration should not be held to have been proved, as the scribe Kalyan Baksh and the attesting witness Pokar Das do not support the passing of consideration. It was urged that the finding was against the evidence on record. There is no doubt that Pokar Das, as stated above, has gone back on his attestation, in which he wrote having attested the document on orders of the Mahant.

He was not questioned as to whether any consideration did pass in his presence, but the plaintiff could not expect him to support him when he had the temerity to say against his written words. Kalyan Baksh no doubt said that the money was not paid in his presence, but this statement cannot wipe out the admission of the defendant himself of having received the amount according to the recital in the document, which this witness scribed on instructions of the defendant himself, and which, as aforesaid, has been proved to have been executed by the defendant. The statement in cross-examination that the entry of this money may be in the account book of the temple kept by the defendant further takes away the sting from the statement of the witness that money was not given in his presence.

There is, however, other evidence of Bijai Lal, Fateh Mohammad and Kandas that money was actually paid to the defendant. The lower Court was, therefore, not wrong in not placing reliance on the statements of Pokar Das and Kalyan Baksh in the matter of the proof of the passing of consideration. The omission of the defendant to come in the witness-box raises a further presumption against the defendant, and the lower Court was, therefore, right in holding that the passing of consideration of the document must also be held to have been proved.

11. Learned counsel next contended that the tenor of the document shows that the money was borrowed for the purpose of the temple by 'the defendant in his capacity as Mahant, and not in his personal capacity, and that a decree against him personally should not have been passed.

12. Learned counsel for the respondent, contended that the suit had been framed in the same manner as it would have been framed if the relief was to be claimed against the defendant in his capacity as Mahant of the temple, for he has been described as a defendant in the following words:

"Mahant Gopal Das Chela Mahant Gordhan Das temple of Shri Janki Ballabhaji, Sikar".

It was, therefore, contended On behalf of the respondent that if the court comes to the conclusion that the money was borrowed for the purpose of meeting the expenses of "Bhog", a decree could also be passed against the defendant in his capacity as Mahant of the temple. This argument is devoid of any force, for as early as 12th November, 1951, on a question being raised, counsel for the respondent made a statement that the defendant was being sued only in his personal capacity.

This statement was repeated by counsel on the 19th December, 1951, when the defendant further wanted to raise the issue and it was stated that the loan was given to the defendant in his personal capacity. It is, therefore, too late for the respondent to urge that the suit was framed as if the defendant was sued in his capacity as Mahant of the temple and not personally.

13. The point that now emerges is that the suit was framed against the defendant in his personal capacity, while the allegation in the plaint as also in the document which was the basis of the suit was that the loan was taken for purposes of the temple of which the defendant was the Mahant at the time. Several authorities have been cited, and it is necessary to go into them to find" if some principle can be evolved which may be applicable to the facts in "dispute in this case.

14. Counsel for the appellant cited Babajirao Gambhirsingh v. Laxmandas Guru Raghunathdas ILR 28 Bom 215 (A), and the relevant observations axe to be found at page 223.

"A math, like an idol, is in Hindu Law a judicial person capable of acquiring, holding and vindicating legal rights, though of necessity it can only act in relation to these rights through the medium of some human agency. When the property is vested in the math, then litigation in respect of it has ordinarily to be conducted by, and in the name of, the manager, not because the legal property is in the manager, but because it is the established practice that the suit would be brought in that form. But a person in whose name a suit is thus brought has in relation to that suit a distinct capacity: he is therein a stranger to himself in his personal and' private capacity in a Court of Law".

15. It was contended that the Mahant could not be personally liable on the allegations that have been put forward by the plaintiff in this case.

16. Counsel for the respondent relied on Swami-natha Aiyar v. Srinivasa Aiyar 38 Ind Cas 172: (AIR 1918 Mad 533) (B). In that case the defendant at the time when the promissory note was executed was a trustee of the temple concerned in the suit. The plaintiff had obtained a personal decree, but the plaintiff claimed that he was also entitled to a decree as against the temple property, that is to say, to a direction that the amount due to him may be obtained out of the trust property. It was decided that the plaintiff was not entitled to any but a personal decree against the defendant as he did not obtain any charge upon the temple property. It was observed that "The fact that the money was utilised and was intended to be utilised for the benefit of the temple cannot entitle the plaintiff to have a decree charging the amount due under the promissory note against the temple property".

Reliance was placed on certain English cases, viz., Strickland v. Symons (1884) 26 Ch D 245 (C) and In re Johnson; Shearman v. Robinson (1880) 15 Ch D 548 (D). This case was adversely commented upon by Sadasiva Ayyar J. in Lakhsmindrathirtha Swamiar v. Raghavendra Rao ILR

43 Mad 795: (AIR 1920 Mad 678) (E), which was a case Of a Sanyasi being a head of a math, and it was observed that the case in Swaminatha Aiyar v. Snnivasa Aiyar (B) did not apply when the question of the liability of the math or other institution for the debt incurred by a Sanyasi as head of the institution came into question; Spencer J. however, rested his decision on a broad principle that cases must be distinguished where the head of a mutt borrowed money lor purposes binding on the mutt, without showing any indication that he intended to make himself personally liable, and where trustees borrowed money for purposes of their trusts upon promissory notes. It was observed with reference to Swaminatha Aiyar v. Srinivasa Aiyar (B) as also certain other cases that in those cases "there were promissory notes executed by the trustees or executors concerned, and in the case of such promissory notes there is always a presumption that the promisor intended to make himself personally liable".

Reference was made to certain other classes of cases, and it was observed that--

"All these are cases in which the head of a mutt, either directly or by implication, pledged the credit of the mutt in incurring debts for purposes necessary for the maintenance of the institution. In such cases there is no presumption that the head of the mutt (mahant, swamiyar or whatever other title he may possess) intended to make himself personally liable".

17. The important thing, therefore, to be seen is whether at the time when the loan was granted the intention of the parties was to give loan personally to the Mahant or was it intended that he should receive the loan only as a trustee or manager of the Deity. While the plaintiff's counsel on more than one occasion stated that the loan was ad-vanced to the defendant personally, the statement of the plaintiff himself in the witness box is that the loan was given to the defendant in his capacity as Mahant of the temple. The document itself, as stated earlier, is not signed by the defendant personally, but he had affixed his "Sahi" and seal as Mahant of the temple. The loan was thus advanced to the defendant, not in his personal capacity, but as Mahant of the temple.

18. Learned counsel for the respondent contended that even if the loan was advanced to the defendant in his capacity as Mahant, he would still be personally liable, unless the defendant can show that the loan was required for the purposes of the temple, and was so utilised. Learned counsel relied on two cases of the Privy Council viz. Niladri Sahu v. Mahant Chaturbhuj Das 53 Ind App 253: (AIR 1926 PC 112) (F). Vibhudapriya Tirtha Swamiar v. Lakshmindra Tirtha Swamiar 54 Ind App 228: (AIR 1927 PC 131) (G), where in spite of the fact that the loan was taken for the purposes of the temple, a decree was passed personally. The second case only follows the first, and in the first case the decree is not personal in the sense that the person & property of the defendant were made liable, but it was only in this sense that a direction was given to the defendant to pay up the loan within a particular time, and on failure to do so, a receiver was to be appointed in respect of the Deottar properties.

19. It may be that if the suit had been properly framed, the question whether the loan was really required for the temple would have been adjudicated upon, and in case it was found that the loan was not required for the purpose of the temple, the defendant could be held personally liable on considerations of his having made a false representation or of not applying that loan for the purpose for which it was intended. That liability would o£ course have arisen as in the case of any other person who obtains property on false representation, but the cause of action for that

liability would have been different. The plaintiff objected to the issue as to the liability of the temple property by a plea that the defendant had personally borrowed the loan. This, however, was negatived by the statement of the plaintiff himself as also by the contents of the document under which the loan was granted. In the circumstances, the plaintiff is not entitled to a personal decree against the defendant appellant. As the plaintiff omitted to sue the defendant in his capacity as Manager of the temple, the question of the,, liability of the temple property was not gone into, and the stage did not come for going into the alternative case against the defendant personally.

20. Learned counsel for the respondent at this stage expressed his desire to amend the plaint in order that the liability of the defendant as Manager of the temple may also be tried. It is now too late to allow amendment of the plaint. The prayer is rejected.

21. The appeal is, therefore, allowed, and the judgment and decree of the lower court are set aside. The respondent will pay costs to the appellant.

22. Learned counsel for the respondent wants leave to appeal to a Division Bench. Leave is granted.