

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Thanmull and Another v. Sirdar Ali Khan, from the Court of the Judicial Commissioner, Hyderabad Assigned Districts; delivered the 18th April 1902.*

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Present at the Hearing :

LORD MACNAGHTEN.

LORD DAVEY.

LORD ROBERTSON.

LORD LINDLEY.

[*Delivered by Lord Macnaghten.*]

On the 2nd of September 1897 the Respondent who was Plaintiff in the suit bought from the Appellants Thanmull and his son Sooganmull trading as "Sirdarmull Sooganmull" certain articles of jewelry for Rs. 33,400. A promissory note was given for the price which was to be paid four months after date. It was one of the terms of sale that the purchaser might return the jewelry within a certain fixed time provided the articles were not damaged and thereupon the price was to be repaid less a deduction of 10 per cent. The promissory note was duly met on the 3rd of January 1898 and a receipt for the money was given. So far the parties are agreed.

On the 6th of May 1898 the Plaintiff proposed to return the jewelry. The offer was refused but no definite reason was then given for the refusal. Thereupon the Respondent brought this suit against the Appellants claiming the right to return the jewelry and relying on a document annexed to the plaint and marked Exhibit I. This document was referred to in the plaint as "the original agreement." It bore

a date corresponding with 2nd September 1897 and it purported to contain a provision to the effect that the jewelry might be returned within a year. There was also annexed to the plaint a document marked Exhibit II, which purported to be the receipt given by the Appellants for the money paid on the 3rd of January 1898. Exhibit I. was in Marathi. Exhibit II. was in English. It referred to Exhibit I. as containing the terms of sale and described that document as the agreement given "in Marathi" on the 2nd of September 1897.

The written statement on behalf of the Defendants admitted that the jewelry was sold under agreement to take it back but alleged that the option was to last for eight months only. The Defendants averred that Exhibit I. and Exhibit II. were both forgeries.

The issues as settled were (1) are Exhibits I. and II. forgeries? (2) If Exhibit I. is a forgery were the jewels to be returned within 12 months of the bargain? An issue was afterwards added as to whether the jewelry in dispute was damaged while in the Plaintiff's possession. But that issue may be disregarded. No sufficient evidence of damage was given at the trial and the point was not pressed on the Appeal.

On the first issue the Subordinate Judge held that the burden of proof was on the Defendants. The Defendants called four witnesses to prove that the signature "Sirdarmull Sooganmull" attached to Exhibit I. and to Exhibit II. was not in the handwriting of the Defendants or either of them. The evidence of these witnesses is not altogether satisfactory. It was no part of the Plaintiff's case that Exhibit I. or the signature at the foot of it was in the handwriting of the Defendants or either of them. The statement on behalf of the Plaintiff was that Exhibit I. was not written or signed in his presence that it was written in Marathi at his request because his accounts were

kept in Marathi and that it was brought to him as a memorandum of the agreed terms of sale. In that view it was wholly immaterial whether it was an original or only a copy and whether it was signed by one of the Defendants or not. The evidence however was principally directed to Exhibit I. with the object of impeaching the genuineness of the signature to it. It seems to be proved that the body of the document and the signatures were in one and the same handwriting and that the signature on Exhibit II. was written by a different hand. The signature on the latter document was blurred by the stamp and partly illegible and two at least of the Defendant's witnesses took objection to Exhibit II. principally on the ground that according to the usual practice the signature ought to have been followed by the signature of the individual member of the firm who signed the firm name. The Plaintiff's case as regards Exhibit II. was that the body of the document was written by his own clerk Jagannath and signed in the name of the firm by Sooganmull.

Both the Defendants were called. They each denied that the signatures to Exhibit I. and Exhibit II. were in the handwriting of either of them.

The Subordinate Judge held that both Exhibit I. and Exhibit II. were not genuine. He seems to have been much impressed by the fact that Exhibit I. was in Marathi a language which he says was "quite foreign to the Defendants and not in ordinary use locally in such matters." He therefore regarded the document "with the greatest suspicion" and relying on the evidence of witnesses as to the handwriting of the two Exhibits he came to the conclusion that both documents were forgeries and dismissed the suit.

On appeal the officiating Judicial Commissioner reversed the Judgment of the Lower Court and held the Plaintiff entitled to relief.

Their Lordships are not able to follow the Judicial Commissioner in all the grounds upon which he relied. But they agree with him in the main ground of his judgment. The principal witness on behalf of the Plaintiff was a Mr. Shamsuddin an uncle of the Plaintiff and formerly Deputy Commissioner of Berar. The Subordinate Judge himself says "I am inclined " to attach very great weight to the evidence of " Mr. Shamsuddin Ali Khan who once held a " high position under the Government and I " don't think he would swear to anything that " he did not believe to be true." Now Mr. Shamsuddin deposed that he saw both the documents in dispute four months before the present question arose. In December 1897 he was he says in Bombay with his nephew and remonstrated with him on the purchase of this jewelry which had been valued in Bombay at not much more than one-third of the price paid for it to the Defendants. The Plaintiff then told him that he had an agreement from the Defendants that he might return the jewelry within twelve months. Shortly afterwards Mr. Shamsuddin went back to Secunderabad where he and the Plaintiff resided. One day towards the end of December he was at breakfast with his nephew when the Defendants came in with another box of jewelry. The Plaintiff went and brought the agreement. Mr. Shamsuddin read it. It was in Marathi. He noticed that it bore no stamp and said it was worthless. Thammull said that he did not care whether it had a stamp or not his word was his written bond. Mr. Shamsuddin cannot say that he read the document aloud but he has no doubt that it was in Marathi. "I am quite sure," he said "Exhibit I. is the document I read at Plaintiff's " house." He also deposes to the fact that he saw the receipt Exhibit II. on the evening of the day on which it was signed. The bank it seems

would not cash the cheque for which a receipt had been given without Mr. Shamshuddin's signature and so he went to the bank and signed the cheque and very probably he may have asked to see the receipt on returning to the Plaintiff's house. Jagannath corroborates Mr. Shamshuddin's evidence as regards Exhibit No. I. but he seems to think that he could not have seen Exhibit No. II. as it was he says always in his possession.

Now if Mr. Shamshuddin is to be believed and there seems to be no reason for doubting either his honesty or his memory and if he really saw Exhibit I. in December 1897 it seems to follow that Exhibit I. must be a genuine document. It is impossible to suppose that at or before that time when there were still four months to run even according to the Defendants' story the Plaintiff should have taken the trouble of forging a document merely for the purpose of extending the time of the option.

Their Lordships think that the Judicial Commissioner was right in accepting Mr. Shamshuddin's evidence. The Subordinate Judge dealt with it in a very unsatisfactory manner; he thought Mr. Shamshuddin's story "so conflicting with the probabilities of the case that there is no help conjecturing that he is suffering from a deceptive memory." Then he says it is clear that Mr. Shamshuddin's recollection is not very vivid because he swears that he saw Exhibit No. II., though Jagannath says that he could not have seen it; he adds that after all "the mere fact of his having seen and read the Marathi agreement on a particular date is no proof of its genuineness. It would merely show that the false document was in existence on that date."

Their Lordships see no reason to differ from the conclusion at which the Judicial Commis-

sioner arrived. They will therefore humbly advise His Majesty that this Appeal ought to be dismissed.

The Appellants will pay the costs of the Appeal.

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