

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Musammatt Durga Kunwar v. Musammatt Mathura Kunwar and others, from the High Court of Judicature for the North-Western Provinces, Allahabad; delivered the 4th May 1911.

PRESENT AT THE HEARING:

LORD MACNAGHTEN.

LORD ROBSON.

SIR ARTHUR WILSON.

MR. AMEER ALI.

[DELIVERED BY LORD ROBSON.]

The Appellant was Plaintiff in this action and obtained a decree in her favour from the Additional Subordinate Judge of Moradabad in January 1905, which has been reversed by a decree of the High Court at Allahabad.

The Appellant's action was to recover certain jewellery alleged by her to have been deposited with the Respondents (who were husband and wife) for safe custody, or Rs. 29,000 their value. She produced receipts for this large quantity of jewels, purporting to be signed on behalf of the Respondents by their son Sheo Narain Singh, which the Respondents allege to be forgeries.

The Respondents denied this deposit and said that the only jewels they had received from the Appellant had been deposited with them by way of security for two loans they had made to her of Rs. 2,500 and Rs. 1,000 respectively. In support of this story they produced Promissory Notes for

those amounts purporting to be signed by the Appellant which the Appellant in her turn alleges to be forgeries.

The dispute is, therefore, one entirely of fact, and under such circumstances great weight naturally attaches to the finding of the Trial Judge. The High Court, however, on appeal, directed that the evidence of a witness not called before the Trial Judge should be taken, and on that evidence, together with the general facts of the case, they came to a conclusion opposite to that reached by the Trial Judge.

The Appellant, Musummat Durga Kunwar, was the mistress of one Chaudri Dhyan Singh, who died in 1898. During his life she lived with him in a separate portion of his family dwelling house, and after his death she continued there with his widow Jamna Kunwar and his son-in-law Dharam Singh. For some time they kept on good terms, but disputes arose as to property and the Appellant became solicitous about the security of her jewels. According to her story, she then decided to send the bulk of them, amounting to more than Rs. 30,000 in value, for safe custody to the Respondents, who were relatives of Chaudri Dhyan Singh, but on bad terms with his relatives. This, she says, she did by the hand of her servant Himia (who was a niece of the female Respondent Mathura) at the end of January 1903. Afterwards, on some date in February of the same year, she succeeded with much difficulty in getting away from the house where she had been living with the late Dhyan Singh's family, and went to live at a house of her own. Acting under the advice and with the assistance of the Respondent Amir Singh she, on the 9th June 1903, instituted proceedings against Musummat Jamna Kunwar and Dhuram Singh in respect of a zemindari called Phulpar which had been bought with her money. Her

pleader in this litigation was the Pundit Pirthi Nath whose testimony plays an important part in this case on her behalf. This gentleman is a lawyer in undoubtedly large practice and is described by the Additional Subordinate Judge as "a respectable and independent witness" and "a pleader of uncommon integrity and reputation for independent character." He testifies that before the Appellant had left Dhyani Singh's family, Amir Singh told him that her ornaments had already been sent to his (Amir Singh's) house. He adds that the first expenses of the litigation were defrayed by the sale of some of her jewels which were brought to Cawnpore by Amir Singh and another witness, Chaudri Chandrabans Singh, for sale. The correspondence between Pirthi Nath and the Appellant also shows that in January 1904 the Appellant was demanding a return of the jewels from Amir Singh and was being met, as she says, by "promises as usual." As a result of this Pirthi Nath says he saw Amir Singh, who told him that he would return the jewels after the Phulpar litigation was over, and begged him (Pirthi Nath) to remove the Appellant's suspicions as to his intentions in reference to her jewels. The Phulpar case was compromised on the 14th January 1904, but the jewels were not returned.

The Respondents say that in March 1903 and in December 1903 the Appellant had given to Amir Singh the two Promissory Notes for Rs. 2,500 and Rs. 1,000, mentioned above, which still remain unpaid. It is clear, however, that the Appellant received a large sum of money on the Phulpar compromise, and was certainly in a position then to redeem her jewellery if it had in fact been pledged to secure these notes. Instead of demanding that this should be done, Amir Singh himself gave her a Promissory Note

for Rs. 1,000 to secure money payable to her by Dharam Singh, and the demands by the Appellant for her jewellery during this period, which are evidenced by the correspondence, met with no written refusal or explanation on the part of the Respondents.

Evidence of similar admissions by both Respondents was given by one of their relatives, Chaudri Chandrabans Singh. He spoke also to conversations with Jot Singh, a son of Amir Singh, in which Jot Singh said the jewels would be returned, and on behalf of his parents asked Rs. 3,000 as a fee for keeping them. It also appears, both from some apparently genuine correspondence and from the evidence of Pundit Damodar Dat, that Jot Singh was actively concerned in the dispute as to the jewels, and made varying promises in reference to their return. It is unnecessary to deal here with this evidence in detail. It is enough to say that, if believed, it amply establishes the Appellant's case, and was certainly strong enough to make it incumbent on the Respondents to meet it by personal denials.

Notwithstanding this, neither Amir Singh nor his wife Mathura Singh (who was said to have received the jewels personally), nor Jot Singh ventured into the witness box at the trial.

Another important witness was Himia, who, according to the Appellant, had carried the jewels to the female Respondent. No doubt she ought, *primâ facie*, to have been called by the Appellant, but she was a relative of the Respondents; she had left the Appellant's service some time previously, and had been summoned by the Respondents, whose conduct suggested that they were going to make her their witness. It was not unnatural, therefore, that the Appellant should leave them to call her, but they did not

do so. Under these circumstances, their Lordships think that the Additional Subordinate Judge was well justified in giving credence to the story told by the Appellant and corroborated by witnesses of whose respectability and credit he had perhaps exceptional advantages for forming an opinion.

The Respondents appealed. In the meantime Himia had died, but they asked and obtained leave from the High Court to take the evidence of one Amir Husain. This witness was called before the Subordinate Judge of Moradabad, and deposed that he had himself written the disputed Promissory Notes and had seen the Appellant sign them. There are some contradictions and peculiarities about the evidence on behalf of the Respondents in regard to these Notes, which cast a good deal of doubt on its value, but, without placing too much reliance on such discrepancies, their Lordships are of opinion that the evidence as to the Notes does not suffice to displace the case of the Appellant in regard to the jewellery, especially in the absence of any denial by the Respondents and their son Jot Singh.

Their Lordships feel unable to concur in the view of the High Court that there was nothing established in the Plaintiff's case which called for a reply from the Defendants. Standing alone it was a strong case. All that the Respondents have put against it is a denial by their son Sheo Narain of his alleged signature to the receipts for the jewellery and their evidence on a collateral question, viz., the two Promissory Notes. On the question of the signature to the receipts the Additional Subordinate Judge had the means, which he appears to have used, of testing Sheo Narain's handwriting, and his opinion was adverse to Sheo Narain's evidence.

On the question of the Promissory Notes, the Respondents' case was supported by the

evidence of three witnesses. Two of them, Ganeshi Lal and Umed Singh, are men of low position. Ganeshi Lal's evidence is analysed by the Subordinate Judge and is shown to be of a character far from satisfactory. Umed Singh was a servant of Amir Singh, and Husain was, to say the least, a somewhat belated witness, considering that the genuineness of the Promissory Notes was in issue at the trial.

Under such circumstances it is impossible to overlook the significance attaching to the refusal of the Respondents and their son Jot Singh to enter the witness-box. It raises a presumption against them which Husain's evidence, and the rest of their case, certainly does not dispel and, on the whole, their Lordships think that the Judgment of the Trial Judge should be allowed to stand.

Their Lordships will therefore humbly advise His Majesty that this Appeal should be allowed, the Decree of the High Court set aside, and that of the Subordinate Court restored with costs in both Courts. The Respondents will pay the costs of the Appeal, but they will be entitled to a set-off in respect of the costs of the Appellant's Petition to admit further evidence which was dismissed on the 9th February last.

In the Privy Council.

MUSAMMAT DURGA KUNWAR

v.

MUSAMMAT MATHURA KUNWAR
AND OTHERS.

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