

Privy Council Appeal No. 57 of 1921.

Allahabad Appeal No. 17 of 1919.

Data Ram Jani and others - - - - - *Appellants*

v.

Musammat Basant Kunwar - - - - - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT ALLAHABAD.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 11TH JULY, 1922.

Present at the Hearing :

LORD DUNEDIN.

LORD PHILLIMORE.

SIR JOHN EDGE.

MR. AMEER ALI.

[*Delivered by* SIR JOHN EDGE.]

This is an appeal by the plaintiffs from a decree, dated the 3rd December, 1918, of the High Court at Allahabad, which reversed a decree, dated the 21st February, 1916, of the Additional Subordinate Judge of Benares and dismissed the suit. The plaintiffs are Data Ram Jani, Kirpa Ram Jani and Ganga Ram Jani, sons of Adit Ram Jani, deceased. Ganga Ram Jani was a minor when the suit was brought.

The suit was brought on the 27th March, 1915, in the Court of the Subordinate Judge of Benares to obtain a decree against the defendant for Rs. 29,818 principal and interest and future interest. It was alleged in the plaint that Adit Ram Jani, who is dead and was the father of the plaintiffs, and the plaintiff Data Ram Jani, in 1911 and 1912 lent to the defendant, partly in cash and partly in the value of ornaments, various sums of money on promissory notes given by her to them, and that on the 28th March, 1912, she, in consideration of the moneys then due by her to them and a sum of Rs. 1,000 then lent by them to her, gave to them her promissory note for Rs. 21,925 and

interest, and that the cause of action arose on the 28th March, 1912. The defence was an absolute denial of these allegations, and the defendant specifically denied that she ever received any money or ornaments from the plaintiffs or their father under promissory notes or in any other way; and said that she had never executed any promissory notes in their favour; and had never had any money dealings with them. Briefly stated, the defence was that the claim was a false and fraudulent claim and that the promissory note sued upon was a forgery. The issue was upon the plaintiffs.

Adit Ram Jani belonged to a Gujrati Hindu family of Nagar Brahmans, which carried on business as a firm at Benares. The plaintiff, Data Ram Jani and his father, on their own account, also carried on a business of money-lending and pawnbroking which was separate from the family business of the firm, drawing upon the firm for such moneys as they required; they finally separated from the firm and on a partition they were found to be indebted to the family business of the firm to the extent of Rs. 10,000 or Rs. 12,000. It has not been proved when the partition actually took place, but it appears that it must have been after the 28th March, 1912, if not shortly before that date. If the evidence of the plaintiff, Data Ram Jani, who was the leading witness for the plaintiffs, is to be believed in any respect, there is no entry in the books of the firm as to the alleged loans to the defendant and he and his father kept no books relating to their separate businesses.

The defendant is a Purdanashin lady of a family of Gujrati Sipahi Nagar Brahmans. Her paternal grandfather was Munshi Chunni Lal, who had two sons, Munshi Pannah Lal, who was the defendant's father and died when she was three years old, and Raja Munshi Madho Lal. Munshi Chunni Lal had been possessed of zamindari property. Zamindari property of Chunni Lal came to the defendant through her father. She had a zamindari and banking business, which was carried on on her behalf, under the supervision and management of her uncle Raja Munshi Madho Lal in a house in Muhalla Nandan Sahu in Benares, which was known as the kothi of Chunni Lal. The business of Raja Munshi Madho Lal was carried on in Muhalla Chan Khamba.

She had last lived in the kothi Chunni Lal about ten years before 1912. Her private residence was in Muhalla Sudeshari, another Muhalla of Benares. She was a wealthy woman, owning zamindari property and a good business. Owing to the adoption by her of a son, disputes arose between her and her uncle. She wished her zamindari property to be recorded in her name, he objected, and he ceased to pay over to her her income from her business. She was compelled to bring a suit against her uncle, and in that suit her uncle was ordered to pay to her during the pendency of the suit an allowance of Rs. 556 a month. Her uncle also brought a suit against her. She thus became involved in litigation in 1911 and 1912, and for the purposes of that litigation she was obliged to raise money, which she did, partly by the

sale of some of her ornaments, partly by pawning ornaments at the kothi of Manohar Das Raghu Nath Das, partly by pawning ornaments at the kothi of Selhatji, and partly by borrowing money on bonds from Mirza Mahmud and Mirza Masud. In September, 1912, she received from her uncle, under a compromise, Rs. 550,000, and promptly paid the debts due by her to her creditors who are in this paragraph mentioned. On the 4th April, 1914, the plaintiffs sent a written notice to the defendant informing her of a claim by them against her on the promissory note of the 28th March, 1912, and demanding payment within two weeks under a threat of legal proceedings. To that demand the defendant, on the 9th April, 1914, replied repudiating the claim and denying that she had made any such promissory note. The present suit was not brought till the 27th March, 1915, on the last day of limitation, for a suit on the promissory note. Unless it has been proved that the promissory note sued upon, that of the 28th March, 1912, was her promissory note, the suit must fail. The facts stated in this and the preceding paragraph should be borne in mind in considering the evidence in this suit.

The promissory note of the 28th March, 1912, upon which this suit has been brought, and which the defendant denies to be her promissory note, is, as translated, as follows :—

"I, Musammât Basant Kunwar, daughter of Munshi Panna Lal, deceased, caste Sepahinagar of Ahmadabad, resident of muhalla Sudeshari, in the city of Benares, declare as follows :—

"Previously I took on several occasions for my necessity ornaments and cash as a loan from Pandit Adit Ram Jani, son of Pandit Gulab Ram Jani, and Data Ram Jani, caste Brahman Nagar, residents of muhalla Ramghat in the city of Benares, on pronotes, the principal and interest whereon comes under account, up to this date, to Rs. 20,925, and having understood all the accounts I took back all the previous notes-of-hand from the said 'mahajans.' I now execute a single pronote for all the items due under different accounts. I have borrowed Rs. 1,000 more to-day in cash from the said 'mahajans.' Now, in all Rs. 21,925, half of which is Rs. 10,962-8-0, is due by me. I execute a note-of-hand for the said sum. I shall on demand pay, without any objection, the said sum with interest at the rate of Re. 1 per cent. per mensem to the bankers. Hence I have executed this note-of-hand, payable on demand, so that it may be of use and may serve as evidence when needed.

"Dated Chait Sudi 10th, Sambat 1969—by the pen of Kashi Nath, resident of Dudhphatak. Benares.

"(Sd.) BASANT KUNWAR, in autograph."

All of the promissory note, except the last line "(Sd.) Basant Kunwar, in autograph," is in the writing of one Kashi Nath, who had been employed at the kothi of Chunni Lal when that kothi was under the management of Raja Munshi Madho Lal, and is in Urdu, written in the Persian character. Kashi Nath was a witness for Raja Munshi Madho Lal in the dispute between him and the defendant.

There is no evidence to show by whom the letter D, which the translator has rendered as (Sd.), meaning signed, was written. That letter D was not written by Kashi Nath. It is a Nagri letter written in a form usually employed by mahajans, and is not in the form which the defendant, to judge by sixty-three admitted signatures of hers, used as a prefix to her signature. Unless the disputed signature to the promissory note is the defendant's, no signature of the defendant to which the letter D written as that letter has been written as a prefix to the disputed signature has been produced. The sixty-three signatures above mentioned were signatures of the defendant, of which the plaintiffs had somehow obtained possession for the purpose of having them photographed for comparison in this suit. The words which are translated as "Basant Kunwar, in autograph," are in the ordinary Nagri character in which the defendant wrote. When shown the signature to the promissory note of the 28th March, 1912, the defendant said that it was not her signature, but she said that "credit was due to the person who forged it." The defendant could not write or read documents written in the Persian character. With the exception of the promissory note in question, there is no other document on the record to which their Lordships' attention has been drawn, alleged to have been signed by her, the body of which is written in Urdu.

As their Lordships have said, the plaintiff Data Ram Jani was the leading witness for the plaintiffs. If his evidence cannot be believed there is, in their Lordships' opinion, an end of the case of the plaintiffs. Their Lordships will only set out so much of Data Ram Jani's evidence as appears to them to be really material. He said :—

"I know Musammat Basant Kunwar, defendant. I have known the defendant for the last fifteen years. Among the brotherhood females do not observe 'parda' before males. We and the defendant are Nagar Brahmans. We are Barnagra. The defendant is 'sepahi nagra.' There is no inter-marriage amongst us and the defendant, but we dine with one another. Nowadays I do not even dine with the defendant. Basant Kunwar brought a suit against Raja Munshi Madho Lal for twelve lacs and several thousands of rupees. Raja Madho Lal is the paternal uncle of Musammat Basant Kunwar. Musammat Basant Kunwar has for the last fifteen years been on visiting terms with me. I see her. The defendant used to come to my house when she brought the suit against Raja Madho Lal. During the pendency of the suit at first she came to induce my paternal uncle, Lakhmi Ram Jani and Salig Ram Jani to give evidence in the case. When they refused to give evidence the defendant began to ask for a loan from Lakhmi Ram Jani, who was the manager of the 'kothi.' He said that money could not be advanced from the 'kothi' as in those days there was a dispute among his brothers. Subsequently the defendant asked my father through the mother of Salig Ram Jani, who was my paternal aunt and mother's sister, to advance money. The mother of Salig Ram Jani died about a year ago. At first my father refused to lend money. When the defendant insisted, my father said that he would give as much money as possible. She wanted to take this loan to defray the expenses of the case that was being fought out between her and Raja Madho Lal. At first she had asked for Rs. 10,000. My father did not agree to give the

money, saying that he had no money in cash. He again said that he had Rs. 3,000 in cash with him and that he could advance the same. The defendant said that Rs. 3,000 were not in any way enough for her, and that somehow or other he should give her more money. My father said, that his money was employed in jewellery and ornaments, i.e., in pawns, inasmuch as the debtors did not redeem them and he was obliged to take them. My father used to carry on jewellery business. The defendant finally asked my father to give her the ornaments which were not redeemed and said that she would sell them or pawn them and thus would be able to pull on her work. My father told her that he would sell them only in need, otherwise he would sustain a loss and he would therefore not sell them. On Bhadon Badi 5th, Sambat 1968, my father gave Rs. 3,000 in cash and ornaments worth Rs. 4,000 to the defendant for the first time under a note-of-hand. The ornaments were gold bracelets, 'chhan,' 'bank' and one pair of sakri, 'chadanhar' and 'pachheli.' I remember only so many. They were 160 tolas in weight. Salig Ram was the scribe of this pronote. The pronote was written in Nagri. The defendant read it and signed it in my presence and took away the money and the ornaments. More money was advanced thereafter. On Katik Sudi 8th, Sambat 1968, Rs. 2,000 were advanced in cash. Salig Ram wrote the pronote at that time. The defendant read it and put down her signature thereon two days after that, i.e., on Katik Sudi 10th, Sambat 1968, ornaments studded with precious stones worth Rs. 4,000 were more given. Even on this occasion Salig Ram wrote the pronote in Hindi and the defendant read and signed it. Then on Aghan Sudi 2nd, and Aghan 8th, money was advanced. On one occasion Rs. 5,000 and on the other Rs. 1,800 were advanced. Pronotes were written by me on both occasions. The defendant read and signed them, out of Rs. 5,000 Rs. 2,000 were paid in cash, and Rs. 3,000 in jewellery, Rs. 1,800 were advanced in cash. Stamps were affixed to each of the five pronotes and the defendant put her signature on the stamps.

“ On Chait Sudi 10th, Sambat 1969, Rs. 1,000 were advanced to Basant Kunwar for the last time. On this occasion a note-of-hand was executed for the amount of principal and interest due under the former pronotes including this sum of Rs. 1,000, Pandit Chhummu Lal, pleader, said 'all these pronotes are in the handwriting of a boy of your house, get a pronote written by some man of (Basant Kunwar) and so the last pronote was obtained in lieu of all of them.' Kashi Nath wrote the last pronote. This Kashi Nath is in the service of the defendant. At that time, i.e., on the last occasion Kashi Nath and Musammat Basant Kunwar herself checked the account and executed the pronote. It was drafted by Kashi Nath. Kashi Nath read out the draft to the Musammat who approved it and asked him to make a fair copy of it. Kashi Nath then made a fair copy of it and read it out to the Musammat. She said that it was all right and she asked him to bring the pronote saying that she would sign it. I then took the pronote inside for signature. We were sitting in the courtyard. The defendant was sitting in a room with a 'chick' hanging at the door. When I took the pronote to the Musammat she signed it. Rs. 1,000 were paid to the defendant at that time, and five old pronotes were returned to her upon which there were endorsements to the effect that in lieu thereof a new pronote was executed. This (the promissory note in question) is the sixth and the last pronote. It bears the defendant's signature on the stamp. The defendant signed it in my presence. It was executed for Rs. 21,925. The whole of it is in the handwriting of Kashi Nath, who wrote it in my presence. I have had Kashi Nath summoned in this case, but I do not know whether he has come or not. After the

summons was served upon Kashi Nath I met him. He told me that as he had eaten his master's salt and his master would be put to loss, he would depose against me, and asked me not to get him examined . . .'

In cross-examination Data Ram Jani said :—

" In the partition we were found indebted to the firm to the extent of Rs. 10,000 or Rs. 12,000 . . . The money which was advanced to the defendant by my father belonged to his private business. He did not advance it out of the funds of the firm. I do not have any account books relating to business. A detail of the ornaments which were given was entered in the pronotes. I did not make a note of them anywhere. No entry relating to the debt advanced to the defendant was made in the account books on the day on which the debt was advanced. My father has private business to the extent of Rs. 25,000 or Rs. 30,000. He did not keep any account book relating to this business . . . Ornaments worth Rs. 4,000 were given to Basant Kunwar. The owners of the ornaments had one or one and a half years previously refused to obtain redemption thereof. But they were kept in the house and were used, hence they were not sold . . ."

That evidence of the plaintiff is, in their Lordships' opinion, so extraordinary as to require the very strongest corroboration. It is inconceivable to their Lordships that Data Ram Jani or his father, or either of them, could have carried on a money-lending and pawnbroking business without keeping any account books. If they kept account books they would have been produced if they contained any entries which would support the case of the plaintiffs in any way. Their Lordships will now consider whether there is any corroboration of the plaintiff's case.

According to Data Ram Jani the promissory note in question was written, except the signature to it, by Kashi Nath at the plaintiffs' house in Muhalla Ramghat in Benares at about 8 a.m., in the presence of himself, Salig Ram Jani, Salig Ram Jani's mother and Binaik Ram Jani. Salig Ram Jani's mother died before the suit. Salig Ram Jani is a first cousin of Data Ram Jani and was in partnership with him. Binaik Ram Jani is a brother-in-law of Salig Ram Jani and carries on business as a money-lender and pawnbroker.

Salig Ram Jani stated that he had written in Nagri three of the promissory notes which it is alleged that the defendant gave for the advances before the 28th March, 1912; and as to the gold ornaments of the value of Rs. 4,000, which it is alleged were given to her, he said that the ornaments were tested by a goldsmith named Bachchan, and Bachchan was present when the ornaments were weighed. Bachchan was not called as a witness. As to the promissory note in question Salig Ram Jani said :—

" The last note-of-hand was written by Kashi Nath. Kashi Nath was in the service of the Musammat. Kashi Nath wrote it at the request of the Musammat. At first Kashi Nath made the draft, then he read it out to the Musammat. When the Musammat approved the draft he made a fair copy of it and made it over to Data Ram. Data Ram affixed a stamp to it and took it inside the house. Data Ram read it out to the Musammat. The Musammat read it herself and signed it.

“ Q.—Does the Musammat know Urdu ?

“ A.—No.

“ Q.—What did Kashi Nath do after he made a fair copy of the draft ?

“ A.—He read it out and explained the account.

“ The last note-of-hand was for Rs. 21,925. The principal and interest due under the former notes-of-hand were added and Rs. 1,000 were paid in cash. All this amounted to Rs. 21,925 for which sum the last note-of-hand was executed. The Musammat took back the former notes-of-hand. The Musammat signed the last pronote in my presence.”

Salig Ram Jani stated that he did not remember who had written the letter D, but when the document was taken to the defendant the letter D was already written on it.

Binaik Ram Jani said that he went inside—that is, that he went into the private, the zenana, part of Data Ram Jani's house—when the draft of the promissory note in question was being made, and was inside when it was read out, and that he remained there until the defendant in his presence put her signature to the promissory note. He said that with the exception of the letter D the signature is in the handwriting of the defendant.

Kashi Nath, who was one of the witnesses for the plaintiffs, contradicted Data Ram Jani, Salig Ram Jani and Binaik Ram Jani, on the material point as to where he wrote the promissory note in question and as to the draft from which he wrote the note. According to Data Ram Jani, the defendant called at his house in Muhalla Ramghat on the morning of the 28th March, 1912, and according to him and to Salig Ram Jani and Binaik Ram Jani it was at that house that the promissory note was written and was signed by the defendant. According to Kashi Nath, Data Ram Jani came to the kothi of Chunni Lal in Muhalla Nandan Sahu, and it was there, and not at Data Ram Jani's house, that he wrote the promissory note in question, and that the defendant was not at the kothi when the promissory note was written. As their Lordships understand Kashi Nath's evidence, he did not make a draft of the promissory note, but he wrote it in Urdu from a draft in Hindi (Nagri) which Data Ram Jani had handed to him, telling him that the account between him and the defendant had been settled. Kashi Nath stated that at the time when he wrote the promissory note in question he did not know whether its contents were true or false, and that the letter D prefixed to the signature had not been written by him. Kashi Nath also stated that he had never written a promissory note except that in question. Kashi Nath's position in the case is difficult to understand, but their Lordships believe his evidence, that the promissory note was written out by him at the kothi of Chunni Lal in Muhalla Nandan Sahu, and that the defendant was not there. In order to introduce Salig Ram Jani and Binaik Ram Jani as witnesses to corroborate him, it was necessary for Data Ram Jani's case that the promissory note should have been written out by Kashi Nath at his, Data Ram Jani's, house in

Muhalla Ramghat, and that the defendant should have signed it at that house. It would have been difficult to account for the presence of Salig Ram Jani and Binaik Ram Jani at the kothi of Chunni Lal. Further, if Data Ram Jani had attempted to make a case that the promissory note was signed by the defendant at the kothi of Chunni Lal on the 28th March, 1912, he would have run the risk of people from the kothi of Chunni Lal being called to prove that the defendant was not at the kothi of Chunni Lal on that day.

The defendant in her evidence has sworn that she did not know and did not visit the plaintiffs' family and did not appear unveiled before them, and had never borrowed money from their father or from them, and that the promissory note was not signed by her. She was a woman of position in Benares, possessed of zamindari property and a good mercantile business, and it cannot be doubted that if she had required more money for the purposes of her litigation than that which she had obtained for that purpose from Manohar Das Raghu Nath Das, the kothi of Selhatji, Mirza Mahmud and Mirza Masud, she could easily have obtained it from them or from some other respectable money-lenders, and would not have gone to Data Ram Jani's father or to Data Ram Jani to borrow money from them. If it is the fact, as Data Ram Jani has sworn that it is, that he and his father kept no books of account, their business as money-lenders and pawnbrokers must have been of the very smallest description and carried on practically without capital. According to Data Ram Jani's evidence he and his father when they separated from the family firm to which they had belonged were indebted to that firm in Rs. 10,000 or Rs. 12,000.

In argument, but not by examination or cross-examination of witnesses, it has been attempted to show by an account which was kept by the defendant of the expenses of the litigation between her and her uncle Raja Munshi Madho Lal that ornaments which she had pawned were ornaments which she had obtained from the plaintiffs' father, but the ornaments which she had pawned came back into her possession in 1912, and she could have been called upon to produce them to enable the plaintiffs to identify them if their case were a true one. No such application for the production of ornaments was made, and the only explanation for the omission to make such an application was that it was a most unfortunate oversight on the part of those who were responsible for the conduct of the plaintiffs' case in the Court of the Subordinate Judge. The High Court did not consider that that explanation was at all convincing and their Lordships agree with the High Court in their comment. It has also been attempted in argument to prove from these accounts that the moneys alleged to have been lent to the defendant by the plaintiffs' father and Data Ram Jani were applied by the defendant in paying expenses of the litigation between her and her uncle. That argument has, in their Lordships' opinion, failed.

It is probable that some one, possibly Kashi Nath, had mentioned to Data Ram Jani, or to his father, that the defendant was borrowing money for the purposes of the litigation between her and her uncle, and that that information suggested the fraudulent scheme of preparing a forged promissory note. Of course, if the promissory note had been signed by the defendant, the plaintiffs were entitled to delay bringing this suit until the last day of limitation, but the plaintiffs had notice on the 9th or 10th of April, 1914, that the defendant repudiated their claim, and in their Lordships' opinion such a repudiation, if made to a claim by a respectable and honest money-lender, would have resulted in a suit being brought at once.

The Subordinate Judge believed the evidence put forward on the part of the plaintiffs and gave them a decree. The High Court, on appeal, dismissed the suit, on the ground that the plaintiffs had failed to prove their case. Their Lordships agree with the High Court. In their Lordships' opinion the case of the plaintiffs is a false and a fraudulent case, and they will humbly advise His Majesty that this appeal should be dismissed with costs.

In the Privy Council.

DATA RAM JANI AND OTHERS

v.

MUSAMMAT BASANT KUNWAR.

DELIVERED BY SIR JOHN EDGE.

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