

Asgarali son of Mulla Ibrahimji - - - - - *Appellant*

v.

Gulam Abbas & others - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT NAGPUR

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL, DELIVERED THE 29TH JULY, 1947.

Present at the Hearing :

LORD SIMONDS

MR. M. R. JAYAKAR

SIR JOHN BEAUMONT.

[*Delivered by* SIR JOHN BEAUMONT]

This is an appeal from a judgment and decree of the High Court of Judicature at Nagpur dated the 24th January, 1939, which reversed a judgment and decree of the Court of the second Additional District Judge, Nagpur, dated the 12th January, 1935.

The question to be determined in this appeal is whether or not the appellant (who was the plaintiff in the suit giving rise to the appeal) is entitled to recover the sum of Rs.19,037-9-3 with interest from the respondents, being the sum paid by him under a bond by which the appellant stood surety for the respondents for monies due under a mortgage decree passed in Suit No. 23 of 1923. The first respondent, who was the principal defendant, pleaded that the decretal sum had been paid by him, and not by the appellant, but this is clearly false, and it is not now disputed that the amount was paid by the appellant.

The appellant sues on the indemnity implied by law, and also on an express contract of indemnity. The defence, as it ultimately emerged, was that the liability of the respondents to the appellant in respect of the decretal sum had been discharged by the conveyance to him of a house, and that he had admitted this in a letter dated 8th June, 1928, being Exhibit D.22. The contents of this letter will be discussed more fully later on, but it may be said at once that the letter does contain an admission that the decretal amount in Suit No. 23 of 1923 was to be satisfied out of the consideration for the house and, if the letter is genuine, it affords an answer to the appellant's claim. The appellant has always alleged that the letter is a forgery. The trial Judge accepted this contention and decreed the appellant's suit. In appeal the High Court held that the appellant had not discharged the burden which was upon him of proving the letter to be a forgery, and dismissed the suit. The letter purports to be signed "Asgarali M. Ibrahimjee". The appellant admitted that the "Asgarali" was in his handwriting, but denied that the rest of the signature was his. From an examination of the document itself their Lordships are satisfied that the whole signature is by one hand, made with the same pen, and in the same ink, and they see no reason to doubt that the whole signature is that of the

appellant. There would, indeed, seem to be no object in forging part of the signature since the signature "Asgarali" would sufficiently identify the writer of the letter as the appellant. The appellant alleged that he had on three occasions handed to the first respondent a blank piece of paper with his signature upon it for use in certain litigation in which the first respondent was acting for him, and he suggested that the letter might have been written upon one of such sheets of paper over his signature. The High Court held that this story was not proved, and their Lordships agree. This, however, does not dispose conclusively of the suggestion of forgery since the appellant may have been induced to sign the letter by false representations as to its nature and contents and, when the letter was produced in the suit more than four years after its date, he may have forgotten the circumstances in which it had been signed. However, in the absence of anything in the physical appearance of the letter to suggest that it is not genuine, and in the absence of any evidence as to the circumstances in which it is alleged to have been forged, their Lordships would not be justified in holding the document to be a forgery unless its contents were so manifestly inconsistent with other documents on the record, and so palpably untrue, as to make an inference of forgery inevitable. It is necessary, therefore, to consider the circumstances in which the letter is alleged by the respondents to have come into existence.

The High Court dealt exhaustively with the financial dealings between the appellant and the respondents, and it is not necessary to discuss them in detail. As already mentioned, the Surety Bond was given by the appellant on the 14th September, 1925. On the 21st October, 1925, the respondents (respondent No. 1 acting for himself and also as guardian of his nephews respondents 3 and 4) entered into a mortgage deed, Exhibit P.17, by which they mortgaged a house to the appellant for a sum of Rs.20,000. Of this sum Rs.7,647 were said to be due by the mortgagors to the appellant on a previous account, and Rs.353 were for the registration charges and stamp duty. The remaining Rs.12,000 were not paid over but, according to the terms of the Deed, were kept in deposit with the mortgagee on behalf on the mortgagors to be paid to the decree-holders in the said Civil Suit No. 23 of 1923 in which case the mortgagee had stood as surety for the mortgagors. It was found by the High Court, and is established by receipts given under the hand of respondent No. 1, that the bulk of the sum of Rs.12,000 (amounting at any rate to Rs.8,000) was released to the mortgagors for purposes other than the discharge of the liability under the said decree, and these payments were made some months before any payment was made by the appellant under the decree.

The next document to consider is Exhibit P.18 which is a conveyance dated 8th June, 1928, by respondents 1, 2 and 4 (the first respondent acting for himself and as guardian for the fourth respondent who was still a minor), to the appellant of the house which had been comprised in the said mortgage Exhibit P.17 for the sum of Rs.28,000. The deed contains the following recitals:—

"The vendors admit to have received from the vendee Rs.28,000 comprising Rs.20,000 covered by the possessory mortgage-deed, in which the same property is mortgaged, dated the 21st October, 1925, executed by the vendors in favour of the vendee and in respect of the properties conveyed by these presents (including the sum of Rs.12,000 in deposit with the vendee and withdrawn by the vendors from time to time to meet the expenses of litigation, agricultural operations and to discharge other family debts) and Rs.4,500 received by the vendors on 24th April, 1928, from the vendee to satisfy the mortgage debt of one Babu Shamlal dated the 4th April, 1921, and Rs.3,500 in deposit with the vendee to meet the expenses of agriculture."

The house was then conveyed to the appellant in consideration of Rs.28,000. The Deed contained a clause in these terms: "The vendors will satisfy the decree in Civil Suit No. 23 of 1923 of the Court of the Additional District Judge Nagpur, and in case the vendee as surety for the vendors has to pay a decretal amount in the said suit, the vendors bind themselves to compensate him".

On the same day, namely, 8th June, 1928, and as part of the same transaction, if the respondents are to be believed, the appellant signed and handed over to the respondents the letter, Exhibit D.22, which has been already referred to. The letter is in the following terms:—

“ In Civil Suit No. 23 of 1923 I took surety for you. I had mortgaged your Itwara house with me for that. You had not received any consideration for the mortgage. The amount of Rs.7,674 shown in the mortgage was disputed debt item between brother Imranali and Gulam Abbas personally without prejudice to settle the debt. I had nothing to do with that amount and neither the other mortgagees had to do anything with it. The house, therefore, though it was possessory mortgage remained in your (mortgagor's) possession.

As the time for depositing the amount has come and as it is necessary to raise the amount and as the same is proposed to be done from the Allahabad Bank by mortgaging this very house by me. The house is conveyed to me by way of sale for Rs.28,000. The decretal amount in Civil Suit No. 23 of 1923 shall be paid from this amount of consideration and the house shall remain in your possession till the decretal amount is fully paid and after account for the balance and payment, the house shall be given in my possession. The details of the consideration in the sale-deed of this house to me are filled in to satisfy the Bank. Otherwise the consideration shown has nothing to do with me and you have not received the same from me. It constitutes without prejudice disputed items of dealings between brother Imranali and Gulam Abbas personally which will be settled subsequently between them. As you wanted a letter before you execute the sale-deed, hereby I give the same out of free will and accord.

ASGARALI M. IBRAHIMJEE.

Dated the 8th June, 1928.”

The respondents' case is that they refused to execute the conveyance, P.18, since it did not contain a statement of the true facts, that Mr. Imranali, the brother of the appellant who was acting for him, said that the appellant wanted a deed which he could show to the Bank, and therefore the conveyance must be in the form suggested, and he then, on behalf of the appellant, handed over the letter which purported to show the true facts.

Their Lordships regard this letter with grave suspicion. A minor criticism is that it is expressed in poor English and Mr. Imranali, who is an LL.B. and a First-Grade Pleader, might be expected to have a better command of English than that displayed by the writer. A more serious criticism is that the recitals in the conveyance as to the consideration for the mortgage are supported by receipts given by respondent No. 1 which are on the record and the receipts contradict the statement in the letter that the mortgagors received no consideration. A further ground for suspicion is that the explanation tendered for requiring a letter to contradict the conveyance of even date does not fit the facts. The desire to have a clean conveyance which could be shown to the Bank for the purposes of obtaining a mortgage might explain an incorrect statement as to the consideration paid, but it affords no explanation for giving details of how the consideration was made up which according to the letter are untrue, at any rate to a great extent. Nor has any explanation been offered as to why the vendors in the conveyance entered into a contract to compensate the vendee if he was called upon to pay the decretal amount as surety if, in fact, the conveyance was given to discharge that liability. That was not a matter with which a mortgagee would be concerned. But suspicion is not enough. As already stated, their Lordships are satisfied that the signature on the letter is that of the appellant and there is no satisfactory evidence to show how the signature got there if the letter is a false one. The Judges of the High Court considered both the appellant and respondent No. 1 to be thoroughly unreliable, and the failure of the appellant to produce his books of account, a matter on which the learned

Judges laid considerable emphasis, does not help him. Their Lordships have little doubt that the whole truth in this case has not been disclosed, but they are of opinion that there is not enough in the circumstances of this case, suspicious though they are, to lead inevitably to the inference that the letter, D.22, is a forgery or to justify this Board in differing from the view of the High Court that the appellant has not proved the letter to be a forgery. It has been contended further for the appellant that even if the letter be genuine its contents should be ignored since they are contradicted by other documents on the record. But if the letter is genuine it was obviously intended to state the position which the appellant and respondents accepted, and it is impossible to ignore the statement that liability in respect of the decretal sum for which the appellant is suing was to be discharged by the conveyance of the house.

For these reasons, their Lordships will humbly advise His Majesty that this appeal should be dismissed. The appellant must pay the costs of the respondents.

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In the Privy Council

ASGARALI SON OF MULLA IBRAHIMJI

2.

GULAM ABBAS & OTHERS

DELIVERED BY SIR JOHN BEAUMONT

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