

Privy Council Appeal No. 59 of 1923.

Gutta Bhadrappa - - - - - *Appellant*

v.

Kalagara Kanakamma - - - - - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 21ST NOVEMBER, 1924.

Present at the Hearing :

LORD SUMNER.

LORD PHILLIMORE.

SIR JOHN EDGE.

SIR LAWRENCE JENKINS.

[*Delivered by* SIR JOHN EDGE.]

The suit in which this appeal has arisen was brought in the Court of the Subordinate Judge of Ellore by the plaintiff on the 8th December, 1919, against two defendants for money due by them under their promissory note of the 30th June, 1917, by which they promised to pay the plaintiff on demand. The makers of the note were Kalagara Kanakamma, who was the second defendant, and her son, Kalagara Srirama Rao, who was the first defendant. In his written statement the first defendant admitted that he had made the note, but alleged that it was intended that the second defendant should join in making the note, but she had not joined in making it and her signature to it was a forgery, and that there was no consideration for the note. The second defendant in her written statement denied that she had made the note and alleged that the signature to the note alleged to be hers was a forgery. The Subordinate Judge found that the note had been made by the defendants and that there was consideration for it, and made a decree against the

defendants on the 30th July, 1920. From that decree the first defendant did not appeal, and the decree against him is final. The second defendant appealed to the High Court at Madras, and her appeal was allowed and the suit as against her was dismissed. From the decree of the High Court dismissing the suit against the second defendant this appeal has been brought by the plaintiff.

Briefly stated, the plaintiff's case was that the note in suit was made by the defendants at Ellore on the 30th June, 1917. The case for the defendants was that the second defendant was not at Ellore on the 30th June, 1917, and did not make the note, and that her alleged signature to the note was a forgery.

That there was good consideration for the making of the note was proved. The note was a renewal of a previous note which had been made by the defendants. The last day upon which a suit could have been brought by the plaintiff on the previous note was the 30th June, 1917. The first defendant was an impecunious man, and his mother, who lived with him at Ellore, was anxious to escape from liability for his debts; but the plaintiff insisted that she should join in making the note sued upon, and she consented to join in making the note. The second defendant, the respondent in this appeal, is an illiterate woman, but is possessed of ample means and thoroughly understands business transactions.

It was proved that on the afternoon of the 30th June, 1917, when there was still ample time for the plaintiff to bring a suit on the previous note, the first defendant wrote with his own hand the note in suit at Ellore. When it had been written it was read out to the second defendant, who was present, and her name was written at the foot of it by the first defendant as a maker of the note, and she touched the pen as signifying that the signature was hers. He then signed his own name to it as a joint maker of the note. Upon that two men, Kaza Narasingh Rao and Kalagara Narasayya, signed their names at the foot of the note as witnesses to its execution by the defendants. The second defendant then went into the house at Ellore and the first defendant took the note with him to the second defendant, so that she might make her thumb mark on the note, not as part of the execution of the note, but to enable her to identify the note at any time as the note which she had made. Although she was not a purdahnashin, and appeared before men, she objected to making her thumb mark in the presence of men. The first defendant brought back the note with the mark of a thumb upon it and gave it to the plaintiff. The previous note had been executed by the second defendant in precisely the same way, and her thumb mark had been made upon it by her in another room.

As a matter of fact, there was a thumb mark on the note when it was produced at the trial, and that thumb mark was compared

with her thumb mark on the previous note and on other documents, and was found not to be a mark of her thumb. The cross-examination of the plaintiff did not suggest where the second defendant was on the 30th June, 1917, if she was not at Ellore that day; nor was there any evidence given by her or any witness to show where she was on that day if she was not at Ellore.

Kaza Narasingh Rao, one of the attesting witnesses, deposed that the note was read out to the second defendant after it was written and that she touched the pen as her signature was being made to it, and that the first defendant took it to another room and brought it back with a thumb mark on it. No aspersion was made against the character of this witness and the Subordinate Judge believed his evidence.

The other attesting witness, Kalagara Narasayya, admitted that he had attested the note, but swore that he had attested it at his house and that the plaintiff and the first defendant brought the note to him for his attestation, and that the plaintiff told him that he would get the thumb mark of the second defendant to it when she returned to the village. If his evidence is to be believed, the second defendant was absent from Ellore on the 30th June, 1917. The Subordinate Judge, in his judgment, made the following remarks as to this witness :—" His cross-examination discloses that he is a friend of the defendants and has been inimical to the plaintiff. The witness is further in straitened circumstances and his evidence did not impress me either as straightforward or truthful. In one breath he says that he knew that Exhibit E (the promissory note in suit) was a forged document when it was brought for his attestation. In another breath he says that he attested the promissory note, believing it to be a genuine document, and that he had no suspicion whatever that Exhibit E was a forgery before he attested it. I cannot place any reliance on the evidence of this witness." Their Lordships believe that this witness gave false evidence.

Oldfield and Venkatasubba, JJ., who heard the appeal in the High Court, after some consideration of the evidence, said : " We do not find ourselves able on evidence of this kind to reach an affirmative conclusion, which will impose responsibility for the execution of a document (the note in question) for so large a sum of money on an illiterate woman." And they allowed her appeal.

Their Lordships have no hesitation in accepting the plaintiff's case as a true case. They find that the case of the second defendant, the respondent, is a false case, and that she made the note at Ellore on the 30th June, 1917. They will humbly advise His Majesty that this appeal should be allowed, the decree of the High Court should be set aside with costs, and the decree of the Subordinate Judge restored. The respondent must pay the costs of this appeal.

In the Privy Council.

GUTTA BHADRAYYA

vs.

KALAGARA KANAKAMMA.

DELIVERED BY SIR JOHN EDGE.

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