

# ALLAHABAD HIGH COURT

Kunwar Muhammad Shafi Khan

Vs.

Kunwar Muhammad Moazzam Ali Khan

(Grim wood Mears, C.J. and P.C. Banerji, J.)

25.01.1922

## JUDGMENT

### **P.C. Banerji, J.**

1. These two appeals have been heard together and can conveniently be dealt with in one judgment. The plaintiff, Kunwar Mohammad Shafi Khan, claims, in the first case Suit No. 104 of 1918, the sum of ₹ 9,000 and interest, and, in the second case, the sum of ₹ 10,000 and interest against Kunwar Muhammad Moazzam Ali Khan, a young man, who, at the time of the transactions, had recently attained his majority. According to the statement of the plaintiff he is a man of independent means and a very remote relation of the defendant. The defendant has an elder brother, by name Kunwar Muhammad Makarram Ali Khan, who is dead, and is the grandson of Nawab Sir Faiyaz Ali Khan. He is a well known Rais of Pahasu in the Bulandshahr District. There is reason to believe that the grandsons are regarded as his expectant heirs, and the present recipient of his bounty. At the time of these transactions, the Nawab was a gentleman of about 65 years of age. The story as told by the plaintiff is, that he was approached by these two young men some time very early in July of 1915, with the request that he should lend them money. He stated that he was not on good terms with the family of the defendant, that these two young men had no property, no money, no business, nothing at all except their expectations from their grandfather. He stated that he did not know why these two young men wanted to borrow this sum of ₹ 18,000 and his only reason for making the loan was relationship. The exact relationship was that the grandfather's father's sister's daughter was the mother of the plaintiff. Although, he says, that the relationship between their family and his was such, and is even now, that is, in 1919, that he could not visit their house, his heart was moved by this extremely remote relationship for the two young men who were already under the care of their grandfather, that he advanced to them on no security at all a sum of ₹ 18,000. The story does not end there, because, on the 15th December 1915, again moved by relationship, he advanced, according to his story, the farther sum of ₹ 20,000 to these young men. He was unable to tell the Court what possible

legitimate use the young men could either have for the ₹ 18,000 and still more for the ₹ 20,000 alleged to have been borrowed after so short an interval, The Suit No. 104 was in respect of the one-half share of the promissory-note of the 9th of July 1915, which he sought to recover from the younger brother, the elder having drifted into bankruptcy. After that suit had been decided, an application was made that Suit No. 163 of 1913 should be decided before another Judge and Mr. Lal Gopal Mukerji, who had decided the first case, very readily assented to the circumstances surrounding the second promissory-note being investigated by another Judge, and consequently that second case was decided by Mr. Jagat Narain. The plaintiff, therefore, has had two opportunities of putting forward his claim. Both Courts have decided against him and when the judgments of both Courts are looked at, although they differ in form, yet, throughout both judgments, there runs a strong disbelief in the honesty and truth of the plaintiff. We share that disbelief in honesty and truth, and we think both of these were most regrettable transactions for a man who put himself forward as a man of position to enter into with these young men.

2. The matter, however, must be carefully analyzed and legal grounds must be shown for our view that both of these appeals must be dismissed. The plaintiff sued on a promissory-note. The defendant denied the execution, denied receipt of the consideration, and set up a story in paragraph 7 of the written statement, which we must accept as being regarded as a defense of fraud. The plaintiff went into the witness-box. At the moment the case opened, all that the plaintiff need have done was to have proved the execution of the document sued upon, and if he had obtained an answer by the defendant to an interrogatory that the document bore the defendant's signature, then all that he need have done was to have put in the document, But it happened to be necessary in this case that the plaintiff himself should go into the witness-box to prove that he actually saw the defendant put his name to the promissory-note in suit, and having commenced the story in the examination-in-chief and proved the execution, he asserted that he gave ₹ 18,000 in currency notes to these two young men. He was cross-examined on that matter and both Judges disbelieved in the first case that he had paid ₹ 13,000 to the young men, and, in the second case that he had paid ₹ 20,000. They did not believe that he had made a true statement about that matter. He swore that ₹ 18,000 and ₹ 20,000 were paid over. They certainly had extremely good grounds on which they could have come to that conclusion, because when he was asked if he kept account-books, he said that he did, "an account-book is kept at my place but not in a regular way. In my account-book, there is an entry of ₹ 18,000 having been advanced. The daily cash balance of my treasury is entered in the accounts. The sum which was lent was included in the cash balance. I cannot produce my accounts. The reason is that, in the first place, they are not in a regular form, and, secondly, because all public and private matters are entered in them and I do not want to disclose them." If any thing more were needed to satisfy a Court as to the untruth of the statement which the plaintiff took upon himself to prove, namely, the giving of the consideration, it is to be found in the story of the money. He says that he had, in July 1918,

lying in his house this large sum of money. He says that, in December, he had also ₹ 20,000 lying in his house. It was not deposited in any Bank but was simply a dead weight in the house. From the evidence, it would appear that the amount was in Rupees, because, he says: "In order to carry the money to Delhi, I got the cash changed into notes. I do not remember from whom I obtained the notes." There was some evidence given to suggest that he himself was in debt and not likely to have so large a sum as ₹ 18,000 and then ₹ 20,000 lying idle at his house, available for a transaction of this kind. We agree entirely with the views expressed in the two judgments, and, though it is undoubted that the onus does lie upon the defendant, in cases of this kind, to prove that no consideration was given, nevertheless, if a plaintiff when, as in this case, consideration was denied in the written statement, goes into the witness-box, and if the result of his examination is such that he fails to establish the point which he set out to make, namely, that he gave the consideration and the Court is thus satisfied that he did not give the consideration which he alleges, the defendant can avail himself of that and has a right to a decree. This, in any (no?) way, trenches upon the ordinary rule that the defendant must prove absence of consideration if that is his case. The result, therefore, is that both these appeals must be dismissed with costs including fees on the higher scale.

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