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LALLU RAM v. DEPUTY COMMISSIONER, KHERI, MANAGER, COURT OF WARDS, MAHEWA ESTATE

Srivastava, C. J. and Smith, J.

The result is that the plaintiff is entitled to Rs.1,500 principal and Rs.750-4 interest, total Rs.2,250-4. Deducting Rs.25 paid on account of interest from this amount, the balance due is Rs.2,225-4. The plaintiff is given a decree for this amount against defendant No. 1, with costs in all the courts. The suit stands dismissed against defendant No. 2, who will, however, bear his costs throughout since he executed the pronote, and was therefore a necessary party and is in the circumstances somewhat fortunate not to have had a decree passed against him.

APPELLATE CIVIL

Before Mr. Justice Bisheshwar Nath Srivastava, Chief Judge, and Mr. Justice H. G. Smith

1936
September, 9

JAGANNATH PRASAD (PLAINTIFF-APPELLANT) *v.* MUNNU LAL (DEFENDANT-RESPONDENT)*

Contract Act (IX of 1872), section 65—Contract of marriage between plaintiff's son and defendant's niece—Breach by plaintiff—Defendant's liability for return of ornaments presented by plaintiff to defendant's niece.

Where the plaintiff brings a suit against the defendant in consequence of an alleged breach of contract on the part of the defendant to marry his niece to the plaintiff's son, for the recovery of the ornaments presented by him to the proposed bride but it is found that the breach has been committed by the plaintiff and there is nothing to show that the defendant has or ever had any of the ornaments in his possession, then the presumption is that the girl has them and therefore the defendant cannot be made liable to the plaintiff either for the return of the ornaments in question or for the value of them. *Shambhoo Shukul* v. *Dhaneshar Singh* (1), *Salgur Prasad* v. *Har Narain Das* (2), *Mulji Thakersey* v. *Gomti* (3), *Rambhat*

*Second Civil Appeal No. 353 of 1934, against the decree of Babu Bhagwati Prasad, Subordinate Judge of Lucknow, dated the 23rd of August, 1934, setting aside the decree of S. Akhtar Ahsan, Munsif, Havali, Lucknow, dated the 23rd of March, 1933.

(1) (1927) 4 O.W.N., 256. (2) (1932) I.L.R., 7 Luck., 64.
(3) (1887) I.L.R., 11 Bom., 412.

v. *Timmyya* (1), and *Abdul Razak Abdul Gafoor* v. *Mahomed Hussein Dalvi* (2), *referred* to and distinguished.

Messrs. *M. Wasim, Khaliq-uz-Zaman* and *Ali Hasan,* for the appellant.

Messrs. *Hyder Husain* and *H. H. Zaidi,* for the respondent.

SRIVASTAVA, C.J., and SMITH, J.:—This is a second appeal from a decision dated the 23rd of August, 1934, of the learned Subordinate Judge of Lucknow, by which he allowed an appeal from a decision dated the 23rd of March, 1933, of the learned Munsif of Havali, Lucknow.

The suit was of a somewhat unusual nature. It was brought by one Jagannath Prasad, a resident of Lucknow, against one Munnu Lal, a resident of Calcutta, to recover a sum of Rs.1,027-8-6 in consequence of an alleged breach on the part of the defendant of a promise to marry his niece to the son of the plaintiff. The plaintiff claimed to have presented the girl with ornaments to the value of Rs.1,271-1-6 and also to have incurred other expenditure, the details of which were stated in the plaint, to the extent of Rs.97-7; that is to say, including the value of the ornaments given to the prospective bride, the plaintiff claimed to have spent in all Rs.1,368-8-6. From that he deducted a sum of Rs.341, which the defendant admittedly spent at the house of the plaintiff. The claim was for the difference between these two sums, that is to say, for the amount above stated, Rs.1,027-8-6. The judgment of the learned Munsif shows that the parties agreed before him that the value of the ornaments given by the plaintiff to the girl was Rs.1,000. From that sum the learned Munsif deducted the sum of Rs.341 referred to above, and also a further sum of Rs.75 which had admittedly been sent by the defendant to the plaintiff to cover the expenses of the plaintiff's journey to Calcutta. The learned Munsif awarded the plaintiff a decree for

(1) (1892) I.L.R., 16 Bom., 673. (2) (1916) I.L.R., 42 Bom., 499.

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Rs.584, with proportionate costs. The defendant appealed, and the plaintiff put in cross-objections. The learned Subordinate Judge allowed the defendant's appeal, and dismissed the plaintiff's suit, with costs of both the courts. In consequence, the plaintiff's cross-objections were also dismissed with costs. The plaintiff has now preferred this second appeal.

The only point taken in the appeal is that the plaintiff-appellant is entitled to the return of the ornaments given by him to the niece of the defendant-respondent, or to the value of those ornaments, which is now stated by the plaintiff-appellant to be only Rs.724.

We were referred by the learned counsel for the appellant to various sections of the Indian Contract Act, including sections 19, 19A, 53, 55, 64 and 65. The finding of the learned court below is that the breach of the contract of marriage took place on the side of the plaintiff, and in these circumstances sections 53 and 64 have clearly no bearing on the claim of the plaintiff-appellant. The only section that seems to us to be applicable is section 65, and that was the section which was in the main relied upon by the learned counsel for the appellant. We were informed in the course of the arguments that both the plaintiff's son and the defendant's niece have since been married, the former in the year 1929, and the latter in 1930. Clearly, therefore, the contract of marriage between them became void, and the question is whether the defendant is liable to restore to the plaintiff the ornaments that were given by the plaintiff to the defendant's niece, or the value of those ornaments.

The learned counsel for the respondent maintained that the suit, as it was originally framed, was based merely on breach of contract, and no specific reliance was placed on section 65 of the Indian Contract Act. He further referred us to the cases of *Shambhoo Shukul*

v. *Dhaneshar Singh* (1), and *Satgur Prasad* (*defendant No.* 1) v. *Mahant Har Narain Das* (*plaintiff*) *and others* (*defendants*) (2). These cases do not seem to us to have any particular application to the facts of the present case. The main contention on behalf of the defendant-respondent was, in the end, that the defendant did not receive any advantage, within the meaning of section 65 of the Indian Contract Act, by the presentation of the ornaments in question to his niece, and that, therefore, he is not bound to restore them, or to pay any compensation for them, to the plaintiff. With regard to this argument, the learned counsel for the plaintiff-appellant objected that this particular plea was not taken by the defendant in the courts below. With reference to the liability of the defendant he referred us to the following cases:

Mulji Thakersey and two others (*plaintiffs*) v. *Gomti and Kastur* (3), *Rambhat* v. *Timmayya* (4) and *Abdul Razak Abdul Gafoor* v. *Mahomed Hussein Dalvi* (5).

In the first of these cases one Musammat Gomti and her son, who afterwards died, had undertaken to marry Musammat Gomti's daughter, Kastur, to a certain party, but afterwards married her to another person. The original prospective bridegroom and his father and his brother thereupon sued to recover certain ornaments and clothes and a sum of Rs.700 said to have been given to Musammat Gomti, the mother of the prospective bride, and they also sued for Rs.10,000 as damages. It was held that the plaintiffs were entitled to recover from Musammat Gomti the value of the ornaments and the Rs.700 and also Rs.600 as damages for breach of contract.

In the second of the above cases the plaintiff sued to recover the value of certain ornaments which he had presented to the defendant's daughter on his agreeing

(1) (1927) 4 O.W.N., 256.
(2) (1932) I.L.R., 7 Luck., 64: L.R., 59 I.A., 147.
(3) (1887) I.L.R., 11 Bom., 412.
(4) (1892) I.L.R., 16 Bom., 673.
(5) (1916) I.L.R., 42 Bom., 499.

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to marry her to the plaintiff's brother. The plaintiff alleged that the defendant broke the agreement and gave his daughter in marriage to another person. He, therefore, asked for the restoration of the ornaments, but the defendant refused to return them. It was held that the suit was maintainable, there being nothing in the plaintiff's claim which was either against morality or public policy.

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In the last of the above cases reference was made to sections 73 and 65 of the Indian Contract Act. The parties in that case were Mahomedans, and it was pointed out that the right to the return of the money, ornaments, clothes, etc. on failure to perform a marriage is one which is recognized by Mahomedan law.

In the case reported in I. L. R., 11 Bom., 412, it appears at page 420 that the ornaments and money then in question were received by Musammat Gomti. In the case reported in I. L. R., 16 Bom., 673, it certainly appears that the ornaments were given to the girl in question personally. In the case reported in I. L. R., 42 Bom., 499, it appears that the ornaments and clothes were sent to the house of the defendant (the father of the girl who was proposed to be married), and the defendant did not raise any specific question on the point of his personal liability for the return of them (vide page 503 of the report).

In all the three Bombay cases to which reference has been made, the breach of the contract was on the part of the defendant, whereas in the present case the finding of the courts below is that the breach was committed by the plaintiff. The facts of those cases are, therefore, distinguishable from the facts of the present case. We have also been referred to COLEBROOKE'S "Law of Inheritance according to the Mitakshara", page 136, Chapter II. section 11, para. 28, which runs as follows:

> "28. Whatever has been expended, on account of the espousals, by the (intended) bride-

groom (or by his father or guardian), for the gratification of his own or of the damsel's relations, must be repaid in full, with interest, by the affiancer to the bridegroom."

That paragraph, however, must be read in conjunction with the preceding para. No. 27, which runs as follows:

"27. One, who has verbally given a damsel (in marriage) but retracts the gift, must be fined by the king, in proportion to (the amount of) the property or (the magnitude of) the offence; and according to (the rank of the parties, their qualities, and) other circumstances. This is applicable, if there be no sufficient motive for retracting the engagement. But if there be good cause, he shall not be fined, since retraction is authorised in such a case. 'The damsel, though betrothed, may be withheld, if a preferable suitor presents himself'".

It is clear that para. 28 above quoted relates to a case where one who has promised a girl in marriage resiles from his promise, and the contents of para. 28 do not, therefore, assist the plaintiff-appellant, having regard to the facts of the present case.

As we have said already, the learned counsel for the plaintiff-appellant relied in the end mainly on the provisions of section 65 of the Indian Contract Act, and we think that according to the wording of that section, and also according to equitable principles, this appeal must be decided by reference to the question whether the defendant-respondent received any advantage from the plaintiff under the contract of marriage. It is stated in the plaint itself that the plaintiff gave the girl the ornaments in question to wear (*bamujib riwaj biradari larki ko pahanaya*). There is nothing to show that the defendant has, or ever had, any of the ornaments in his possession, and we think the presumption is that the girl has them

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As we have said already, she was married in 1930, and is, therefore, presumably now out of the control of the defendant. Taking the view we do, we think that the defendant cannot be made liable to the plaintiff either for the return of the ornaments in question, or for the value of them.

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The result is that we hold the decision of the learned Subordinate Judge to be correct, and we accordingly dismiss this second appeal with costs.

Appeal dismissed.

APPELLATE CIVIL.

Before Mr. Justice Bisheshwar Nath Srivastava, Chief Judge and Mr. Justice H. G. Smith

1936
September 16

RAJA JAGANNATH BAKHSH SINGH (DEFENDANT-APPELLANT) *v.* CHANDRA BHUKHAN SINGH AND ANOTHER, PLAINTIFFS AND ANOTHER, DEFENDANT (RESPONDENTS)*

Contract Act (IX of 1872), sections 124 and 126—Indemnity, contract of—Guarantee, contract of—Essential elements of a contract of guarantee and a contract of indemnity—Person writing letter to another requesting him to advance loan to another and holding himself responsible if there be any trouble in repayment—Surety's liability, if arises—Stamp Act (II of 1899), section 36—Pronote insufficiently stamped—Pronote admitted in evidence without objection about insufficiency of stamp—Admissibility of pronote in evidence, if can be questioned subsequently.

For a contract of suretyship there should be concurrence of the principal debtor, the creditor and the surety, but this does not mean that there must be evidence showing that the surety undertook his obligation at the express request of the principal debtor. Where, therefore, *J* writes a letter to *S* to advance a certain sum of money to *D* assuring him that there will be no trouble in the repayment of his money and that if there was any trouble he would hold himself responsible and in pursuance thereof *S* advances the loan and obtains a pro-

*Second Civil Appeal No. 349 of 1934, against the decree of Babu Avadh Behari Lal, Civil Judge, Rae Bareli, dated the 21st of August, 1934, upholding the decree of S. Abbas Raza, Munsif of Rae Bareli, dated the 3rd of April, 1934.