

HIGH COURT FORM NO. (J) 2

HEADING OF JUDGMENT IN ORIGINAL SUIT

District: Bongaigaon

IN THE COURT OF MUNSIF, BONGAIGAON

Present: - Uttam Chetri

Thursday, the 31st day of March, 2016

Money Suit No. 10/2013

Sri Uddhab Ch. Ray
Son of Late Sarbharam Ray,
Resident of Village Choibari (Shib Mandir),
P.O. Rangamati, P.S. Chapar, District: Dhubri, Assam

..... **Plaintiff**

Versus

Sri Nirmal Barman,
Son of Late Harimohan Barman,
Resident of Village: Purani Bongaigaon,
Bhakarapara, P.O: Bongaigaon,
P.S and District: Bongaigaon, Assam

.....**Defendant**

Sri Tapan Singha,
Son of Late Kailash Singha,

Resident of Village: Bhagatgaon,
P.O and P.S: Chapar, District: Dhubri, Assam

.....**Pro forma defendant**

This suit coming on for final hearing on **28.03.16**, in the presence of

Advocate for the plaintiff: Smt Juti Rani Barman
Advocate for the defendant: **None**

and having stood for consideration to this **31st day of March, 2016**, the Court delivers the following judgment :-

J U D G M E N T

1. This is a suit for recovery of a sum of Rs 1, 17,000/- (Rupees one lakh seventeen thousand) only from the defendant.

PLAINTIFF'S PLEA

2. The fact of the case as pleaded by the plaintiff is that the defendant approached the plaintiff and pro forma defendant seeking monetary help of a sum of Rs 2, 22,000/- (Rupees two lakh twenty two thousand) only and, accordingly, on 28.12.2011 the plaintiff and pro forma defendant provided Rs 1, 17,000/- (Rupees one lakh seventeen thousand) only and Rs 1, 05,000/- (Rupees one lakh five thousand) only respectively to the defendant by executing a deed of agreement vide Instrument No. A 417 dated 27.12.2011 executed before Notary Smt. Tutul Bhowmik; that as per the terms and conditions of the aforesaid deed of agreement, the defendant was required to repay the aforesaid money within a period of 1 (one) month from the date of execution of the aforesaid deed of

agreement i.e., within 26.01.2012 to the plaintiff and pro forma defendant; that after a period of 1 (one) month from the date of execution of the aforesaid agreement, the plaintiff requested the defendant to repay the loan provided by the former to the later, but the defendant did not pay any heed to his requests, and later on refused to pay the loan amount to the plaintiff. The plaintiff, therefore, prays for the following reliefs:

- a) Decreeing the suit for recovery of the sum amounting to Rs 1,17,000/- (Rupees one lakh seventeen thousand) only from the defendant in favour of the plaintiff;
- b) Decreeing the suit for interest @ 12% over the decretal amount with effect from 26.01.2012 till recovery of the decretal amount;
- c) Cost of the suit, and;
- d) Any other relief/s that this Court may deem fit and proper.

DEFENDANT'S PLEA

3. The defendant contested the suit by filing his written statement. In his written statement, the defendant pleads that the suit is bad for non-joinder of necessary parties as the plaintiff has paid the aforesaid money to one Ananada Hazarika and not to him as alleged, and non impleadment of Sri Ananda Hazarika is fatal to the suit; that the plaintiff had forcefully obtained his signatures in a blank non judicial stamp paper, blank cartridge papers and revenue stamp papers which was later on used by the plaintiff to prepare the deed of agreement dated 27.11.2011; that the defendant has not taken any amount from the plaintiff and, as such, there is no question of repayment of the same. The defendant, therefore, prays for dismissing the suit with costs.

4. Be it stated herein that vide order dated 05.09.2014 passed in the present suit, my learned predecessor directed that the suit shall proceed ex parte against the pro forma defendant. After going through the pleadings of the parties, their documents on record and after hearing the submissions of the learned counsels appearing for both the parties, the following issues were framed by my learned predecessor.

ISSUES

- 1.** Whether there is cause of action for the suit?
- 2.** Whether the defendant received Rs 1, 17,000/ and Rs 1, 05,000 from the plaintiff and pro forma defendant pursuant to the deed of agreement dated 27.12.2011?
- 3.** Whether the defendant failed to repay the amount of Rs 1, 17,000/- to the plaintiff?
- 4.** Whether the plaintiff is entitled to the decree as prayed for?
- 5.** To what other relief the plaintiff is entitled to?

5. The plaintiff has adduced evidence of himself as PW1, Sri Dharanidhar Ray as PW2, and Sri Uddhab Ch. Ray as PW3. The defendants, on the other hand, have not adduced any evidence.

DISCUSSION, DECISION AND THE REASONS THERE OF

6. After conclusion of the evidence stage, I have heard the arguments of Juti Rani Barman, the learned counsel appearing for the plaintiff. None appeared for the defendant. The rival contentions have duly been considered and will be discussed at appropriate stage.

ISSUE NO.-1 Whether there is any cause of action for the suit?

7. The plaintiff has filed the present suit for recovery of a sum of Rs 1, 17,000/- (Rupees one lakh seventeen thousand) only from the defendant. The plaintiff alleges that he had provided the aforesaid sum to the defendant by executing a deed of agreement vide Instrument No. A 417 dated 27.12.2011 executed before Notary Smt. Tutul Bhowmik. The plaintiff also alleges that as per the aforesaid agreement, the defendant was required to refund the aforesaid sum within a period of 1 (one) month, but the defendant in spite of several request has not returned the same. The defendant, on the other hand, pleads that he has not taken any amount from the plaintiff and, as such, there is no question of repayment of the same. Cause of action is a bundle of material fact which the plaintiff must allege and prove in order to succeed in his case. Thus the rival claims and contentions of both the parties disclose that there is a cause of action for filing the present suit by the plaintiff. The infraction of the alleged right of the plaintiff by the defendant has given rise to the cause of action. Issue No. 1 is decided in affirmative in favour of the plaintiff.

8. **DECISION: There is cause of action for the suit.**

ISSUE NO. 2: Whether the defendant received Rs 1, 17,000/ and Rs 1, 05,000 from the plaintiff and pro forma defendant pursuant to the deed of agreement dated 27.12.2011?

9. The plaintiff has pleaded that the defendant approached the plaintiff and pro forma defendant seeking monetary help of a sum of Rs

2, 22,000/- (Rupees two lakh twenty two thousand) only and, accordingly, on 28.12.2011 the plaintiff and pro forma defendant provided Rs 1, 17,000/- and Rs 1, 05,000/- respectively to the defendant by executing a Deed of Agreement vide Instrument No. A 417 dated 27.12.2011 executed before Notary Smt. Tutul Bhowmik. To substantiate his claim the plaintiff has exhibited original copy of the Notarial Certificate along with Deed of Agreement dated 27.12.2011 as Exhibit 1 and Memorandum of Receipt dated 28.12.2011 executed in favour of Sri Uddhab Ch. Barman and Sri Tapan Singha as Exhibit 2 and 3 respectively.

10. Section 61 of the Indian Evidence Act provides that contents of documents may be proved either by primary or secondary evidence by examining the witness to prove the document and their contents, unless the same are admitted. Mere proof of handwriting would not amount to proof of the contents or facts stated, if the truth thereof is in issue. Truth of contents has to be proved by examining persons who can vouchsafe the truth. In the present suit, the plaintiff has exhibited the Notarial Certificate and Original Deed of Agreement dated 27.12.2011 (Exhibit 1) and examined PW2 and PW3 to prove the content thereof. PW 2 has stated in his evidence in chief that **'both the parties hereto i.e., the plaintiff and the defendant are well known to me and I being the witness of the deed of agreement executed by both the parties vide Instrument No. A-417 dated 27th day of December, 2011 know the facts and circumstances of the instant suit'**. PW3 has stated in his evidence in affidavit **both the parties hereto i.e., the plaintiff and the defendant are well known to me and I being the witness of the deed of agreement executed by both the parties vide Instrument No. A-417 dated 27th day of December, 2011 know the facts and circumstances of the instant suit'**. PW2 and

PW3 have not been cross examined by the defendant and, as such, their evidence in respect of contents of Exhibit 1 has remained intact.

11. Moreover, Section 67 of the Indian Evidence Act provides that handwriting or signature in a document must be proved to be of the person whose handwriting or signature they purport to be. The normal methods of such proof are the following:

- a) By calling the person who signed or wrote the document
- b) By calling the person in whose presence the document was signed and written (attestor)
- c) By calling an expert
- d) By calling the person who is acquainted with the handwriting of the person or persons by whom the document was purported to be written or signed
- e) By the admission of the person who was alleged to have written or signed
- f) By comparison of the signature or writing on the document with the admitted or proved signature or writing of the person who purported to have signed or written the document
- g) By other circumstantial evidence.

12. The plaintiff has examined Sri Dharanidhar Ray as PW2 to prove the signature of the defendant in Exhibit 1. PW2 in his evidence in affidavit states that **'both the parties hereto i.e., the plaintiff and the defendant are well known to me and I being the witness of the deed of agreement executed by both the parties vide Instrument No. A-417 dated 27th day of December, 2011 know the facts and circumstances of the instant suit'**. PW2 further states that **'that I hereby say that the signatures of the plaintiff,**

defendant and the pro forma defendant in the said deed of agreement which I am exhibiting here were put in presence of me in the said deed and I more particularly say that the defendant put his signatures in the said deed of agreement without any coercion from any corner in presence of me'. PW2 has not been cross examined and, as such, his evidence regarding the signature of the plaintiff, defendant and pro forma defendant in the Deed of Agreement dated 27.12.11 (Exhibit 1) has remained intact. Although the defendant has pleaded that the plaintiff had forcefully obtained his signatures in a blank non judicial stamp paper, blank cartridge papers and revenue stamp papers which was later on used by the plaintiff to prepare the deed of agreement dated 27.11.2011, he, however, could not substantiate his claim with the help of any independent witnesses.

13. Thus the plaintiff having proved the execution and contents of Exhibit 1 and the signature of the defendant therein by examining independent witness, and the defendant not being able to substantiate his claim regarding the plaintiff having obtained his signature in the Deed of Agreement dated 27.11.2011 by coercion, it is highly probable that the defendant received Rs 1, 17,000/ and Rs 1, 05,000 from the plaintiff and pro forma defendant by executing the deed of agreement dated 27.12.2011 (Exhibit 1) on 28.12.2011 before Notary Smt. Tutul Bhowmik without any force or coercion. Issue No. 2 is, accordingly, decided in affirmative in favour of the plaintiff.

14. DECISION: The defendant received Rs 1, 17,000/ and Rs 1, 05,000 from the plaintiff and pro forma defendant pursuant to the deed of agreement dated 27.12.2011.

ISSUE NO. 3: Whether the defendant failed to repay the amount of Rs 1, 17,000/- to the plaintiff?

15. The plaintiff has pleaded that although the defendant was required to repay the sum of Rs 1, 17,000/- to the plaintiff as per the Deed of Agreement dated 27.12.11 (Exhibit 1) within a period of 1 month from the date of execution of the aforesaid deed of agreement i.e., within 26.01.2012, but the defendant refused to pay the same in spite of repeated requests from the plaintiff to pay the same. To substantiate his claim the plaintiff has examined PW2 Dharanidhar Ray and PW3 Uddhab Ch. Ray. PW2 has stated in his evidence that **'the defendant received Rs 1, 17000/- from the plaintiff and Rs 1,05,000/ from the pro forma defendant by executing a deed of agreement vide Instrument No. A-417 dated 27th day of December, 2011 before the Notary Public, Smt Tutul Bhowmik at Bongaigaon on condition of repayment to be made by the defendant within 1 month from the date of execution of the deed of agreement to the plaintiff and the defendant failed to keep the condition of the said deed of agreement'**. PW3 has stated in his evidence in affidavit that **'the defendant received Rs 1,17, 000/- from the plaintiff and Rs 1,05,000/ from me by executing a deed of agreement vide Instrument No. A-417 dated 27th day of December, 2011 before the Notary Public, Smt Tutul Bhowmik at Bongaigaon on condition of repayment to be made by the defendant within 1 month from the date of execution of the deed of agreement and it is very unfortunate that the defendant failed to repay the said loan amount to the tune of Rs 1,17,000/- to the plaintiff within the said stipulated time and till date no repayment has been made by the defendant and it is also to mention here that the defendant has not even repaid my share of the loaned money to**

me till date. PW2 and PW3 have not been cross examined by the defendant and their evidence in respect of the fact of non-payment of Rs 1, 17,000/- by the defendant to the plaintiff in violation of terms and conditions mentioned in Deed of Agreement dated 27.12.11 (Exhibit) 1 has remained intact. Issue No. 3 is, accordingly, decided in affirmative in favour of the plaintiff.

16. DECISION: The defendant failed to repay the amount of Rs 1, 17,000/- to the plaintiff.

ISSUE NO. 4 AND 5: Whether the plaintiff is entitled to the decree as prayed for? /To what other relief the plaintiff is entitled to?

17. Issue No. 4 and 5 are decided together for sake of convenience. In Issue No. 2, it has been decided that the defendant received Rs 1, 17,000/ and Rs 1, 05,000 from the plaintiff and pro forma defendant pursuant to the deed of agreement dated 27.12.2011. In Issue No. 3, it has been decided that the defendant failed to repay the amount of Rs 1, 17,000/- to the plaintiff. Thus from the above discussions and decisions on issues, it is found that, the plaintiff has succeeded in proving his case. As such, the plaintiff is entitled to the decree as prayed for. The aforesaid issues are decided accordingly.

18. DECISION: The plaintiff is entitled to the decree as prayed for along with other reliefs sought for by the plaintiff in his plaint.

ORDER

It is hereby declared that the plaintiff is entitled to a decree for recovery of the sum amounting to Rs 1, 17,000/- (Rupees one lakh seventeen

thousand) only from the defendant. The plaintiff is also entitled to recover interest @ 12% over the decretal amount with effect from 26.01.2012 till recovery of the decretal amount and together with cost of the suit.

In the light of the above findings and directions, the suit is decreed on contest with cost.

Prepare decree accordingly within fifteen days.

The operative part of the judgment is pronounced in the open court.

This judgment is pronounced in the open Court, which is given under my hand and seal of the Court, on this **31st day of March, 2016.**

(Uttam Chetri)
Munsiff, Bongaigaon

APPENDIX

A. Plaintiff's exhibits :

**Exhibit 1- Notarial Certificate in respect of the
Deed of Agreement dated 27.12.11**

Exhibit 2- Original Money Receipt dated 28.12.11

Exhibit 3- Original Money Receipt dated 28.12.11

B. Defendant's Exhibits:

None

C. Plaintiff's witnesses:

**PW1: Uddhab Ch. Ray
PW2: Dharanidhar Ray
PW3: Tapan Singha**

D. Defendant's witnesses :

None

**(Uttam Chetri)
Munsiff, Bongaigaon**