

CHHOTUBHAI SHIVABHAI PATEL

v.

SADIK

[SUPREME COURT, 1963 (MacDuff C.J.), 22nd February, 6th May]

Appellate Jurisdiction

Crops—future proceeds—assignment of—unlimited in amount—valid.

Evidence—assignment—extrinsic—inadmissible where no ambiguity.

An assignment of future cane proceeds is valid and, if it is unambiguous and absolute in its terms, extrinsic evidence is not admissible to show that the parties originally intended it to be for a fixed amount. A notation on the document "Stamp to cover £1,000" did not give rise to an ambiguity rendering extrinsic evidence receivable in the absence of any evidence of when, or for what purpose, the notation was typed.

Appeal from a judgment of the Magistrate's Court.

Patel for the appellant.

Falvey for the respondent.

The facts sufficiently appear from the judgment.

MACDUFF C.J. [6th May, 1963]—

This appeal arises out of an Interpleader Summons taken out by the Colonial Sugar Refining Co. Ltd. as to which of two claimants, the appellant or the respondent, was entitled to be paid cane proceeds amounting to £354 12s. 1d. held by the company.

The appellant, who was eventually by consent treated as plaintiff, claimed the cane proceeds on the ground:

"That the proceeds of sugar cane harvested and supplied during the 1960 and 1961 seasons from part of the land known as Yalavu under contract No. 5611 now amounting to the sum of £354 12s. 1d. is assigned to me under and by virtue of an assignment given by Sadiq son of Rajai to me and dated 26th March, 1958."

The respondent admitted executing the assignment of 26th March, 1958, but alleged that such assignment was in fact only to secure a debt of £700 then due and the sum of £300 in respect of goods to be supplied. He admitted supply of the £300 worth of goods subsequent to his execution of the assignment but alleged that the appellant had already received £1,031 4s. 0d. pursuant to the assignment. He admitted receiving a claim for £1,249 6s. 4d. on 31st May, 1961, from the appellant but he disputes the correctness of this amount and claims that his indebtedness under the assignment has been satisfied and that in fact the appellant has been overpaid £31 4s. 0d.

One other matter should be referred to, that is the stamping of this assignment. The assignment has been stamped with adhesive stamps as to 5s. on 26th March, 1958, as to £2 10s. 0d. on 6th June, 1958, and with an embossed revenue stamp of £5 on 29th August, 1962. The appropriate stamp duty, I am informed from the Bar, is 2s. 6d. for each £50 of consideration. No point has been taken as to the manner in which this assignment has been stamped or as to the amounts of stamp duty except in so far as the dates and amounts may have some evidential value.

The assignment given by the respondent was in these terms:

“ Stamp to cover £1,000. (C.S.R. Noted 30/1/58)

ASSIGNMENT

I, Sadiq (father's name Rajai) of Yalavu in the district of Nadroga, Cultivator (hereinafter called the assignor) for valuable consideration received from Chhotubhai Shivabhai Patel of Yalavu, Nadroga, Storekeeper hereby transfer, assign and set over unto the said Chhotubhai Shivabhai Patel all of my net cane proceeds in respect of sugar cane which has been harvested and which will be harvested and sold to the Colonial Sugar Refining Company Limited of Lautoka Mill from the lands described as follows:—

Block of land held under Tenancy from C.S.R. Company Limited—Cane Contract No. 5611 situated at Yalavu, Nadroga in K/Sau sector.

I declare that the receipt or receipts of the said Chhotubhai Shivabhai Patel shall be sufficient discharge. The condition of this assignment is that the said Colonial Sugar Refining Company Limited shall have the first charge against the cane proceeds payable under this assignment in respect of cash advanced or debt of any nature for manure, cane seeds due and owing by the assignor to the company.

Dated at Nadi this 26th day of March, 1958.

(Sgd.) Sadik.

Witness:

Solicitor's Clerk, Nadi.

I certify that I read over and explained the contents hereof to the assignor in the Hindustani language and he appeared fully to understand the meaning and effect thereof.

(Sgd.)

Solicitor's Clerk, Nadi.”

As far as this appeal is concerned the findings of the learned trial Magistrate were:

“ The Court makes a finding of fact that it was the original intention of the parties that the assignment was to be for £1,000. Both have said as much in evidence and the assignment was only stamped to cover £1,000 assignment. The written terms of this contract to assign were varied by the parties, that is the assignor and assignee, even though they gave no notice to the debtor, the C.S.R. Co. Ltd. More than £1,000 has already been collected on the assignment by plaintiff.

An issue has been made in this case of the upstamping of the assignment so as to cover a sum in excess of £1,000. The matter of what stamps are upon it is a matter for revenue only. It does not in any way vary or limit the expressed terms of the assignment. Its only relevance is as an indication whether the parties came to any real agreement effecting the written terms of the contract to assign.

It is for plaintiff to show this Court that on the balance of probabilities the defendant agreed to a further variation of the terms of this assignment so as to make it effect a sum in excess of £1,000.

There is no evidence that parties agreed that the assignment should be varied to cover any particular extra sum or should revert to its written terms of an unlimited sum. Court has seen both parties and plaintiff has failed to satisfy the Court that defendant agreed to any further variation of the assignment so as to increase the amount it covered.

This finding of fact renders it unnecessary to determine here two points of law (*i*) whether an unlimited assignment is valid and (*ii*) whether consideration required for a subsequent variation extending the amount of debt assigned. In case of appeal, however, I should record that there is no evidence of any consideration for a subsequent variation.

For the reasons that I have given, I find that while I have no doubt that defendant owes plaintiff money, this particular assignment is no longer effective."

The appellant now appeals against that finding on the following grounds:—

"The learned Magistrate was wrong in law in holding that the assignment was for £1,000 (one thousand pounds) and that there was an agreement to vary the said assignment for which there was no consideration, the said assignment being a valid assignment enforceable in law.

That the decision is unreasonable and cannot be supported having regard to the evidence."

The second ground was not argued and was, I take it, abandoned. The part of the first ground reading "that there was an agreement to vary the said assignment for which there was no consideration" is contrary to what the Magistrate in fact held and does not make sense. In effect what the appellant says is that the learned Magistrate was wrong in law in holding that the assignment was for £1,000 (one thousand pounds) only and that the assignment was unlimited in amount and valid in so far as the cane proceeds in dispute were concerned. It was on this basis that the appeal was argued.

For the appellant it is contended that the form of the assignment is by its terms an absolute assignment of all present and future cane proceeds sold to the Colonial Sugar Refining Company Limited at Lautoka Mill, that the property assigned is definite, that there was consideration for the assignment, that the assignment is valid and being still subsisting the appellant as assignor is entitled to the present cane proceeds lying with the Colonial Sugar Refining Company Limited.

For the respondent it is argued that the assignment is not, in fact, absolute but is limited to the sum of £1,000. The true intention of the parties, as clearly shown on the evidence, was that the amount of the assignment was to be limited to £1,000. This is supported by the fact that there is a notation at the top of the assignment "Stamp to cover £1,000". It is on this one issue that the parties are in conflict. The appellant replies that the assignment is clear in its terms and extrinsic evidence cannot be imported to vary or interpret those terms.

It is clear that future cane proceeds are assignable. It would appear that an assignment in the form in this case would come within the terms of section 25 (6) of the Judicature Act, 1873 (36 & 37 Vict. c. 66) now replaced by section 136 (1) of the Law of Property Act, 1925 (15 Geo. V, c. 20) and is therefore an absolute legal assignment. Even if it were not by its terms it would still amount to an absolute assignment in equity.

The respondent in the first place relies on extrinsic evidence to show that the real intention of the parties was that this assignment was to be one limited in amount to £1,000. It is clear from the evidence of both parties that this was the original intention of the parties. The fact remains that the assignment itself is absolute and not limited in form. It is in common, that is to say printed form, and is certified by a clerk as having been read over and explained to the respondent who appeared fully to understand the meaning and effect thereof. This fact or certificate has not been challenged. As against the respondent there is also the fact that a previous assignment to the same assignee, dated 26th June, 1956, was for a definite sum—£800—and was in respect of cane proceeds for the years 1957 and 1958 only. Nor is it unusual that an assignment be made in form absolute when it is really intended to cover what are usually known as "further advances". There is another remedy available to the assignor in the event of his eventually becoming free from his indebtedness to the assignee. Nor am I, in my view, entitled to utilise extrinsic evidence to vary the clear and unequivocal provisions of the assignment itself. I have been referred to authority by counsel but I think it is clear law that:

"The function of the court is to ascertain what the parties meant by the words which they have used, not what was intended to have been written." (Halsbury's Laws of England 3rd Ed. Vol. 11 p. 382)

and the wording of the assignment itself is clear in the extreme. In default of pleading that the actual terms of the assignment were a mistake, or were not interpreted and explained by the solicitor's clerk, I do not see that a court could hold this assignment to be other than it clearly purports to be on the face of it—that is an absolute assignment of all future cane proceeds.

In parenthesis I may say that had the question been raised before me as a trial Magistrate I would have taken some convincing that the full effect of this type of assignment was understood by an assignor.

There remains the final question—is there an ambiguity on the face of the assignment itself which would entitle a court to admit evidence to resolve such ambiguity, or to resolve such ambiguity against the assignee, and in favour of the assignor? There is at the top left hand corner of the document these words "Stamp to cover £1,000" which the respondent contends should be taken as qualifying the absolute nature of the assignment itself. I am afraid I am unable to accept that contention for a number of reasons. In the first place, as far as I can see from the record, there is no evidence as to when this note was typed on the assignment. On the face of it it may be no more than an instruction to a clerk. In the second place it is explainable by the requirements of stamping on *ad valorem* duty in respect of an amount unascertainable at the time of stamping. In my view the assignment should be held to be what it is expressed to be an absolute assignment of all of the respondent's future cane proceeds until such time as it be set aside.

For those reasons, in my view, the decision of the learned Magistrate was wrong and on the proceedings before him the assignment was still in force and bound the moneys in the hands of the Colonial Sugar Refining

Company Limited. The judgment of the learned Magistrate is set aside and in lieu therefore there will be an order that the appellant is entitled to the moneys paid into Court, that the respondent pay the appellant's costs here and in the Court below, and that he also pay the costs of the interpleader, the Colonial Sugar Refining Company Limited.

I should, perhaps, add that I am in agreement with the learned trial Magistrate in his description of the pleadings in the Court below. Had the pleadings been in proper form the learned trial Magistrate may have had some chance of sorting out a position which is obviously unsatisfactory and inequitable to the respondent. However, as I have pointed out, there is a remedy in law open to him.

Appeal allowed.

Solicitors for the appellant: *A. D. Patel and Co.*

Solicitor for the respondent: *D. S. Sharma.*