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Court : Delhi

Decided On : Apr-19-2016

Judge : Rajiv Sahai Endlaw

Appeal No. : RFA No. 561 of 2007

Appellant : Madan Singh

Respondent : Phoolwati and Others

Judgement :

1. This first appeal under Section 96 of the Code of Civil Procedure (CPC), 1908 impugns the judgment and decree dated 16th August, 2007 of the Court of the Additional District Judge (ADJ), Delhi decreeing Suit No.236/03/2002 filed by the deceased respondent no.1/plaintiff for recovery of Rs.6,50,000/- together with interest at 9% per annum with effect from the date of filing of the suit till the date of realization against the appellant.

2. Notice of the appeal was issued and vide ex parte order dated 5th November, 2007, subject to the appellant depositing Rs.7.50 lacs in this Court, execution was stayed. The appellant filed CM No.16999/2007 for modification of the order dated 5th November, 2007, seeking stay of execution subject to deposit of Rs.2 lacs only instead of Rs. 7.50 lacs, as ordered. The said application came up before this Court on 12th December, 2007 when the same was dismissed and it was made clear that the stay earlier granted stood vacated. The appeal, on 19th February,

2008 was admitted for hearing and ordered to be taken up for hearing in due course. The respondent no.1/plaintiff died during the pendency of the appeal but steps for substitution of her legal representatives were not taken within the prescribed time. Belatedly applications for setting aside of the abatement, for condonation of delay in applying therefor and for substitution of legal heirs of the respondent no.1/plaintiff and for condonation of delay in applying therefor were filed and notice of which was ordered to be issued. One of the legal representatives namely Shri Kalu Ram appeared and accepted notice on behalf of all the legal representatives and though repeatedly took time to file replies to the applications but no replies were filed neither by the legal representatives of the respondent no.1/plaintiff nor by the Advocate who had been intermittently appearing on their behalf. Vide order dated 6th August, 2015, the applications were allowed, delay in applying for setting aside of abatement of the appeal and abatement of the appeal set aside, delay in applying for substitution of legal representatives of the deceased respondent no.1/plaintiff condoned and legal representatives substituted. On the same day, final arguments on the appeal were also heard from the counsel for the appellant and need to wait for the counsel for the respondent no.1/plaintiff was not felt as the written arguments were already on record and judgment reserved. The respondent no.2 Shri Babloo, since also deceased and represented through legal representatives, was the defendant in the suit along with the appellant and though the respondent no.1/plaintiff had sought money decree against the appellant and the respondent no.2/defendant jointly and severally but the suit was decreed only against the appellant.

3. The Trial Court record requisitioned in this Court has been perused.

4. The respondent no.1/plaintiff instituted the suit from which this appeal arises pleading (i) that the respondent no.1/plaintiff is an illiterate lady and the appellant/defendant and the respondent no.2/defendant were father and son and known to the family of the respondent no.1/plaintiff for many years; (ii) that appellant/defendant and the respondent no.2/defendant represented to the respondent no.1/plaintiff that the appellant/defendant was the Manager of Sita Ram Bhandar Trust having land in the Revenue Estate of Village Karkardooma and that the respondent no.2/defendant was the attorney holder of the previous

owner of the said land and offering to sell the said land to the respondent no.1/plaintiff; (iii) that the respondent no.1/plaintiff agreed to purchase 200 sq. yds. of the said land for a total consideration of Rs.10 lacs and on 10th December, 1999 made part payment of Rs.6.50 lacs to the appellant/defendant and respondent no.2/defendant and the balance payment was agreed to be made at the time of execution of the documents before the Sub-Registrar; (iv) that the appellant/defendant executed a Pronote-cum-Receipt on 10th December, 1999 in favour of the respondent no.1/plaintiff at the time of receiving Rs.6.50 lacs; and, (v) subsequently the respondent no.1/plaintiff learnt that the appellant/defendant and the respondent no.2/defendant had defrauded her and lodged FIR No.39/2002 of PS Anand Vihar under Section 420 of the Indian Penal Code, 1860 (IPC) and during investigation of which the said Pronote was sent to forensic laboratory for examination and the signatures thereon were found to be of the appellant/defendant and charge sheet filed.

5. The appellant/defendant contested the suit by filing a written statement pleading (i) that no Pronote had been signed by him and no money had been received by him from the respondent no.1/plaintiff; (ii) both civil and criminal proceedings could not go on simultaneously; (iii) that neither he nor his son respondent no.2/defendant knew the family of the respondent no.1/plaintiff; (iv) that the appellant/defendant had never made any representations to the respondent no.1/plaintiff and never offered any land for sale to the respondent no.1/plaintiff; and, (v) that the respondent no.1/plaintiff had forged the said Pronote. The respondent no.2/defendant also filed a separate written statement denying the claim of the respondent no.1/plaintiff in toto and also contending that the suit against him was not maintainable inasmuch as he was not stated to have signed the Pronote also.

6. Though the respondent no.1/plaintiff is found to have filed replications to the written statements but need to refer thereto is not felt.

7. The following issues were framed in the suit on 17th May, 2004:-

1. Whether the defendant had received a sum of Rs.6,50,000/- on 10/12/1999 and had executed a Pronote along with the receipt on the same day? OPP.

2. Whether the Pronote and receipt dated 10/12/1999 is a forged document and has not been executed by the defendant? OPD.

3. Whether the suit is bad for mis-joinder of defendant no.2? OPD.

4. Whether the suit has not been properly valued? OPD

5. Whether the plaintiff is entitled to a decree for recovery of Rs.6,50,000/-, as prayed in the suit.

6. Relief.

8. The respondent no.1/plaintiff besides herself examined two other witnesses. The appellant/defendant and the respondent no.2/defendant besides examining themselves examined six other witnesses.

9. The learned ADJ decreed the suit finding/observing/holding (i) that the respondent no.1/plaintiff had proved the certified copy of the Pronote, original whereof was summoned from the Court where the prosecution in the FIR No.39/2002 was pending, as Ex.PW1/X by deposing that the appellant/defendant had signed the same in her presence; (ii) the respondent no.1/plaintiff had also examined the attesting witness to the Pronote who also deposed about the deal in pursuance to which the respondent no.1/plaintiff paid Rs.6.50 lacs to the appellant/defendant and that the appellant/defendant had signed the Pronote in his presence; (iii) that the appellant/defendant had examined one Mr. Tej Pal as DW-1 and who had also during the cross-examination admitted his signatures as a witness on the Pronote Ex.PW1/X and which also proved execution of the Pronote by the appellant/defendant; (iv) that the respondent no.1/plaintiff had thus successfully proved that she gave a sum of Rs.6.50 lacs to the appellant/defendant and the respondent no.2/defendant and that the appellant/defendant had executed the Pronote Ex.PW1/X; (v) accordingly Issue no.1 was decided in favour of the respondent no.1/plaintiff and against the appellant/defendant and respondent no.2/defendant; (vi) the appellant/defendant and the respondent no.1/defendant had examined Shri Ashok Kashyap, Handwriting Expert who opined that the signatures of the Promissory Note were

forged however in cross examination he admitted that he had given his report on the basis of photocopy and that he was not having any qualification as an handwriting expert and that his report is merely a tentative opinion; (vii) that the report of the CFSL in the pending criminal proceeding that there was no divergence in the questioned and standard signature of appellant/defendant had to be preferred over the report of private handwriting expert; (viii) that the appellant/defendant and the respondent no.2/defendant had thus failed to prove that the Pronote was forged; Issue no.2 was accordingly decided against the appellant/defendant and the respondent no.2/defendant; (ix) that the appellant/defendant and the respondent no.2/defendant had failed to lead any evidence on Issues no.3and4 onus whereof was on them; and, (x) that since there was no written agreement for payment of interest at 18% per annum as claimed, interest at 9% per annum was being awarded as just and equitable.

10. The counsel for the appellant/defendant on enquiry during the hearing informed that execution of the impugned decree was still underway.

11. Else the counsel for the appellant/defendant argued (i) that the decree is entirely on the basis of report of CFSL; (ii) that though the appellant/defendant had been convicted in the FIR aforesaid but in appeal stood acquitted; (iii) that the Pronote-cum-Receipt on the basis whereof the respondent no.1/plaintiff had sued was a printed Pronote cum-Receipt; that the same against the column date mentions 20 indicating that the same was printed in the year 2000 or thereafter; (iv) however the date of 10th December, 1999 had been filled up thereon; (v) that the printed form of the Pronote-cum-Receipt meant for execution in the decade of 2000 could not have been available in the market in December, 1999 and therefrom alone the forgery practiced by the respondent no.1/plaintiff is evident; and, (vi) that the respondent no.1/plaintiff had not proved that she was possessed of Rs.6.50 lac in cash.

12. I had during the hearing enquired from the counsel for the appellant/defendant that if there was no transaction or acquaintance whatsoever between the appellant/defendant and the respondent no.1/plaintiff, why would respondent no.1/plaintiff lodge an FIR against the appellant/defendant and the respondent

no.2/defendant.

13. The counsel for the appellant/defendant could only say that they were neighbours but on further enquiry could not tell of any dispute between the two owing where to the respondent No.1/plaintiff would want to falsely implicate the appellant/defendant and his son respondent No.2/defendant.

14. I further enquired from the counsel for the appellant/defendant whether the appellant/defendant had cross examined the respondent no.1/plaintiff or her witnesses on the aspect of the printed form of Pronote-cum-Receipt being of the decade of 2000.

15. The counsel for the appellant/defendant fairly admitted that there was no cross examination on the said aspect. On further enquiry as to how without giving an opportunity to the respondent no.1/plaintiff and her witnesses to respond on the said aspect the appeal could succeed on that basis alone, no response was forthcoming.

16. Though the counsel for the appellant/defendant during the hearing had not raised any other argument but the written arguments filed by him on record are also found to contain a contention challenging the testimony of the attesting witnesses to the Pronote-cum-Receipt on the ground that they are chance witnesses and that the Appellate Court pertaining to criminal proceeding had acquitted the appellant/defendant on the ground that the admitted specimen signatures of the relevant period were not sent to the CFSL for examination and thus the report of the CFSL was not admissible in evidence.

17. The counsel for the respondent no.1/plaintiff in his written arguments on record has merely given a conspectus of the pleadings and the evidence.

18. A perusal of the evidence on record shows (i) respondent no.1/plaintiff to have at the time of tendering her affidavit by way of examination-in-chief into evidence having identified the Pronote-cum-Receipt the original whereof was on the prosecution file and certified copy whereof was proved as Ex.PW1/X and deposed of the same having been executed by the appellant/defendant; ii) the respondent

no.1/plaintiff in her cross examination having re-affirmed that the appellant/defendant had signed the Pronote-cum-Receipt in her presence; iii) the respondent no.1/plaintiff in her cross examination having deposed that she had paid the sum of Rs.6.50 lacs in cash in the presence of the two witnesses; iv) one of the said witnesses namely Shri Swaroop Singh having been called by her to become a witness and other witness Shri Tej Pal having come at that time for making some purchases; (v) the testimony of the respondent no.1/plaintiff qua the Pronote-cum-Receipt having not been dented in cross examination; vi) the counsel for the respondent no.2/defendant having suggested to the respondent no.1/plaintiff in cross examination that she was working as a moneylender; (vii) the witness to the Pronote Shri Swaroop Singh having also deposed of the Pronote having been signed by the appellant/defendant in his presence he also identified the signatures of the appellant/defendant and his own signatures on the Pronote; he also deposed of the appellant/defendant having received Rs.6.50 lacs from the respondent no.1/plaintiff at the time of execution of the Pronote-cum-Receipt; (viii) Shri Swaroop Singh in his cross examination deposed that he was living at a distance of 4-5 minute walk from the house of the respondent no.1/plaintiff; that the respondent no.1/plaintiff was having dairy business and a sweet meat shop and owning several properties; his testimony also during cross examination having not been dented; (ix) Shri Tej Pal aforesaid was examined as a witness by the appellant/defendant and in his affidavit by way of examination-in-chief deposed that the son of the respondent no.1/plaintiff had asked him to sign as a witness on the Pronote-cum-Receipt but at that time neither the appellant/defendant nor the respondent no.2/defendant were present, nor was any money given in his presence and that the Pronote was signed by him in 2001 although the date entered was that of 10th December, 1999; (x) the respondent no.2/defendant in his cross examination admitted that he was bailed out in a cheating case before the Karkardooma Court; the appellant/defendant in his cross examination to have admitted that besides the FIR lodged by the respondent no.1/plaintiff against him there were two other FIRs registered against him at PS Anand Vihar at the instance of Sita Ram Bhandar Trust for the offence of cheating; (xi) the appellant/defendant in his cross examination to have stated that he knew Shri Tej Pal attesting witness to the Pronote (this becomes relevant because in the Pronote

there is only a signature of Shri Tej Pal and from which also his name cannot be clearly deciphered and there are no other particulars or address of Shri Tej Pal).

19. I am, on an analysis aforesaid and appreciation in entirety of the evidence on record unable to find any error in the conclusion reached by the learned ADJ or differ from the findings on issues 1,2 and 5, that the appellant/defendant had received a sum of Rs.6,50,000/- from the respondent No.1/plaintiff and executed the Pronote-cum-Receipt and that the Pronote-cum-Receipt is not forged and that the respondent No.1/plaintiff is entitled to a decree for Rs.6,50,000/-.

20. It matters not that the appellant/defendant has been acquitted in the criminal proceeding relating to the same transaction. Supreme Court, in Seth Ramdayal Jat Vs. Laxmi Prasad (2009) 11 SCC 545 reiterated that i) acquittal or conviction in a criminal case has no evidentiary value in a subsequent civil litigation except for the limited purpose of showing that there was a trial resulting in acquittal or conviction; ii) the findings of a criminal court are inadmissible; iii) a judgment in a criminal case is thus admissible for a limited purpose relying only on or on the basis thereof, a civil proceeding cannot be determined; iv) a decision in a criminal case is not binding on a Civil Court and the two proceedings may go on simultaneously; v) the civil suit must be decided on its own keeping in view the evidence which has been brought on record before it and not in terms of evidence brought in criminal proceeding; vi) the standard of proof required in the two proceedings is entirely different civil cases are decided on the basis of preponderance of probabilities and evidence while in a criminal case the entire burden lies on the prosecution and proof beyond reasonable doubt has to be given. Reference in this context can also be made to the judgment of the Division Bench of this Court in Subhash Chander Chhabra Vs. Food Corporation of India ILR (1996) I Delhi 433.

21. The respondent no.1/plaintiff is found to have proved the Pronote-cum-Receipt independent of the CFSL report which according to the appellant/defendant has been held to be inadmissible in evidence in the criminal proceedings. The Pronote-cum-Receipt, in the suit from which this appeal arises, is found to have been proved in the testimonies of the respondent no.1/plaintiff and Shri Swaroop Singh attesting witness thereto.

22. However the most important factor which in my opinion goes in favour of the respondent no.1/plaintiff and against the appellant/defendant is the testimony of Shri Tej Pal the other attesting witness to the Pronote-cum-Receipt. It is not in dispute that he is the other attesting witness to the Pronote-cum-Receipt and he himself has identified his signatures thereon. As aforesaid, the Pronote-cum-Receipt bears only his signatures from which his name cannot be deciphered and does not bear any other particulars viz. his father's name or his address. Though Shri Tej Pal, produced as a witness by the appellant/defendant, deposed that at the time when he signed the Pronote-cum-Receipt as an attesting witness, the appellant/defendant was not present and no money was exchanged in his presence and the same happened in the year 2001 but obviously to help the appellant/defendant. From his examination as a witness by the appellant/defendant it becomes evident that he was known to the appellant/defendant before the time he signed the Pronote-cum-Receipt as a witness. The only inference is that Shri Swaroop Singh was called as a witness by the respondent no.1/plaintiff while Shri Tej Pal was called as a witness by the appellant/defendant.

23. Once the Pronote-cum-Receipt stands proved, the other argument of the counsel for the appellant/defendant of the respondent no.1/plaintiff having not exclusively proved that she was possessed of Rs.6.50 lacs pales into insignificance. Admittedly the respondent no.1/plaintiff was carrying on dairy business and running a sweet meat shop and it is not as if she was without any source of income. Moreover, that was not the defence also of the appellant/defendant or respondent No.2/defendant and no issue was framed thereon and no cross-examination of respondent no.1/plaintiff in this respect.

24. The appellant/defendant cannot also be permitted to, in appeal and without cross-examining the respondent no.1/plaintiff, raise doubts about the Pronote-cum-Receipt on the basis of numericals 20 appearing thereon. I have in Chanchal Dhingra Vs. Raj Gopal Mehra MANU/DE/3647/2013 relying on Rajinder Pershad Vs. Darshana Devi (2001) 7 SCC 69, Laxmibai Vs. Bhagwantbuva (2013) 4 SCC 97 and Madhukar D. Shende Vs. Tarabai Aba Shedage (2002) 2 SCC 85 held that no argument of suspicious circumstances relating to documents can be raised

without controverting the opposite party therewith in cross-examination and that suspicion cannot be the foundation of a judicial verdict.

25. There is thus no merit in the appeal; the same is dismissed with costs of Rs.15,000/- to the respondent no.1/plaintiff. Decree sheet bedrawn up.

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