

Rati Ram Vs. Hardewa

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Court : Allahabad

Decided On : May-23-1927

Reported in : AIR1927All676; 103Ind.Cas.348

Appellant : Rati Ram

Respondent : Hardewa

Judgement :

1. This is a plaintiff's appeal and arises out of a suit for recovery of Rs. 700 on the basis of a pro-note dated the 19th June 1921, alleged to have been executed by the defendant-respondent in favour of the plaintiff.
2. The defence to the suit was that the defendant never borrowed any money from the plaintiff nor executed the pro-note in dispute and that the pro-note was not supported by consideration.
3. On the date fixed for the hearing of the suit the parties agreed to abide by the statement on oath of one Khem Chand alias Khimma. Khimma's statement was recorded by the Court. He did not make any statement on his own personal knowledge and stated that he had settled the dispute between the parties and had decided that the defendant should pay to Rati Ram the sum of Rs. 450 in nine monthly instalments of Rs. 50. He was shown the pro-note in dispute and was asked to state whether or not the pro-note in dispute was genuine. In reply to this question he stated that he could make no statement with respect to the pro-note,

and that he was not prepared to arbitrate the dispute between the parties relating to the pro-note. He never stated that; he could, on his personal knowledge, say that any debt had been advanced by the plaintiff to the defendant.

4. The trial Court refused to apply to the statement of Khem Chand the provisions of Section 11, Oaths Act, and, after recording the evidence for the parties, came to the conclusion that the pro-note was not genuine and was not supported by consideration. Accordingly that Court dismissed the plaintiff's suit.

5. On appeal by the plaintiff the lower appellate Court has affirmed the decree of the trial Court. The lower appellate Court has held that the evidence produced by the plaintiff to prove the pro-note in suit was not worthy of belief. It has further held that Khem Chand not having made any statement with reference to facts on his own personal knowledge, the trial Court was right in not deciding the case according to the statement of Khem Chand.

6. In our judgment, the decisions of the Courts below are perfectly correct and ought to be affirmed. For the application of Section 11, Oaths Act, it is necessary that the statement given by a referee should amount to 'evidence' of the fact in controversy between the parties. It is clear that the decision of the referee is not evidence with reference to the matters in dispute. That being so the statement of Khem Chand could not be treated as evidence given in accordance with the provisions of Section 10, Oaths Act, and could not be accepted as conclusive under Section 11 of the same Act. Khem Chand professed to act as an arbitrator though he was never appointed arbitrator by the parties. Therefore the trial Court was right in deciding the case on the merits. We dismiss the appeal with costs.