

Satish Mohan Bindal Vs. the State of U.P.

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Court : Allahabad

Decided On : May-17-1985

Reported in : AIR1986All126

Judge : R.K. Shukla, J.

Acts : [Evidence Act, 1872](#) - Sections 17 and 58

Appeal No. : Second Appeal Nos. 1605 and 1606 of 1974

Appellant : Satish Mohan Bindal

Respondent : The State of U.P.

Advocate for Def. : R.N. Upadhyaya, Standing Counsel

Advocate for Pet/Ap. : K.B.L. Gaur, Adv.

Disposition : Appeal allowed

Judgement :

R.K. Shukla, J.

1. These two connected Second Appeals are directed against the judgments and order dated 5-3-1974 passed by Civil Judge, Roorkee at Saharanpur in Suits Nos. 88 of 1967 and 87 of 1967 respectively.

2. In both the appeals, common questions of law and facts are involved and, therefore, they are being disposed of by a common judgment.

3. Brief facts of the Appeal No. 1605 of 1974 arising out of Suit No. 88 of 1967 are that Satish Mohan Plaintiff-appellant filed a suit for recovery of Rs. 1400/- deposited by him in the State Bank of India through N.D.G.C. Nos. 910291 and 910293 dated 15-12-66 pledged in favour of the Executive Engineer, Northern Ganga Canal Roorkee and for interest due thereon with the allegations that the plaintiff was a contractor and the defendant owns, maintains and runs Ganga Canal Division. The aforesaid division of the defendant invited tenders from contractors for certain works on 15-12-66. The plaintiff appellant gave his tender for the works mentioned in the plaint and deposited a sum of Rs. 1400/- in terms of the tender notices. It is further alleged that the plaintiff received letter No. 10425/T-34 dated 4-1-67 on 9-1-67 from the Executive Engineer, Northern Division Ganga Canal Roorkee wherein the Executive Engineer had referred the sending of letters dated 21-12-66 and 29-12-66 and had also disclosed that the said letters contained a request to deposit 3% further security and to sign the agreement. The plaintiff gave reply of the aforesaid letter on 12-1-67 to the effect that the letters dated 21-12-66 and 29-12-66 referred by the Executive Engineer were never communicated to the plaintiff and the condition of depositing 3% further security did not exist in the tender notices. Letter No. C-69/A-2 dated 13-2-67 was given by the Executive Engineer to the plaintiff as reply to the plaintiff's letter dated 12-1-67. The defendant department had disclosed to the plaintiff that a sum of Rs. 1400/- deposited by the plaintiff had been forfeited as the agreement had not been signed and that the further deposit of 3% had not been made by the plaintiff. The action of forfeitures was said to have been taken under Clause 14 of the tender notice. The Department had neither given work nor had refunded money deposited by the plaintiff and was wrongly insisting on the action of forfeiture. According to the plaintiff, the Department was bound to return his security and was not entitled to forfeit the security amount. The Government has suffered no loss and the State of U.P. is liable to refund the amount deposited by the plaintiff. The plaintiff served upon the defendant notice dated 10-4-1967 under Section 80 CP.C. and the service was made on 12-4-67. After expiry of two months, suit was filed.

4. The defendant accepted the notice under Section 80, C P.C. but pleaded that the same was illegal and invalid. As such, the suit was liable to be dismissed. According to the case of the defendant, tender notices were accepted on 15-12-66 and in accordance with the same, the plaintiff, whose tenders were accepted, was to sign the agreement within 7 days from the date of acceptance of the tenders failing which the acceptance of tenders was liable to be withdrawn and earnest money forfeited. The plaintiff was requested to attend the office within a week to sign the agreement and to deposit Rs. 625/- and Rs. 1500/- as security in respect of the works. The plaintiff deliberately avoided the service of the registered envelopes and did not receive the same.

5. The facts of the connected Appeal No. 1606 of 1974 arising out of Suit No. 87 of 1967 are that Amrish Kumar, Contractor, who happens to be brother of aforesaid Satish Mohan, filed a suit for recovery of Rs. 2400/- deposited by him at State Bank of India, Roorkee vide N.D.G.C. Nos. 910295, and 910294, 910296 dt. 15-12-66 pledged in favour of the Executive Engineer, Northern Ganga Canal, Roorkee. The plaintiff's case in this suit is exactly the same as in the Suit No. 88 of 1967 aforesaid except the amounts and N.D.G.C. Numbers. The case of the defendant in this case is also the same as in the Suit No. 87 of 1967.

6. In the Court of the Munsif, following issues were framed in both the cases : --

1. Whether the forfeiture of the amount is illegal on the grounds given in para 11 of the plaint?

2. To what relief, if any, is the plaintiff entitled?

3. Is the notice of Section 80 valid

7. It is clear from the English order sheet dated 5-5-1970 that no oral evidence was led by the parties and the case was adjourned for judgment. Both the suits were decreed with costs with pendente lite and further interest @ 6% per annum on the amounts which were deposited in the State Bank of India by Munsif vide his judgments dated 21-5-70 and 16-5-70 in both the suits respectively. The Civil Judge Roorkee, vide his judgment dated 5-3-1974 allowed the appeal and set aside

the judgment and decrees passed by the learned Munsif in Suits Nos. 88 of 1967 and 87 of 1967. Hence these appeals.

8. After hearing learned counsel for the parties in both the appeals and going through the judgment of the Munsif and Civil Judge, I am fully satisfied that the judgments of both the Courts below are based on such evidence which is not proved. From the English order sheet dt. 5-5-1970 it is quite clear that none of the documents on which the Munsif and the Civil Judge have based their judgments, have been legally proved in the trial court, English order sheet dated 6-11-1979 in Suit No. 88 of 1967 as under : --

'Plaintiffs files 12 papers list 34 C. I. paper No. 2 public Ex. 1 Defendants files 7 papers list 22 C.I. Paper No. 3 public Ex. 1 Rest require proof.'

It is strange that in spite of the aforesaid order that rest of the documents require proof, all the papers filed along with list 34 C-1 have been exhibited while none of the documents was admitted. Same is the case with list 22 C-1. The trial court as well as the appellate Court have utilised the documents on record as evidence without their being proved. Both the Courts below have utilised the allegations made in the pleadings as evidence even without being admitted. Under these circumstances learned counsel for the parties have fairly conceded that the judgments of both the Courts below in both the appeals should be set aside and the case should be remanded to the trial court for deciding the case according to law afresh.

9. There is no doubt that admission in pleadings or judicial admissions by themselves can be made the foundation of the rights of the parties as held by Supreme Court in the case of Nagindas Ramdas v. Dalpatram Inccharam AIR 1974 SC 471 in para 26 as under :

'....Admissions, if true and clear are by far the best proof of the facts admitted. Admissions in pleadings or judicial admissions, admissible under Section 58 of the Evidence Act, made by the parties or their agents at or before the hearing of the case, stand on a higher footing than evidentiary admissions. The former class of admissions are fully binding on the party that makes them and constitute a waiver

of proof. They by themselves can be made the foundation of the rights of the parties on the other hand, evidentiary admissions which are receivable at the trial as evidence are by themselves, not conclusive. They can be shown to be wrong,'

The trial court as well as the appellate court proceeded with the case on wrong assumptions that the documents filed by the aforesaid parties along with lists 34C 1 and 22C 1 were admissible documents in spite of the aforesaid order of the Munsif that they require proof. Not admitted is clearly written on the back of the documents exhibited. A document which is not a public document or not admitted cannot be exhibited and looked into unless it is proved by oral evidence or otherwise. No oral evidence has been adduced in this case. In my view of the matter, these documents and their contents which are not admitted or proved should not have been exhibited and used without being proved. This method of exhibiting the document and using them to decide the cases is unusual and contrary to law and it has resulted into grave miscarriage of justice, which requires interference by this Court.

10. In view of the above discussions, I have come to the conclusion that the ends of justice will be fully met if the orders of the lower courts are set aside and the cases are remanded to the trial court for decision afresh according to law.

11. In the result, both the appeals succeed and are allowed. The judgment and orders of Munsif, Roorkee dated 21-5-1970 and 16-5-70 in Suits Nos. 87 of 1967 and 88 of 1967 respectively and that of Civil Judge, Roorkee at Sharanpur dated 5th of March 1967 are set aside and the cases are remanded to the trial Court for deciding afresh according to law on priority basis. In the circumstances of these cases, the parties shall bear their own costs.

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