

Pirthi Vs. Todar Mal

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Court : Allahabad

Decided On : Sep-08-1998

Reported in : 1998(4)AWC129

Judge : R.K. Mahajan, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Order 37, Rule 4; [Evidence Act, 1872](#) - Sections 114

Appeal No. : Civil Revision No. 637 of 1983

Appellant : Pirthi

Respondent : Todar Mal

Advocate for Def. : R.P. Tewari, Adv.

Advocate for Pet/Ap. : H.M.V. Sinha, Adv.

Judgement :

R.K. Mahajan, J.

1. This is a revision petition filed against the order dated 28.10.1983, passed by Ist Civil Judge. Meerut by virtue of which he has refused to restore the ex-parte decree passed on 24.8.1981. He was of the view that the revisionist has refused to take the delivery of registered cover. The Postman appeared and deposed that

revisionist did not take delivery of the registered cover. It appears that Original Suit. No. 590 of 1980 was filed under Order XXXVII. Rule 4 of the Civil Procedure Code for recovery of Rs. 29,889.75 in the Court of First Civil Judge. Meerut on the allegations that the plaintiff had advanced loan of Rs. 12,000 to the defendant revisionist on 19.7.1976 at an agreed rate of interest 2% per annum. It was also agreed to create a charge in the form of simple mortgage on Khasra No. 152 area 8 Blghas 8 Biswas and 6 Biswansls. situate in village Nangla Barhi, Pargana and Tehsil Baghpat. district Meerut. The revisionist defendant inspite of service, did not attend the Court. The Court passed an ex-parte decree for recovery of Rs. 29,889.75 with costs with pendente lite and future interest at the rate of 2 percent per month till the date of recovery. It was also held that if the money is not recovered, it cannot be recovered through sale of the land mortgaged.

2. Sri H. M. V. Sinha, learned counsel for the revisionist has submitted that the trial court has committed an error of law in not setting aside ex-parte decree. He further submitted that the trial court has no Jurisdiction to try the same, and only Judge Small Cause Court has jurisdiction.

3. I do not agree with the submissions as I have gone through the statements of Postman who has stated that the registered cover was not taken by the revisionist. He has further stated that his Identity was pointed out by two persons. Since It is a question of fact, I do not find any material irregularity in the proceedings. It is well-settled principle of law that official acts are presumed to be true under Section 114 of the Indian Evidence Act. which is being quoted herein below :

'114. Court may presume existence of certain facts.--The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

Illustrations

The Court may presume-

(a)

(b)

(c)

(d)

(e) that judicial and official acts have been regularly performed.'

The Postman has made the presumption irrebutable by appearing in a witness box. I also do not agree that the suit was not cognizable by the Court below as no law has been shown. The matter is pending since long and the amount has been deposited as stated by the counsel.

4. Sri R. P. Tewari has put in appearance on behalf of opposite party.

5. I find no force in the revision and it is dismissed with cost of Rs. 200.

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