

Paras Ram Vs. Raksha Devi

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Court : Delhi

Decided On : Nov-11-1969

Reported in : 6(1970)DLT41

Judge : Pritam Singh Safeer, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 100(1) and 103

Appeal No. : Regular Second Appeal No. 119 of 1967

Appellant : Paras Ram

Respondent : Raksha Devi

Advocate for Pet/Ap. : S. Malhotra and; R.K. Gupta, Advs

Judgement :

P.S. Safeer, J.

(1) This regular second appeal under section 100 of the Code of Civil Procedure seeks to impugn the decree made by the Additional District Judge, Hoshiarpur, on the 7th of April, 1964. The learned counsel appearing for the appellant places reliance on clause (e) of Section 100(1) of the Code of Civil Procedure. His contention is that there has been a procedural error which has been committed by the Local Commissioner appointed by the trial Court for going into accounts between the parties inasmuch as the Local Commissioner did not permit Paras

Ram, the present appellant, to produce the handwriting expert. My attention has been drawn to the relevant provisions in Order Xxvi of the Code of Civil Procedure and the argument is that the Commissioner in such a situation was exercising the powers of the Court and was bound to examine evidence which might have been sought to be produced. If a reference is made to the law laid down by the Hon'ble Supreme Court in : [1963]3SCR604 then it becomes obvious that a procedural error so as to attract the provisions of clause (e) of Section 100(1) of the Code of Civil Procedure must be sub-substantial and the one which occasions prejudice and injustice to the aggrieved party.

(2) I have personally seen the documents regarding which Paras Ram wanted to examine the so-called handwriting expert. I am convinced in my sub-conscious mind as well as on ocular estimation of Paras Ram's admitted and disputed signatures that they are of one and the same person. I asked Mr. Malhotra, counsel for Paras Ram, to closely examine the very signatures and then make the submissions regarding the prejudice which the non-examination of the expert witness may have caused. Although he could not field his ground, his argument lost all elquence.

(3) The Local Commissioner did not rely upon the evidence of the handwriting expert produced by the opposite party. Whatever the situation may have been before the trial Court the Additional District Judge, Hoshiarpur whose judgment is under consideration dealt thoroughly with the concerned documents. He carefully scrutinized them and considered every pros and cons of the case and then made the observations which are contained in paragraph 11 of the impugned judgment. After taking into account the submission in respect of an amount of Rs. 200.00 the amount due to Paras Ram has been found as being Rs. 708.09 P. That is a finding of fact. The Judgment does not call for any interference.

(4) The grievance regarding the nonrecording of the evidence of the handwriting expert. It is true that the evidence of a handwriting expert may be admissible as 'opinion evidence' but then it has always been observed by the Courts that the handwriting experts produced always try to favor their respective clients. Non-recording of evidence regarding the pen lifts, the pen pressures and various kinds

of strokes or stops does not in my view cause any such procedural error which may call for interference under Section 100 of the Code of Civil Procedure.

(5) With these observations I hereby dismiss this second appeal but there will be no order as to costs.

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