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Narinder Kumar Vs. Harnam Singh

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Court : Delhi

Decided On : May-01-1995

Reported in : 58(1995)DLT781; 1995RLR359

Judge : D.P. Wadhwa and; M.K. Sharma, JJ.

Appeal No. : Regular First Appeal No. 416 of 1974

Appellant : Narinder Kumar

Respondent : Harnam Singh

Advocate for Pet/Ap. : R.K. Watel, Adv

Judgement :

M.K. Sharma, J.

(1) This appeal by the defendant is against the judgment and decree passed by Commercial Sub Judge, Delhi on 6.6.1974 in Suit No. 185/1969 decreeing the suit of the plaintiff for recovery of Rs. 16,320.00 with costs and interest pendente life and future at 6% per annum on the principal amount against the defendant.

(2) Briefly stated the allegations made in the plaint are that on 20.9.1966 the defendant borrowed a sum of Rs. 12,000.00 from the plaintiff and in consideration thereof a pronote and receipt on the same date agreeing to repay the said amount of loan Along with interest @ 1% per month. The plaintiff in his plaint had further

prayed for a decree for another sum of Rs. 4,320.00 towards interest at the aboverate, which according to the plaintiff is due from the defendant.

(3) The defendant contested the suit by filing the written statement, wherein he denied to have executed any pronote in favor of the plaintiff after receiving consideration thereof.

(4) On the basis of the aforesaid pleadings of the parties the learned Trial Court framed altogether six issues in the suit and thereafter proceeded to record the evidence produced on behalf of the parties. During the course of the hearing both oral as well as documentary evidence were produced by the plaintiff and the defendant in support of their respective cases. On consideration of the pleadings of the parties and evidence on record the learned Trial Court by judgment and decree dated 6.6.1974 decreed the suit of the plaintiff for recovery of Rs. 16,320.00with costs and interest pendente lite and future at 6% per annum and principal amount against the defendant.

(5) Being aggrieved by the aforesaid judgment and decree passed by the learned Trial Court the defendant has preferred this appeal. We may mention here that during the course of the hearing of the aforesaid appeal before us the defendant/appellant was represented by Mr. R.K. Watel, Advocate, whereas none appeared on behalf of the respondent/plaintiff. The learned Counsel appearing for the appellant submitted before us that the signatures of the defendant were obtained on blank pronote and receipt (Ex. P-l & P-2) in the circumstances as setout in the written statement and that no consideration had passed at the time of obtaining the signatures of the defendant on the aforesaid blank pronote and receipt. In support of his aforesaid submissions the learned Counsel for the appellant drew our attention to a number of circumstances. The first circumstance to which our attention was drawn was the contradictory stand of the plaintiff in his pleadings as well as in his evidence to the effect that plaintiff agreed to advanceRs. 12,000.00 to the defendant on consideration of execution of a pronote and receipt whereas the other case of the plaintiff is that he had advanced a sum of Rs.12,000.00 to the defendant on the faith of his assurance that he would execute a mortgage deed in respect of his property within two days. Itself was

purchased against mortgage.The next submission of the learned Counsel for the appellant is that the nexus of relationship between the plaintiff and the defendant having not been established in the instant case there was no reason why the plaintiff would have advanced the money to the defendant, who hails from Punjab and totally unknown to the plaintiff till atleast April 1966, so as to bring in an agreement to mortgage a property which according to the learned Counsel is totally unbelievable and un-trustworthy. Learned Counsel also submitted that the plaintiff has failed to give any satisfactory Explanationn as to why he had mentioned in the receipt that he was also cheated by Shri Dutt. He further drew our attention to the contents of Ex.D.W.II/2 which is the Investigation Report of Zimini No. 13 under Sections 406/420 IPC. In the said report the Station House Officer, P.S. Nihal SinghWala, had stated that on investigation he has found that Harnam Singh had lodged a false complaint and that according to him the case is.a bogus one. He however,stated in the said report that no transaction was found to have taken place and thata blind man would not have come to such a long distance for taking such a heavy amount.

(6) We have given our careful consideration to the submissions made by the learned Counsel for the appellant and in our view the said submissions appear to 71have strong force. We find that the allegations made by the plaintiff at different stages, as submitted by the learned Counsel for the appellant, are contradictory in nature. We further find that at one place, according to the plaintiff, the defendant was in need of Rs. 12,000.00 for payment to Shri Dutt, the vendor of property No. A-76, Inderpuri, New Delhi, being the consideration of the saidproperty, whereas from the assertions made in the sale deed itself as well as from the statement of A.L. Bali, Dw 5 and P.C. Verma, Dw 3 it is proved that the defendant has already paid the entire consideration much prior to the execution of the sale deed in his favor by Shri Dutt and thus there was no occasion on the part of the defendant to borrow money from the plaintiff. It is thus apparent that as on20.9.1966 the defendant was not to pay Rs.12,000.00towards the sale consideration to Shri Dutt, on which day the sale deed was registered.

(7) We further find from the evidence on record that no nexus has been established as to why the plaintiff would have advanced a considerable sum ofRs.

12,000.00to the defendant who was a person from Punjab and was admittedly unknown to the plaintiff till the month of April 1966. No plausible Explanationn has come forward from the plaintiff's side in the entire record. On perusal of the evidence of the plaintiff who examined himself in the suit we find that his evidence is not at all trustworthy on the basis of which in our opinion a decree could be passed in the instant case.

(8) In view of the aforesaid facts and circumstances and findings arrived at byus, we set-aside the judgment and decree passed by the learned Trial Court and dismiss the suit filed by the plaintiff.

(9) In the result, the appeal stands allowed, and the judgment and decree passed by the learned Trial Court in Suit No. 185/1969 stands set-aside and the suit stands dismissed. No costs.

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