

Pusaram and ors. Vs. Manmal and ors.

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Court : Rajasthan

Decided On : Nov-28-1951

Reported in : AIR1952Raj102

Judge : Bapna, J.

Acts : [Evidence Act, 1872](#) - Sections 47

Appeal No. : Second Appeal No. 35 of 1950

Appellant : Pusaram and ors.

Respondent : Manmal and ors.

Advocate for Def. : Maktoormal Guardian, Adv. for minor Respondents Nos. 12, 19 to 22 and 33

Advocate for Pet/Ap. : Mohanlal Joshi, Adv.

Disposition : Appeal dismissed

Judgement :

Bapna, J.

1. This is a second appeal by the contesting defendants in a suit for redemption. The respondents Nos. 1 to 5 sued the appellants on the allegations that a certain shop described in the plaint was mortgaged by Pratapmal and his sons Chhotmal

and Jethmal with Roopram and Kaniram on 'Kati Vadi' 13, Smt. 1917 for a sum of Rs. 451/-. It was stated that the plaintiffs and defendants Nos. 6 to 38 were successors-in-title to the mortgagors, and defendants Nos. 1 to 5, who are now appellants, were the successors-in-title to the mortgagee. The appellants denied the fact of the mortgage and the fact of the plaintiffs being the successors-in-title to the mortgagors claiming to redeem the same. The trial Court dismissed the suit on 2nd March 1944 but the case was remanded for a fresh trial on appeal, and after re-trial the suit was decreed. The contesting defendants being successors-in-title to the mortgagees filed an appeal which was dismissed.

2. The finding that the shop was mortgaged by Pratapmal, Chhotmal and Jethmal with Roopram Kaniram was based on certain entries of the 'Baki-yat' Department of the Government of Jodhpur. The property of Pratapmal was taken possession of by the State but on representation by Kaniram, the rent of the shop collected by the State was paid over to him on the ground that he was a mortgagee of the shop. The genuineness of these documents being established, learned counsel for the appellants has not challenged the status of the appellants as mortgagees but he urges that that fact alone will not entitle the plaintiffs to a decree unless they can establish that there was a subsisting mortgage on the date of the suit.

It was argued that there was no proof that the mortgage was made on 'Kati vadi' 13, Smt. 1917 and that it was for Rs. 451/-. The lower Court relied upon Ex. P/A-8 which was an entry in the account-book kept by the ancestor of the plaintiffs. Learned counsel for the appellants argued that the evidence of Chhaganmal P. W. 4 relied upon by the lower Court as having proved the entry is not sufficient for that purpose. The evidence of Chhaganmal is that the said entry is in the pen of one Heerachand who was a 'munim' in the employment of the plaintiffs' ancestor and that he was acquainted with the handwriting of said Heerachand. It is contended by learned counsel for the appellant that in cross-examination the witness admitted that Heerachand had died in Smt. 1930 long before the witness was born and, therefore, he could not possibly identify his handwriting and the conditions laid down in Section 47 of Indian Evidence Act -- before a person can be said to be acquainted with the handwriting of the scribe -- are not fulfilled.

Learned counsel for the respondent urges that the witness had made a Statement in examination-in-chief that he was acquainted with the handwriting of Heerachand and it was for the defendants to test by cross-examination in what manner he became acquainted with the handwriting of Heerachand and since all the methods in which that witness could make himself acquainted with the handwriting of Heerachand had not been exhausted in cross-examination, his evidence should be held to be sufficient to prove the document. Reliance was placed on 'SHANKERRAO GANGADHAR v. RAMJI HURJIVAN', 28 Bom 58. With great respect I agree with the view of law taken in this case, and when the witness had stated in his examination-in-chief that he was acquainted with the handwriting of Heerachand, it was for the defendants to show by cross-examination that the witness was really incompetent to testify under Section 47 of the Evidence Act.

It was urged by learned counsel for the respondents that the admission of the fact that Heerachand died long before the witness Chhaganmal was born excludes the possibilities mentioned in the explanation for becoming acquainted with the handwriting of Heerachand. He could not see him write nor could he have exchanged correspondence, nor could document be submitted to him habitually in the course of ordinary business. While the first two modes of being acquainted with the handwriting are certainly excluded, the possibility of being acquainted in the third manner is not eliminated. In the third category will also be included cases where a person having custody of family records obtains familiarity with the handwriting of persons who are dead and gone. Wigmore in his learned treatise of the Law of Evidence (1904 Edition) while dealing with this question has observed in paragraph 704 :

'Another class of persons seem properly to possess safe sources for estimating authenticity, though they have not received implied admissions from the supposed makers, namely, persons who, having the custody of official records, have thus become familiar with the official signature of a predecessor in the office, whether a superior or one of the same grade, or, having the custody of family records, thus obtain familiarity with the handwriting. The propriety of the place of custody and the general reliance upon the documents for legal, mercantile and family purposes, are a sufficient ground for belief in authenticity.'

A direct question does not seem to have been put to Chhaganmal in what manner he became acquainted with the handwriting of Heerachand and, therefore, it could not be said that all the modes of becoming acquainted with the handwriting of Heerachand had been negated in cross-examination.

3. I, therefore, agree with the lower Court in the finding that the mortgage was dated Kati Vadi 13, Smt. 1917 and was for a sum of Rs. 451/-. No other, point was argued and this appeal fails and is hereby dismissed with costs.

4. Learned counsel for the appellants wants a certificate for leave to appeal to a Division Bench. As the question relates to the interpretation of Section 47 of the Evidence Act, I grant certificate for leave to appeal to a Division Bench.

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