

Sobhagmal Vs. Ram Gopal

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Court : Rajasthan

Decided On : Jan-17-1969

Reported in : 1969WLN51

Judge : Jagat Narain, J.

Appeal No. : S.B. Civil Rev. No. 8 of 1968

Appellant : Sobhagmal

Respondent : Ram Gopal

Disposition : Application allowed

Judgement :

Jagat Narain, J.

1. This is a revision application by the plaintiff against an order of the Civil Judge, Chittorgarh, holding that the documents which he seeks to prove is a promissory note which is inadmissible in evidence as it is not stamped.

2. The case of the plaintiff in the plaint is that he advanced Rs. 1500/- to the defendant on 28-2-64 and Rs. 1500/- on 17-5-64 and the defendant agreed to pay these amount with interest at rupee one percent per month. It is further pleaded that the defendant executed a writing on 17-5 64 by way of security in favour of the plaintiff which was being filed in original as evidence in the suit.

3. On behalf of the defendant it was contended that this document was promissory note. The argument on behalf of the plaintiff however was that the writing was made by way of acknowledgement and there was no intention to create negotiable instrument. Further it was argued that if there had been any such intention then the writing would have been stamped.

4. The trial court held that para 1 of the plaint itself showed that the [document was executed by way of security, which means that the parties intended to create a negotiable instrument.

5. On behalf of the applicant it is contended by his learned Counsel that the intention of creating the document was to obtain an acknowledgement in writing of the two loans advanced to the defendant. The writing fulfils all the requirements of the promissory note given in Section 4 of the Negotiable Instruments Act. It was held in Smt. Bhanwar Bai V. Ghanshyam Dass S.B. Civil Revision No. 251/1964 decided on 7-12-65 that parties creating a document falling within the definition given in Section 4 of the Negotiable Instruments Act prima facie intend to create a negotiable instrument and unless there are facts and circumstances negating such an intention it must be held to be a promissory note.

6. The learned Counsel for the applicant also referred to the decision in Jethmal v. Lalchand and Anr. S.B. Civil Revision No. 275/1964 decided on 27-4-65. In the notice served by the lawyer of the plaintiff in that case the document was described as a promissory note. In the plaint which was in Hindi it was referred to as Rukka. Despite this it was held that the document was not a promissory note. The document in that case ran as following:

AA Jh AA

Jh x.ks'kk; lk; NS

1A [kkrrks ,d lksukj tsBey] jkeukjk.k] cnzhukjk;.k] fyNehukjk;.k] ckydf'ku] eqjyh/kj] uUnfd'kksj csVk iskrk cLrhjketh jk tkrjk lksukj [ktokfu;k ckl >oj TkkVkokl okyk nsuk us eqnM+k ykypUn] cLrhjke xkWo >oj TkkVkokl rglhy tks/kiqj okyk ysuk laor~ 2015 jk ferh dkrh lqn 5 rk0 15&11&58 'kfuokj gLr tsBey A

5501 :0 ipkou lkS us ,d v[kjs ipkou lkS us ,d tks/kiqj jh pyujk dynkj ckdh jgk ykkyks fglkc djus ckdh js;s ft.kjks O;kt ISdM+s :0 100AAA ckjs vkuk ys[ks ls fnuk tkolh A ekl js ek cnurh nslh ;s :lk;k C;kt /k.kh ekaxlh ft.k oDr ft.k txk ns'k ijns'k rqjUr nslh gLrs lksukj tsBey vks [kkrrks vkijh jkth [kq'kh lwa eaMk;ks ls lgh NS fy[kkoV jk nLr[kr eqUnM+k jkeiky jk NS fy[kus tsBey us cpk; fnuks NS lerw 2015 jk dkfr lqn 5 rkjh[k 15&11&58

lksukj tsBey cLrh jke rk0 15&11&58

ij fyf[k;k eqtc lgh NS vks [kkrrks eS e jk le> lw fy[kus fnuks NS ykkyk [kkrrk jks fglkc djuks fy[k fnuks NS nLr[kr tSBey cLrhjke lksukj 15&11&58

7. In deciding whether or not the intention of the parties was to create a negotiable instrument the language used in the documents itself is of primary importance. In the above document the writing was described as a Khata, which means an account and it acknowledged the balance found due on an accounting between the parties. That was the main reason why the document was held not a promissory note but an agreement for the payment of interest.

8. The above decision is not applicable to the document in the present case.

9. I accordingly see no reason to interfere with the order of the trial court and dismiss the revision application. In the circumstances of the case, I leave the parties to bear their own costs of it.

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