

Govind Narayan Vs. Sunder Lal

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Court : Rajasthan

Decided On : Jan-15-1974

Reported in : 1974WLN(UC)216

Judge : S.N. Modi, J.

Appeal No. : S.B. Civil First Appeal No. 198 of 1972

Appellant : Govind Narayan

Respondent : Sunder Lal

Advocate for Def. : Mr. Porwal

Disposition : Appeal dismissed

Judgement :

S.N. Modi, J.

1. This is a defendant's appeal against the judgment and decree of the Civil Judge, Kota dated 27th September, 1972 for the recovery of mortgage-money.

2 The plaintiff respondent instituted a suit against the defendant for the recovery of Rs. 18,500/- on the basis of a mortgage deed executed by the defendant on 12-10-66. It was stipulated in the mortgage deed that mortgage amount shall be payable in two years Further, it appears that the defendant mortgagor executed a

rent note in respect of the mortgaged house and on the basis of that rent note the mortgagees instituted a suit for arrears of rent on 12th of March, 1968. The defendant admitted having executed the mortgage deed. He also admitted consideration of the mortgage to the extent of Rs. 17,000/- and for the remaining amount of Rs. 1,500/-, he pleaded that this amount was not paid to him. According to the defendant, the plaintiffs charged extra amount of interest to the tune of Rs. 1,500/- and included in the mortgage amount of Rs. 18,500/-.

3. The learned Civil Judge decreed the suit. He disbelieved the version of the defendant that the defendant was not paid Rs. 1,500/-. The defendant has now preferred this appeal.

4. Mr. Porwal, learned Counsel for the defendant-appellant, has in the first instance, argued that the suit for the recovery of mortgage money was barred under Order 2 Rule 2 CPC. His contention is that the mortgage deed and the rent note constituted one transaction and since the mortgagees filed a suit for the recovery of rent on the basis of rent note the present suit for recovery of mortgage money was not maintainable. In my opinion, this contention is wholly untenable. The mortgage amount could not have been recovered by the mortgagees before the expiry of two years according to the terms of the mortgage deed. The rent suit was filed on 12.3.68 i.e. before the expiry of the period of two years. On the date the rent suit was filed the mortgage amount had not become due. In this view of the matter, Order 2 Rule 2 CPC is not at all applicable and it cannot be said that the present suit was barred under Order 2 Rule 2 CPC.

5. Mr. Porwal's next contention is that there is sufficient evidence to show that Rs. 1,500/- were not paid to the defendant. This contention is equally without force. The defendant has examined 5 witnesses in support of his above version. Govind Narayan DW/1 is the defendant himself and his statement is contrary to the admission contained in the mortgage deed and, therefore, much importance cannot be attached to this statement. It further appears that he is not a truthful witness in as much as he has denied even those facts which stand proved from the recitals in the mortgage deed and the endorsement of the Sub Registrar. Madan Gopal DW/2 is the attesting witness but he has not said a word as to the

consideration which passed at the time of executing the mortgage deed. Jagannath DW/3 is the brother-in law of the defendant. His evidence is that Govind Narayan's mother told him that Rs. 17,000/- has been taken as loan from the plaintiff. Similar is the evidence for Brijmohanlal DW/4. It is not clear on what basis the mother of the defendant told these witnesses that that Rs. 17,000/- only were received from the plaintiffs. It might be that Govind Narayan told his mother that he had received only Rs. 17,000/- with some ulterior motive and suppressed the truth. Much importance therefore, cannot be attached to the statement of Jagannath DW/3 and Brijmohanlal DW/4. Kishanlal DW/5 is wholly untruthful witness in as much as he says that in his presence the plaintiffs paid Rs. 17,000/- to the defendant. This is wholly untrue as nothing was paid at the house of the mortgagor on the date of the execution of the mortgage deed. Some of the amount was paid before the Registrar and the rest prior to the execution of the mortgage deed. There is thus no satisfactory evidence to prove that the defendant-mortgagor did not receive Rs. 1,500/- out of Rs. 18,500/- from the plaintiff.

6. Lastly, it is contended by Mr. Porwal that his two witnesses Biharilal and Santoshkumar were not examined and the Court in a very hurried manner closed his evidence. The learned Counsel was not able to point out how these witnesses are important. As already pointed out above, the recital in the mortgage deed clearly shows that full consideration had been received by the mortgagor. These witnesses are neither attesting witnesses nor it has been suggested by the defendant in his statement that they were present during the course of the transaction. The court gave sufficient opportunities to the defendant to produce his evidence and it cannot be said that the court in a hurried manner closed the evidence of the defendant.

7. There is no force in this appeal and it is dismissed with costs.