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Court : Rajasthan

Decided On : Feb-05-1974

Reported in : 1974WLN(UC)289

Judge : S.N. Modi, J.

Appeal No. : S.B. Civil First Appeal No. 128 of 1971

Appellant : Mohanlal

Respondent : Kesraram and ors.

Disposition : Appeal dismissed

Judgement :

S.N. Modi, J.

1. This is a defendant's appeal in a suit for recovery of money. The plaintiff respondent Kesraram instituted a suit for the recovery of Rs. 12000/- as principal and Rs. 1472/- by way of interest total Rs. 13472/. on the basis of a rukka executed by defendant appellant Mohanlal and his brother respondent No. 2 Ramchander on 21-7-67. The plaintiff respondent Mohanlal alleged that the defendants had purchased moth fodder worth Rs. 12000/- and executed the said rukka. The defendants admitted execution of the rukka dated 21-7-67 but pleaded that the plaintiff and the defendants were partners and this rukka was executed without going into the partnership accounts. The defendants also pleaded repayment of Rs. 12498/70 and produced certain receipts in support of the various repayments made by them. It was also pleaded that the rukka amounted to a promissory note and being insufficiently stamped was not admissible in evidence. A plea of territorial jurisdiction was also raised on the ground that the rukka was executed in village Sudsar outside the jurisdiction of the District Judge, Bikaner. The trial court struck issues on 4-7-69 One more issue was added on 17-5-70. The case was then fixed for arguments on issue No. 3 relating to insufficiency of stamp on the rukka. Issue No. 3 was decided in favour of the plaintiff on 27-4-71 and the case was fixed for evidence of the defendants on 1-6-1971 Neither the defendants nor any witness was present on 1-6-1971 and at the request of the learned Counsel for the defendants the case was adjourned to 11-8-71 for defendants' evidence on payment of Rs. 25/- as costs to the plaintiff. Again on 11-8-71 neither the defendants nor their witnesses were present. Their counsel pleaded no instructions. The trial court thereupon examined the plaintiff in support of his case and passed a decree against the defendants for Rs. 13472/- and also allowed pendente lite and future interest at the rate of four & half percent per annum on the principal amount. Dissatisfied with the said judgment and decree, defendant Mohanlal has preferred this appeal.

2. It is argued on behalf of the appellant, that the defendants could not produce evidence as they were not informed by their counsel of the hearings dated 1.6.71 & 11.8.71. It is also alleged that the defendants had repaid the entire amount to the plaintiff and it would be a great hardship on the defendants if they were not allowed to produce their evidence in support of the repayments alleged by them. I however find no substance

in the above contention. No good ground has been shown on behalf of this appellant as to why he remained absent on the hearings dated 1.6.71 and 11.8.71. His contention that he was not informed by his counsel does not appear to be correct. There is no affidavit filed by his counsel to show that he failed to inform the defendants to produce evidence on the hearings dated 1.6.71 and 11.8.71. An affidavit has been filed on behalf of the appellant Mohanlal but is highly vague and indefinite. I therefore see no good reason why the defendant should be given an opportunity to produce his evidence.

3. The learned Counsel next contended that the court below had no territorial jurisdiction to try the suit in as much as the rukka was executed by the defendant at village Sadsar beyond the jurisdiction of the District Judge Bikaner. There is, however, nothing to show that the rukki was executed at Sudsar. A bare reading of the rukka reveals that it was executed either Bikaner or at village Gadgala where the plaintiff resided. It is within the jurisdiction of the District Judge, Bikaner.

4. No other point has been pressed before me.

5. The appeal fails and it is dismissed. Having regard to the circumstances of the case, the parties are left to bear their own costs in this appeal.

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