

JahurdIn Vs. Modaram

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Court : Rajasthan

Decided On : Feb-04-1982

Reported in : 1982WLN(UC)164

Judge : N.M. Kasliwal, J.

Appeal No. : S.B. Civil Regular Second Appeal No. 664/1971

Appellant : Jahurdin

Respondent : Modaram

Advocate for Pet/Ap. : Mr. R.L. Maheshwari

Disposition : Appeal dismissed

Judgement :

N.M. Kasliwal, J.

1. This is a defendant's second appeal in a suit for compensation decree by both the courts below. The plaintiff-respondent Modaram filed a suit against the defendant - appellant on the allegation that the defendant was running an oil factory and flour mill known as the Rajasthan Oil & Flour Mills at Nokha. The plaintiff was an employee in the service of the defendant and use to take oil cakes from the machine. No safety measures had been introduced by the defendant in the factory, as a result of which the plaintiff lost his right hand on March 8, 1966

while working in the factory during the course of employment. The plaintiff claimed an amount of Rs. 8,000/- by way of compensation. The case of the defendant was that though he was running the Rajasthan Oil Flour Mills at Nokha but the plaintiff was not in his service and (he plaintiff did not receive any injury in his Mill. On the basis of the aforesaid pleadings of the parties, the trial court framed the following issues:

(1) Whether the plaintiff was a Workman on 8.3.1966 at a monthly wages of Rs. 100/- in the factory of the defendant named & styled as the Rajasthan Oil and Flour Mills? B P.

(2) Whether the defendant did not maintain the security arrangement as mentioned in para 5,1, and 2 of the plaint and better particulars and as such he was negligent? B P.

(3) Whether the plaintiff's wrist was cut on 8.3.1966 as it was entangled in a machine and due to that the fracture of arm was also caused and it disabled permanently the plaintiff? B.P.

(4) Whether the plaintiff is entitled to get damages amounting to Rs. 8000/- as mentioned in para 6 of the plaint?

(5) Whether the plaintiff suffered the injuries due to his contributing negligence and as such he is not entitled get to the damages? B.D.

(6) Whether the Civil Judge was not competent to hear this suit? B.D.

(7) Whether the suit is time barred? B.D.

(8) Relief.

The learned trial court after considering the evidence led by the parties decided all the issues in favour of the plaintiff and decreed the plaintiff's suit with costs to the extent of Rs. 5,880/- and dismissed the rest of the claim by judgment and decree dated February 10, 1971. Both the parties filed appeals against the judgment and decree of the trial court. The learned District Judge, Bikaner, by his judgment dated September 8, 1971 dismissed both the appeals and affirmed the judgment

and decree passed by the trial court. The defendant had filed the First Appeal in the court of the District Judge on March 19, 1971. On July 22, 1971, the defendant-appellant also filed an application under Order XLI, Rule 27, C.P.C. for permitting him to produce additional evidence consisting of the muster roll and attendance register. The learned District Judge, after considering all the authorities cited by the parties held that the defendant could not be permitted to file muster roll and register and the application of the defendant dated 22.7.1971, was rejected. The learned District Judge, thereafter, considered the case on merits and upheld the judgment of the trial court. The defendant aggrieved against the judgment of the learned District Judge, has filed this Second Appeal. The plaintiff has also filed a cross objection.

2. It is contended by Mr. R.L. Maheshwari, learned Counsel for the appellant, that though the learned District Judge dismissed the application filed by *he defendant-appellant under Order XLI, Rule 27. C.P C. but subsequently in the judgment placed reliance on the muster roll and the register to hold that the plaintiff Modaram was in the service of the defendant. It was,, thus, contended that the learned District Judge, under these circumstances, should be taken of the view that he was considering these documents necessary for pronouncing the judgment It is argued that if the learned District Judge had placed reliance on these documents to hold that the defendant was in the employment of the plaintiff, in that case an opportunity ought to have been granted to the defendant to prove these documents and the application filed by him under Order XLI, Rule 27, C.P.C. should not have been dismissed. It is also argued that these documents were not produced in the trial court as he was not given a proper legal advice. An affidavit was also filed in support of the application and the same was not controverted and under these circumstances, the appeal should be allowed and the appellant should be permitted to lead the evidence with regard to these additional documents filed before the first appellate court and the case should be decided thereafter, reliance is placed on Ramjiwan v. Roopchand A.I.R. 1956 Raj. 1 and Venkataramiah v. Seatharama Reddy A.I.R. 1963 S.C. 1526.

3. On the other hand, it was contended by the learned Counsel for the plaintiff-respondent that the main controversy between the parties was whether the plaintiff

was in the employment of the defendant or not on March 8, 1956, and in case, the defendant wanted to prove the muster roll and the attendance register to establish that the plaintiff was not in his employment, then it was his duty to have produced these documents before the trial court. The documents in question are private documents whose genuineness has been doubted by the lower appellate court itself. No reason has been given that these documents were not available with the defendant during the trial of the case. Even the application and the documents were not filed along with the memo of appeal and it was only after four adjournments that such application was tiled when the arguments were going to be heard on the merits of the appeal, it is further submitted that the learned District Judge has given cogent reasons for dismissing the application filed by the defendant-appellant under Order XLI, Rule 27, C.P.C.

4. Order XLI, Rule 27, C.P.C. permits production of additional evidence in appellate court in three circumstances only: (i) the parties seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence be produced by him at the time what the decree appealed against was passed; (ii) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted: (iii) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause. Admittedly, in this case the application filed by defendant-appellant does not fall within the scope of the conditions mentioned at No. 1 and 2 above. So far as the third condition is concerned, the party has no right to introduce any additional evidence but it is only the requirement of the appellate court which permits it to take additional evidence when it considers that such evidence is necessary in order to pronounce the judgment or for any other substantial cause. In the present case, the learned District Judge clearly held that it was not essential for the just decision of the appeal to take such additional evidence on record and the defendant could not be permitted to file the muster roll and the register showing the payment of wages of the labourers. The learned District Judge, after taking this view, apart from considering the oral evidence placed on record made the following observations 'these contentions are also without merit and force for the

following reasons: even the muster roll of the defendant and the register showing the payment of wages of the labourers which the defendant wants to produce at this appellate stage reveal that Modaram Bhat son of Rewaram was in the service of the defendant.' At another stage, in the judgment, the learned District Judge again observed as under: 'the defendant has stated that he kept only two servants in the month of March, 1966 that he runs his Flour Mills and his Oil Mill with the help of his two labourers but this fact is disproved even from his own register which he wants to produce in this Court at this stage, that he kept two only where as the entry of the register reveals that in June, 1966 he had five labourers as in December, 1965, six labourers in November, 1965. This statement is not a reliable one, even from his register.' So far as this approach taken by the District Judge is concerned, it can be said without hesitation that it was not proper for the District Judge to have rejected the application filed by the defendant-appellant under Order XLI, Rule 27, C.P.C. and at the same time to place reliance on certain contents of these documents to hold against the defendant-appellant without giving any opportunity to prove these documents. However, this litigation is going on since 1970 and relates to compensation awarded to an employee whose hand was cut in a machine, I allowed the learned Counsel for the defendant-appellant to argue the appeal in this Court as a court of first appeal. The entire evidence led by both the parties was read in detailed before this Court. The main controversy between the parties is whether the plaintiff was a workman on March 8, 1966 at a monthly wage of Rs. 100/- in the factory of the defendant named and styled as the Rajasthan Oil & Flour Mills. The plaintiff, in this regard, apart from his own statement has led evidence of Gani Khan (P.W. 2), who has stated that he knew the parties, the Mill was in the neighborhood of his own business premises, the hand of the plaintiff was cut in the Mill. The plaintiff was in the service of the Mill of the defendant. He was in the employment for the last about one year. People were going, running and as such he also went inside the Mill. Thereafter, the witness, the defendant and the other persons took the plaintiff to the hospital. Thereafter, the Doctor had asked them to get the cut piece of the hand and on this the witness and one Mumtaz had gone to the Mill and had brought the piece of the hand from the Mill. Though it was suggested in the cross-examination that some dispute was going on between the defendant and the witness but the same was denied. There

is no reason to disbelieve the evidence of this witness. Purkha (P.W.

3) also stated that the Oil and Flour Mill of the defendant was just adjacent to his house. Modaram (plaintiff) had remained in his employment of 12 months about 4 or 3 3/4 years' ago. The hand of the plaintiff was cut in this very Oil Machine, on hearing his hus and cry he had also reached on the spot. In the cross-examination, it was suggested that be had some enmity with the defendant but the witness denied it. Magha (P.W.

4) also stated that there was a Oil Mill of the defendant in the Nokha Mandi. About 4 years back, near about Holi, Modaram was in the service of the defendant and his hand was cut It was cut when 'Khal' was taken out from the Machine. His shop was in the neighbourhood, and when he had gone there running, he found the hand cut. The defendant was present at that time. The plaintiff was taken to the hospital. He did not know who were the persons who had taken him to the hospital. There is nothing in the cross-examination to show that this witness had any enmity with the defendant. Mumtaz (P.W.

5) also stated that he knew the parties there was a Oil and Flour Mill of the defendant in Nokha Mandi. The plaintiff was serving there. About 4 years' ago, near about Holi, the plaintiff was taking out 'Khal' out of the Machine when his hand was cut He had gone to take oil there and as such he knew about this incident. The plaintiff was then taken to the hospital. In the cross-examination, he stated that his shop was at a distance of 40 steps from the Mill of the defendant. He knew the plaintiff from his childhood. The defendant was also present at the time when he reached on the spot. Then there is a evidence of Dr. Asaram Acharya (P.W

6) who stated that he had clinically, examined the plaintiff Modaram on March 8, 1966, Jahurdin Teli (defendant) had brought him there. Johurddin told that the plaintiff got this injury while working in his Mill. The plaintiff had received injury and his hand had been cut. The Doctor also brought the register containing the entries of injuries. Both the court below have placed reliance on the statements of all the witnesses produced by the plaintiff as well as including doctor Asaram Acharya (P.W. 5). The evidence of doctor Asaram Acharya (P.W.

5) who is an independent witness is clear to the effect that he had examined Modaram on March 8, 1966 and the defendant himself had brought the plaintiff to him and had also told that his hand was cut while working in the Mill. Thus, there is cogent and reliable evidence led by the plaintiff to hold that the plaintiff was in the employment of the defendant on March 8, 1966 and his hand was cut while working on a Maching in the Mill of the defendant.

5. The evidence in rebuttal, apart from his own statement has led the evidence of Ramjan (P.W. 2), who has stated that he did not see the plaintiff working in tin Mill of the defendant (Jahurddin) near about Holi. He did not see the hand of the plaintiff being cut in the Machine of Jahur. His house was near the Machine of the defendant leaving a gap of four houses in between. In the cross-examination, he admitted that he was son-in-law of Pusa Khan. Pusa Khan and defendant were brothers but not real. The father of Pusa Khan was lau (father's elder brother) pf Jahur. In cross-examination, he stated that he had no knowledge if the plaintiff ever remained in the service of the defendant, but he had himself not seen. He knew plaintiff for the last 5-7 years' but he did not have any knowledge about the cutting of the hand of the plaintiff. He further admitted that he goes on labour work in the morning and returns in the evening after sunset. The evidence of Ramjan, therefore, is a vague one. He even does not know about the fact of the plaintiff's hand being cut. There is a general denial that he did not see that the hand of the plaintiff was cut in the Mill of the defendant. He has himself admitted that he goes on labour working the morning and returns in the evening after sun-set. That apart, he had admitted his relationship through Phusa Khan, who was brother in relation to the defendant No reliance at all can be placed on the statement of such a witness. Rahmat Ali (D.W).

3) stated that he was in the employment of defendant. He was also in the employment in March, 1966. I here is an Oil Machine and Flour Mill in the defendant's factory. Two persons were in his employment in March, 1966. Anwar Ali and he himself were in the employment of the defendant in March, 1966. Plaintiff was not in the service of the, defendant but he was in his service in 1965. After 1965, the plaintiff never remained in service of the defendant. The hand of the plaintiff was not cut in the Oil Machine of the defendant. He further stated that

the Oil Machine had gone out of order on 3rd March, 1966 and had remained closed for 15 days. The plaintiff had not come in the factory of the defendant on 8th March, 1966. In the cross-examination, he admitted that he was employee as a 'Mistri' in the factory of the defendant. He also stated that Jahurddin (defendant) does not maintain any attendance register. He did not remember as to when this Oil Machine remained closed. He even did not remember such dates when Oil Machine remained closed. He admitted that Ramjan was his real brother. He further stated that he had no relation with the defendant (Jahurddin). This witness had a clear interest with the defendant as according to him, he was working as a 'Mistri' in the factory. He is the real brother of Ramjan (D. W 2), but he even did not admit that he had any relation with Jahur, though such relation was admitted by Ramjan (D.W. 2). No reliance thus, can be placed on the statement of such witness. Anwar (D.W.

4) stated that he was in the employment of Jahur since 1965. He was also in his employment in March 1966. The plaintiff did not work in the factory of defendant in March, 1966. The Oil Machine went out of order on 3rd March, 1966 & remained out of order for 17-18 days. During this period, the Oil Machine never worked. On March 8, 1966, Modaram, did not work on the Machine belonging to the defendant. The hand of the plaintiff was never cut in the Machine of the defendant. In the cross-examination; he stated that he joined the service of the defendant in the nine months' of the year 1965 and when he was employed at the time Modaram (plaintiff) was not serving there. This fact is contradicted by the statement of (D.W.

3) Rahmat Ali, who has admitted that the plaintiff remained in the service of the defendant in the year 1965. He further stated in the cross-examination that an attendance register is kept by the defendant. The keeping of attendance register by the defendant was denied by Rahmat Ali (D.W. 3). He admitted in the cross-examination that he was paid the salary during the period when the Machine remained out of order. The case that Machine remained out of order for 15 days, was never set up in the written statement and appears to be clearly an after thought introduced at the stage of evidence. Though according to the evidence led by the defendant in this regard, he has tried to show that some parts were brought

from out-side to make the Machine in proper order, but no evidence of bills, vouchers etc. have been produced to show that any parts were brought subsequently. Anwar (D.W.

4) has admitted that wages were paid to him even during the period when the Machine remained out of order.

6. I have discussed the entire evidence produced by both the parties on record and I am clearly of the view that the evidence led by the plaintiff is positive, reliable and is of independent witnesses which clearly establishes that the plaintiff was in the employment of the defendant on March 8, 1966 and during the course of employment his hand was cut while working on the Machine. I am further of the view that it is not at all necessary to take into consideration the evidence of alleged attendance register and muster roll sought to be produced by the defendant under Order XLI, Rule 27 C.P.C., in order to pronounce the judgment in this case. The application filed by the appellant under Order XLI, Rule 27 C.P.C. has thereafter, been rightly rejected by the lower appellate court.

7. It was also contended by Mr. R.L. Maheshwari, learned Counsel for the appellant that apart from the statement of the plaintiff, there was no other evidence to show that the plaintiff was getting a salary of Rs. 100/-per month. It is submitted that Rs. 125/- were paid to the Mistri and another employee was being paid Rs. 65 to 70 per month and as such the courts below were wrong in calculating the compensation by taking the salary of plaintiff at 100/- Rs. per month. I see no force in this contention Both the courts below have placed reliance on the statement of the plaintiff that he was being paid Rs. 100/-per month and no interference can be made by this Court in such finding. That apart, the stand taken by the defendant that the plaintiff was not at all in his employment and the Oil Machine remained out of order during that period, is totally proved to be false and as such there can't be any rebuttal from the side of the defendant amount of salary paid to the plaintiff.

8. In the result, I find no force in this appeal and it is dismissed with costs. No arguments were made by the plaintiff-respondent in support of the cross objection as such the same were also dismissed.

