

Abdul Mazid Vs. Abdul Mazid

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Court : Rajasthan

Decided On : Jul-25-1984

Reported in : 1984WLN(UC)219

Judge : S.S. Byas, J.

Appeal No. : S.B. Civil Regular Appeal No. 278 of 1973

Appellant : Abdul Mazid

Respondent : Abdul Mazid

Advocate for Pet/Ap. : Mr. Mathur

Disposition : Appeal dismissed

Judgement :

S.S. Byas, J.

1. is a plaintiff s civil second appeal who lost his money suit in the trial as well as in the appellate court.

2. Plaintiff Abdul Majid instituted a suit for the recovery of a sum of Rs. 3650/- against the defendant Abdul Majid and his father Mohammed Hanif on the foot of promissory note Ex. 3 and receipt Ex. 4. The case set up by him is that both the defendants executed Ex. 3 and Ex. 4 in his favour for consideration. The amount

recited in them has not been paid back to him by the defendants. During the pendency of the suit, defendant Mohammed Hanif passed away. The defendant contested the suit and denied the execution of Ex 3 and Ex. 4. The plaintiff was called upon to prove the execution of Ex. 3 and Ex. 4. The parties led evidence in the trial Court. The defendant also examined a Handwriting Expert to show that Ex. 3 and Ex. 4 are forged documents. The trial court held that Ex. 3 and Ex. 4 were not executed by the defendants. The plaintiff went in appeal which was heard by the learned Additional District Judge (1), Jodhpur. He concurred with the findings of the trial court and held that the plaintiff had failed to prove that Ex. 3 and Ex. 4 were executed by the defendants. The appeal was consequently dismissed.

3. The only contention raised by Mr. Mathur appearing for the plaintiff-appellant is that Ex. 3 and Ex. 4 were not sent in original to the Handwriting Expert. Only their negative photographs were sent. It was also argued that the specimen signatures of defendant Abdul Majid, who had executed Ex. 3 and Ex. 4 on his behalf and on behalf of his father Mohammed Hanif were not taken in the presence of the plaintiff. Therefore, it cannot be said that the specimen signatures sent to the Handwriting Expert were that of defendant Abdul Majid.

4. I find no force in this contention. The specimen signatures of defendant Abdul Majid were taken in the presence of the Judge of the trial court on Ex. A 1. The defendant was identified by his advocate before the learned Judge. As such the specimen signatures on Ex. A1 cannot be said to have been made by some body also other than the defendant Abdul Majid. The contention of the learned counsel on this point thus fails.

5. It is true that Ex. 3, Ex. 4 and Ex. A 1 were not sent in original to the Handwriting Expert for comparison. Only their negative photographs were sent. It would have been better if the originals were sent instead of the negative photographs. But that is not a sound reason to disturb the concurrent findings of the courts below.

6. I have gone through the evidence adduced by the parties. The learned Judge of the trial court held that Ex. 3 and Ex. 4 were not executed by defendant Abdul Majid on his behalf and on behalf of his father Mohammed Hanif. He his

thoroughly discussed the evidence. The matter went in appeal before the learned Additional District Judge. He has also thoroughly discussed, scanned and weighed the evidence of the parties. It may be pointed out that the execution of Ex. 3 and Ex. 4 was taken as not proved not only on the evidence of Handwriting Expert but also on other evidence and circumstances. In other words, the finding of the learned District Judge is not based only on the evidence of the Handwriting Expert. It is also based on other evidence and circumstances. The learned Additional District Judge has advanced cogent and convincing reasons as to way he concurred with the finding of the trial court. In my view, the approach made by the learned Additional District Judge was proper and justified. He has committed no error in evaluating and weighing the evidence of the parties. No error of law has been pointed out by the learned Counsel as to where the learned District Judge committed the error in his approach to the evidence of the parties.

7. The concurrent finding on the facts of the court below should not be disturbed unless there are cogent and convincing reasons to do so. In the instant case I find no good and cogent reasons to disturb the concurrent finding of the courts below.

8. For the reasons stated above, I find no force in this appeal of the plaintiff It is hereby dismissed with costs.

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