Teju Mal Vs. Daya Ram

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Court : Rajasthan

Decided On : Mar-04-1999

Reported in : [1999]98CompCas229(Raj)

Judge : Shiv Kumar Sharma, J.

Acts : Negotiable Instruments Act, 1881 - Sections 114 and 118; Evidence Act, 1872 - Sections 114

Appeal No. : S.B. Civil Regular First Appeal No. 120 of 1981

Appellant : Teju Mal

Respondent : Daya Ram

Advocate for Def. : Sagar Mal Mehta and; Anil Mehta, Advs.

Advocate for Pet/Ap. : R.P. Agrawal, Adv.

Disposition : Appeal dismissed

Judgement :

Shiv Kumar Sharma, J.

1. The plaintiff-appellant herein seeks to challenge the decree dated May 29, 1981, of the learned District Judge, Tonk, whereby his money suit based on a pronote was dismissed. The parties hereinafter shall be referred to in the same

manner as they were arrayed in the suit.

2. In the plaint, it was averred by the plaintiff that the defendant borrowed cash in the sum of Rs. 51,800 from him on November 2, 1977, and executed a pronote and receipt. Out of the borrowed money only Rs, 15,150 were paid and an amount in the sum of Rs. 36,650 was outstanding against the defendant. The prayer to decree the suit was made by the plaintiff. The defendant in the written statement denied the averments made in the plaint and pleaded that a frivolous suit was instituted by the plaintiff on account of enmity as the defendant persuaded the C. M. O. Tonk, not to issue licence to the plaintiff for installing a medical store. It was also averred that the suit was not maintainable as the plaintiff did not produce the licence under the Money Lenders Act. The trial court framed as many as four issues thus-

(i) Whether the defendant borrowed cash in the sum of Rs. 51,800 from the plaintiff and executed pronote and receipt in favour of the plaintiff on November 2, 1977 ?

(ii) Whether the defendant has to repay Rs. 36,650 to the plaintiff ?

(in) Whether the plaintiff is a money lender, if so, what is its effect on the suit ?

(iv) Relief

3. The plaintiff examined himself as P.W. 1 and produced Udhav Das, P.W.-2, and Prem Chand, P.W.-3, and exhibited pronote, exhibit-1, and two receipts, exhibit-2 and exhibit-3, whereas the defendant himself appeared in the witness box as D.W.-1. The learned trial court decided all the issues against the plaintiff.

4. I have reflected over the rival submissions and carefully scanned the material on record. I proceed to consider the contentions issue-wise.

Issues Nos. 1 and 2 :

5. In para. No. 1 of the plaint, it was pleaded by the plaintiff that he lent cash in the sum of Rs. 51,800 to the defendant and for this purpose pro-note, exhibit 1, and receipt, exhibit 3, were executed. But, in his statement, before the court, the

plaintiff deposed that he on October 14, 1977, lent cash Rs. 10,000 and supplied medicines in the sum of Rs. 41,800. Udhav Das, P.W.-2, stated that in his presence both parties had entered into compromise. The plaintiff lent Rs. 10,000 in cash, medicines and furniture in the sum of Rs. 41,800 to the defendant on October 14, 1977, and pronote was executed. Prem Chand, P.W.-3, stated that the plaintiff lent cash amounting to Rs. 10,000 in his shop whereas medicines and furniture were handed over to the plaintiff in the shop of the defendant on October 17, 1977.

6. Referring to the evidence of the plaintiff learned counsel, R. P. Agrawal, urged that execution of pronote, exhibit-1, stood proved and the presumption under Section 118 of the Negotiable Instruments Act, 1881 (for short 'the Act'), applies. Merely because the plaintiff comes forward with a case slightly different from the one mentioned in the pronote it will not be correct to say that the presumption under the said section does not arise at all.

7. Mr. Sagar Mal Mehta, learned senior advocate, on the other hand, canvassed that it is well settled that by his own pleading the plaintiff has established that the consideration shown in the pronote was not the real consideration therefore Section 118 of the Act would not come to his aid and the burden of proving the consideration was still on the plaintiff which he failed to discharge as he did not produce the account books and the arbitration award and the trial court rightly drew an adverse inference against the plaintiff. Reliance was placed on Kundan Lal Rallaram v. Custodian, Evacuee Property, AIR 1961 SC 1316 and Shrinarain v. Chunnilal, AIR 1957 Raj 159.

8. The provisions of Section 118 of the Act evolve the following principles:

(i) There is a presumption that consideration has passed for execution of the document.

(ii) In order to rebut the presumption the defendant has to prove that no consideration has passed.

(iii) Even if the plaintiff fails to prove that particular consideration mentioned in the document has passed, still the presumption wouldcontinue unless the defendant rebuts the presumption by establishing that no form of consideration has passed.

(iv) The presumption can be rebutted by producing definite evidence or by relying on the facts and circumstances of the case as well as the flaws in the plaintiff's evidence.

9. Section 118 of the Act provides a special rule of evidence contrary to the case of an ordinary contract. The statutory presumption in favour of there being consideration for every negotiable instrument continues unless it is rebutted. Where the cumulative effect of various factors and circumstances has been sufficient to destroy the presumption and to place the plaintiff in a position where he cannot succeed only on the basis of presumptions, he is required to establish affirmatively by cogent and positive evidence that the document sued upon was supported by consideration.

10. From the evidence of the plaintiff it is quite clear that the consideration mentioned in exhibit 1 was different from the consideration admitted by the plaintiff himself. The defendant did not admit the execution of the pronote. The plaintiff in his statement did admit that he maintained accounts of the amount paid which he submitted to the Income-tax Department. Witness Udhav Das, P.W.-2, in his cross-examination deposed that the plaintiff and the defendant both requested him to become arbitrator by submitting a written application. He accepted their request and passed an award in black and white. The witness admitted that the award was in his possession. Admittedly, the plaintiff did not produce the account books and the award before the trial court. In Kundan Lal Rallaram v. Custodian, Evacuee Property, AIR 1961 SC 1316, their Lordships of the Supreme Court observed thus (page 1319) :

'A plaintiff, who says that he had sold certain goods to the defendant and that a promissory note was executed as consideration for the goods and that he is in possession of the relevant account books to show that he was in possession of the goods sold and that the sale was effected for a particular consideration, should produce the said account books, for he is in possession of the same and the defendant certainly cannot be expected to produce his documents. In those circumstances, if such a relevant evidence is withheld by the plaintiff, Section 114 enables the court to draw a presumption to the effect that, if produced, the said accounts would be unfavourable to the plaintiff. This presumption, if raised by a court, can under certain circumstances rebut the presumption of law raised under Section 118 of the Negotiable Instruments Act.'

11. In Shrinarain v. Chunnilal, AIR 1957 Raj. 159, the Division Bench of this court (Hon'ble Wanchoo C. J. and Dave J.), indicated in para. 6 thus (page 160) :

'It is settled law that when the execution of a document is admitted by the executant thereof, the burden of proving want of consideration lieson him ; but if the plaintiff pleads a consideration different from that which is mentioned in the document sued upon, then the burden still rests upon the plaintiff to prove the consideration pleaded by him.'

12. In para. 11 of the said judgment it was further observed that (page 161) :

'Since the burden of proving the consideration was still on the appellants, it was their duty to produce their account books to show that so much amount was given in cash, if any, or that so much amount was really payable by the defendants to the plaintiffs on account of transaction between them and that exhibit P-l was written for good consideration.'

13. As the plaintiff failed to produce the account books and the arbitration award, the trial court rightly drew an adverse inference against the plaintiff by invoking Section 114 of the Indian Evidence Act. I do not see any illegality in the finding on issues Nos. 1 and 2 and I hold that the said issues were rightly decided by the trial court.

14. The decision on issues Nos. 1 and 2 goes to the root of the matter. Therefore it seems altogether unnecessary to go into the question of issue No. 3 whether the plaintiff was a money lender or not. Even if this issue is decided in the plaintiffs favour, his suit cannot be decreed. Since the consideration for exhibit 1 is not proved, it is not possible to give any relief to the plaintiff. The plaintiff's suit was

rightly dismissed by the trial court.

15. The appeal is, therefore, dismissed with costs.