

Khusiram Vs. Swaroop Narayan

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Court : Rajasthan

Decided On : Jan-20-1989

Reported in : 1989WLN(UC)332

Judge : Navin Chandra Sharma, J.

Appeal No. : S.B. Civil Second Appeal No. 62 of 1978

Appellant : Khusiram

Respondent : Swaroop Narayan

Disposition : Appeal Dismissed

Judgement :

Navin Chandra Sharma, J.

1. This is a second appeal by the plaintiff against the decree of the Additional District Judge No. 1, Jodhpur dated December 23, 1977 affirming the degree passed by the Additional Civil Judge, Jodhpur, on October 25, 1975 whereby the suit of the plaintiff was dismissed.

2. Brief facts of the case are that the plaintiff appellant instituted Civil Suit No. 32 of 1976 against the respondent for the recovery of a sum of Rs. 5280/- on the basis of a promissory note, The defence set up by the respondents was that he had pledged goods worth Rs. 9476/- with the plaintiff as a security for this loan and

the plaintiff cannot claim the money unless he returned the pledged goods. Both the courts below have concurrently found that the defendant had pledged goods worth Rs. 6230/- with the plaintiff. It was held that the plaintiff had no right to file the suit on the basis of the promissory note and all he could do was to file a suit for recovery of the amount due against the defendant after sale of the pledged articles.

3. At the time of admission of this appeal, the only substantial question of law framed was as to whether the plaintiff's suit for more recovery of money without praying for the sale of the pledged articles was maintainable because the remedy was concurrent?

4. It has been categorically laid down by their Lordships of the Supreme Court in *Lallan Parsad v. Rehmat Ali* and another reported in : [1967]2SCR233 that if a Pawnee sues on the debt denying the pledge, and it is found that he was given possession of the goods pledged and had retained the same the Pawner has the right to redeem the goods so pledged by payment of the debt. If the Pawnee is not in a position to re-deliver the goods, he cannot have both the payment of the debt and also the goods. Where the value of the pledge property is less than the debt and in a suit for recovery of debt by the pledge, the pledgee denies the pledge or is otherwise not in a position to return the pledge goods, he has to be entitled then to only the balance. That being the position the Pawnee would not be entitled to a decree on the basis of the promissory note and also retain the goods found to have been delivered to him and, therefore, in his custody. The High Court in *Lallan Parsad's* case had found that the goods were delivered to the appellant under pledge and the appellant was not entitled to any relief in view of his stand that the goods were never pledged with him. The High Court had dismissed the suit of the appellant. It was held by their Lordships of the Supreme Court that if the Pawnee is made entitled to maintain the suit while denying the pledge, the Pawner would be compelled not only to pay the amount due under the promissory note but lose the pledge goods as well. The appeal filed by the plaintiff was dismissed by the Supreme Court.

5. In view of the above decision of the Supreme Court in Lallan Parsad's case, the substantial question of law framed is awarded as against the plaintiff. This appeal has no merit in it and it is hereby dismissed with costs to the defendant respondent

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