

Jayabati Chatterjee Vs. Bimala Das

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Court : Kolkata

Decided On : Dec-24-1990

Reported in : (1991)2CALLT212(HC),95CWN1016

Judge : Anandamoy Bhattacharjee and ;Amulya Kumar Nandi, JJ.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Section 97(1); ;Code of Civil Procedure (CPC) (Amendment) Act, 1976 - Section 100 - Order 41, Rule 11

Appeal No. : S.A. No. 22 of 1976

Appellant : Jayabati Chatterjee

Respondent : Bimala Das

Advocate for Def. : None

Advocate for Pet/Ap. : Ranjit Banerjee and ;Abhijit Banerjee, Advs.

Disposition : Appeal dismissed

Judgement :

Anandamoy Bhattacharjee, J.

1. These two Second Appeals having been presented and also heard under the provisions of Order 41 Rule 11 of the Code of Civil Procedure before the commencement of the Code of Civil Procedure (Amendment) Act of 1976,

whereby a new Section 100 has been substituted for the old one, shall be governed by the provision of Section 100, as it stood before, in view of the saving provisions contained in Section 97(1) (m) of the Amendment Act of 1976.

2. But even Under Section 100 of the Code, as it stood before, our apex Courts have consistently deprecated interference with the finding of fact and the Supreme Court even had to regret in *Deity Pattabhiramaswamy* (AIR 1959 SC 57 at 59) that High Courts, in their anxiety to do justice, were disposing of Second Appeals as if they were first appeals.

3. Not that finding of fact was beyond the reach of and a 'no-entry' area for the High Courts. As reiterated by the Supreme Court in *Mattulal v. Radhelal* : [1975]1SCR127 , a finding of fact could legally be assailed even in Second Appeal if the same - (a) was arrived at an erroneous application of law, or (b) was based on no evidence at all, or (c) was such as could not be arrived at by any reasonable person. Let us govern ourselves accordingly.

4. The question before the Courts below was whether the disputed transaction was really, and not merely apparently, a sale or was a loan in substance, notwithstanding its form. Both the Courts below have relied on the decision of this Court laying down the tests to ascertain as to whether a sale in form is in substance a loan transaction and the apparent state of thing is accordingly not the real one. And applying these well-settled tests, approved by the Supreme Court in later decisions, to the evidence on record and on a detailed consideration thereof, have held the transaction to be really a sale as it professed to be. We are afraid that these concurrent findings by the two Courts below are no longer assailable in Second Appeals as we have not been able to find any erroneous application of law, nor the findings to be based on no evidence at all, nor to be such as could not be arrived at by any reasonable person, Finding thus nothing to warrant our intervention according to the principles governing hearing of Second Appeals, as reiterated by the Supreme Court in *Mattulal* (supra), we cannot but fold our hands.

5. We accordingly dismiss both the second appeals involving the common question as indicated above, but we do so without any order as to costs.

Amulya Kumar Nandi, J.

6. I agree.

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