

Ram Avtar Vs. Krishan Pal

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Court : Delhi

Decided On : Feb-26-2013

Judge : V.K.Shali

Appellant : Ram Avtar

Respondent : Krishan Pal

Judgement :

* HIGH COURT OF DELHI AT NEW DELHI + R.S.A. NO.96 OF 2011.Decided on :

26. h February, 2013 RAM AVTAR Through: Appellant Ms.Jyotsana Gupta, Advocate. Versus KRISHAN PAL Respondent Through : CORAM: HONBLE MR. JUSTICE V.K. SHALI V.K. SHALI, J.

(ORAL) 1. This is a regular second appeal filed by the appellant against the order/judgment dated 24.3.2012 passed by Sh.Dinesh Bhatt, ADJ, Tis Hazari Courts, Delhi in RCA No.66/11.

2. I have heard the learned counsel for the appellant. The learned counsel has contended that two substantial questions of law arising from the present regular second appeal reads as under:(a) Whether the document filed by the plaintiff is having a burden to prove it, or it shifts upon the defendant, as held by the trial court? (b) Whether the suit of the plaintiff is liable to be rejected for not proving the document filed by the plaintiff? 3. At the outset, it may be pertinent here to mention that both these questions cannot be treated as the substantial questions of law as

these are essentially questions of fact which have been adjudicated by the courts below.

4. Briefly stated the facts of the case are that the respondent /Krishan Pal filed a suit for recovery of `1,03,000/- against the appellant/Ram Avtar. It was alleged in the plaint that the appellant/defendant had approached the respondent /plaintiff for a loan as he was in need of money and the respondent herein advanced a sum of `1,03,000/-. For security of the loan, the appellant had deposited the original documents of his plot measuring 120 sq. yds. out of plot measuring 500 sq. yds. comprising of Khasra no.15, Kila No.19-20, Mustatil No.16, Kila No.16, situated in the revenue estate of Village Kakrola, Delhi.

5. It was agreed by the appellant/defendant by executing a receipt cum undertaking on 12.3.2003 that the amount of `1,03,000/- will be repaid with 2% interest per month. Since the appellant/defendant did not adhere to his commitment, the respondent/plaintiff filed a suit for recovery bearing Suit No.588/2009.

6. On the pleadings of the parties, the following issues were framed: (i) Whether the suit is liable to be rejected under Order 7 Rule 11 CPC? OPD (ii) Whether the plaintiff is entitled to decree of recovery as prayed for? OPP (iii) Whether the plaintiff is entitled to interest? OPP (iv) Relief.

7. All these issues, after permitting the parties to adduce their respective evidence, were decided against the appellant/defendant and the suit was decreed for a sum of `1,03,000/- in favour of the respondent/plaintiff with pendente lite and future interest with 9% p.a. from the date of institution of the suit till the date of realization.

8. The appellant feeling aggrieved, has preferred an appeal dated 24.3.12 listed on before Mr.Dinesh Bhatt, learned ADJ in RCA No.66/11, wherein the learned ADJ had upheld the order of the trial court.

9. Thus there was a concurrent finding returned by the two courts below that the plaintiff was entitled to recovery of `1,30,000/- along with interest @ 9% per

annum.

10. The question which has been purportedly raised by the appellant /defendant in the present second appeal are as to on whom the burden was to prove the documents which was forming the basis of decreeing the suit. Obviously, this burden was on the respondent /plaintiff who has been held to have discharged the said burden and it was only thereafter, onus shifted to the defendant /appellant. The general principle of proof as contained in Section 101 of the Evidence Act is one who asserts must prove. The remaining Sections, that is, Section 102 of the Evidence Act onwards are only envisaging exceptions. In the instant case, an issue had also been framed with regard to the rejection of the plaint which was also decided against the appellant. Therefore, both these issues essentially are issues of facts which have already been adjudicated by the courts below and in my considered view, they do not raise any substantial questions of law and accordingly, the present regular second appeal is without any merit and the same is dismissed. V.K. SHALI, J.

FEBRUARY 26 2013 RN

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