(2019) 08 CHH CK 0027

In the Chhattisgarh High Court

Case No : First Appeal No. 191 Of 2004

Bhuri Bai Soni And Ors — APPELLANT

Vs

Banshi Lal Soni And Ors — RESPONDENT

Date of Decision : 02-08-2019

Acts Referred:

Code Of Civil Procedure 1908 — Section 96, Order 17 Rule 1, Order 26 Rule 2, Order 26 Rule 9
Money Lenders Act,1934 — Section 10

Citation : (2019) 08 CHH CK 0027

Hon'ble Judges : Ram Prasanna Sharma, J

Bench : Single Bench

Advocate : Manoj Paranjpe, A.K. Prasad

Final Decision : Dismissed

Judgement

Ram Prasanna Sharma, J

1. This first appeal is preferred under Section 96 of the Code of Civil Procedure, 1908 against judgment/ decree dated 12.08.2004 passed by Third Additional District Judge, Raipur (C.G.) in Civil Suit No. 15- A/2004, wherein the said court decreed the suit filed by the original respondent No. 1 namely Banshi Lal Soni for recovery of amount to the tune of Rs. 3,29,600/- and interest thereon.

2. As per the appellants, the original respondent No. 1 filed a suit against the appellants on the ground that on 16.05.1994, the appellants/ defendants executed a registered mortgage deed of their house in his favour and received a loan from him to the tune of Rs. 1,95,000/-. The details of mortgaged property is described in Schedule- A & B annexed with the plaint. The loan amount was to be repaid in three 6 monthly installments of Rs. 65,000/- each with interest thereon @ 2% per month and in default an additional penal rent was liable to be charged at 1.50% per month. The appellants had paid Rs. 7,800/- on 11.11.1994 and Rs. 7,800/- on 16.12.1994. Thereafter, no amount has been paid towards interest or principal amount. The suit for recovery of principal amount and interest to the

tune of Rs. 3,29,600/- was filed. The appellants denied all the averments and the trial court passed decree against the facts and legal aspects of the matter.

3. Learned counsel for the appellants submits as under:-

(i) The appellants were not afforded proper opportunity to adduce evidence. On 03.08.2004, an application for adjournment was filed along with medical documents, but the same was rejected. An application under Order 26 Rule 9 of the C.P.C., 1908 was also filed for recording evidence of appellant No. 2 on Commission, but the same was also rejected.

(ii) As the evidence is closed, the appellants were not able to prove their pleading that they have signed on the paper of mortgage on the basis of undue influence.

(iii) The original respondent No. 1 was not having license under the Money Lenders Act, 1934 (for short "the Act, 1934"). As per Section 10 of the Act, 1934, the interest shall not exceed to principal amount. The finding recorded by the trial court is not based on proper marshaling of evidence and the same is liable to be set aside.

4. On the other hand, learned counsel for the respondents submits as under:-

(i) The appellants have been provided sufficient opportunity to adduce evidence, but no evidence was adduced by them and when right to adduce evidence is closed, the same is not challenged, therefore, the order is attained finality

(ii) The documents filed by the original respondent/ plaintiff was not rebutted and there is nothing on record to show that the mortgage deed which is registered one is executed on undue influence.

(iii) The mortgage deed is substantiated by evidence of witnesses and the same is proved to the satisfaction of the court.

(iv) A number of adjournments were given by the court to record evidence of appellants side, therefore, they cannot complain that opportunity was not provided. The finding arrived at by the trial court is not liable to be interfered with invoking jurisdiction of appeal.

5. I have heard learned counsel for the parties and perused the record in which judgment and decree has been passed.

6. First question for consideration before this Court is whether the appellants borrowed a sum of Rs. 1,95,000/- from the original respondent No. 1 and executed mortgage deed of their house in favour of respondent No. 1. Banshi Lal Soni (PW-1) deposed before the trial court that the appellants borrowed a sum of Rs. 1,95,000/- from him and executed a registered mortgage deed in their favour as per Ex.P/1. As per the agreement, rate of interest was 2% per month from 01.06.1994. The appellants paid Rs. 7,800/- and Rs. 7,800/- on count of interest and thereafter, they did not pay the principal amount and the interest.

Thereafter, a notice was served to them as per Ex.P/6, but the amount was not paid i.e. why the suit was filed. Version of this witness is unrebutted in cross-examination and the same is supported by mortgage deed Ex.P/1 and other documents regarding receipt of payment of interest and service of notice from Ex. P/2 to P/13. Oral and documentary evidence adduced on behalf of original respondent No. 1 is not rebutted by the appellants, therefore, it is proved that the appellants were under obligation to pay the principal amount and interest thereon as claimed.

7. Second question for consideration before this Court is whether the opportunity is provided to the appellants to adduce evidence. As per order-sheet of the trial court, on 18.10.2003, the case was fixed for recording evidence of appellants side. An application under Order 17 Rule 1 of C.P.C. was filed for adjournment. The court granted adjournment and case was fixed on 29.11.2003 for recording their evidence. Likewise, on 02.01.2004, 20.02.2004, 24.04.2004 & 30.06.2004, the case was fixed for recording evidence of the appellants side. After taking adjournments, the appellants did not adduce any evidence. Thereafter, on 03.08.2004, the evidence of appellant side was closed. Order-sheets of the trial court show that the appellants did not avail opportunity as provided by the trial court, therefore, they cannot complain that opportunity was not provided to them. Argument advanced on this court must fail.

8. Third question for consideration before this Court is whether the opportunity was not provided to examine appellant No. 2 on Commission as per Order 26 Rule 9 of the C.P.C. From record, it is clear that the case was fixed for producing list of witnesses, but no list of witnesses was produced by the appellants. When the case was fixed for recording evidence of appellant side, no such application was filed for examination of appellant No. 1 & 2 on Commission. When evidence was closed on 03.08.2004, one application was filed for examination of appellant No. 2 on Commission, but no affidavit was filed in support of the application as per Order 26 Rule 2 of the C.P.C., therefore, reopening of the case was not reasonable in the facts and circumstances of the case. Argument advanced on this count is also not liable to be sustained.

9. Fourth question for consideration before this Court is whether original respondent No. 1 was a money lender. There is no such record that the respondent was money lender, therefore, the Act, 1934 has no application in the present case. The appellants are under obligation to pay principal amount and interest as agreed upon. The finding arrived at by the trial court is based on proper marshaling on evidence and the same is not liable to be interfered with and this Court has no reason to record contrary finding.

10. Accordingly, the appeal is liable to be dismissed. The decree is passed against the appellants and in favour of the respondents on the following terms and conditions:-

(i) The appeal is dismissed with cost.

(ii) The appellants to bear cost of the respondents throughout.

(iii) Pleaders' fee is fixed to Rs. 3,000/- for this appeal, if certified.

(iv) A decree be drawn accordingly.

