(2002) 03 OHC CK 0045

In the Orissa High Court

Case No : Second Appeal No. 59 of 1987

Chinari Srirama Murty and Others — APPELLANT

Vs

Abhimanyu Mohapatra — RESPONDENT

Date of Decision : 25-03-2002

Acts Referred:

Evidence Act, 1872 — Section 67, 68, 72
Negotiable Instruments Act, 1881 (NI) — Section 118
Stamp Act, 1899 — Section 25

Citation : (2002) 94 CLT 251 : (2002) 1 OLR 634

Hon'ble Judges : Pradipta Ray, J

Bench : Single Bench

Advocate : B. Pal, for the Appellant; A.K. Nanda, for the Respondent

Final Decision : Dismissed

Judgement

Pradipta Ray, J.—Plaintiff-Respondent filed Money suit No. 4 of 1983 in the Court of the Subordinate Judge, Gunupur, claiming a decree for Rs. 4,100/- or in the alternative for Quintal 34.20 K.Gs. of paddy, pendente lite interest and future interest till payment or recovery. By judgment and decree dated February 16, 1985, Trial Court dismissed the suit. The plaintiff-respondent preferred Miscellaneous Appeal No. 2 of 1986 of the Court of the Addl. District Judge, Jeypore (Previous M.A. No. 4/85 of the Court of the District Judge, Jeypore). By judgment and decree dated November 26, 1986 the Addl. District Judge allowed the said appeal and decreed the suit. Being aggrieved the present appellants, who were defendants in the suit, have filed this second appeal.

2, The case of the plaintiff-respondents as pleaded in the plaint, inter alia, is :

The present appellants jointly borrowed 55 putties of paddy from the respondent on June 11, 1980 by executing a grain-bond wherein they jointly promised to repay the borrowed paddy with 5 maanas of paddy per putty as interest on or before January 25, 1981. Despite repeated requests and lawyer''s notice dated November 17, 1982 the appellants failed to repay the same.

3. Defendants contested the suit filing joint written statement. The defence case, inter alia, is :

The plaintiff-respondent is money lender by profession and as such in absence of a Money Lender Certificate, the suit is not maintainable. The said defendant-appellants owned and possessed 10 acres of land annually producing 300 bags of paddy, each containing 75 Kgs. They were never in need of any paddy from the respondent or any other person. The respondent had no land and capacity to advance the paddy loan to them.

4. The Trial Court held that the plaintiff-respondent was not a professional money lender; that he had landed property; that the defendant-appellants failed to prove that they did not take any paddy as loan from the respondent. The Trial Court, however, dismissed the suit on the ground that the plaintiff could not prove execution of the document (Ext. 1) by the defendants-appellants as there was no attesting witness. It took the view that no attesting witness having been examined, the disputed grain-bond (Ext. 1) could not be accepted in evidence in view of Section 68 of the Evidence Act. It appears that the plaintiff-respondent sought to get the benefit of presumption u/s 118(a) of the Negotiable Instruments Act, but the Trial Court rejected the said plea on the ground that the execution of the disputed bond (Ext. 1) was not proved.

5. In the appeal the Addl. District Judge has taken the view that a grain-bond is not required by law to be attested; that the execution of the disputed bond (Ext. 1) has been duly proved and that the plaintiff-respondent is not entitled to the benefit of presumption u/s 118(a) of the Negotiable instruments Act. The lower Appellant Court reversed the judgment and decree of. the Trial Court and decreed the suit.

6. From the pleading of the parties and the judgments of the Courts below, the following substantial questions of law are required to be determined in the present second appeal:

(i) Whether a bond is required by law to be attested ?

(ii) What is the legal effect and consequence of the requirement of attestation of an instrument under the provisions of Section 2(5)(c) of the Indian Stamp Act ?

(iii) Whether Section 68 or Section 72 of the Indian Evidence Act will be applicable for determining acceptance of the disputed bond in evidence ?

7. Mr. B. Pal, learned Senior Advocate appearing for the defendant-appellants has referred to Section 2(5) of the Indian Stamp Act and submitted that in view of the said provisions, a grain-bond is required to be attested and cannot be accepted in evidence unless the requirements of Section 68 of the Evidence Act are satisfied. Mr.-Pal has cited the following decisions in support of his aforesaid submission :

(i) AIR 1925 188 (Oudh)

(ii) Wadhawa Mat v. Karim Bakhsh and Anr. AIR 1925 Lah 415

(iii) Chettapalli Sitharama Ratna Ranganayakamma v. Vankamamidi Venkata Subba Rao AIR 1957 A.P. 779

Learned Advocate for the plaintiff-respondent has submitted that a bond is not required by law to be attested for the purpose of execution and the definition of "bond" under the Indian Stamp Act Is meant for the limited purpose of collection of stamp duty and does not extend to creation or execution of a bond. He has also referred to several decisions in support of such submission.

8. The sole object of the Stamp Act is to collect revenue and the definitions given by the said Act are meant only for the limited purpose of the Stamp Act. The definition given in the Stamp Act will only determine whether a particular instrument / document Is required to be stamped or not. If a document does not satisfy the definition given In the Stamp Act, the same may not be required to be stamped, but the document / instrument does not become ineffective or inoperative merely because it does not satisfy the definition of the Stamp Act. The word "bond" has not been defined In any Act dealing with loan of grain. En general sense a bond Is a document by which one person binds himself to give back a sum or something In kind taken as loan.

9. Mr. Pal, learned Advocate has not placed before this Court any provision of law by which a bond in the nature of the disputed bond is required to be attested for the purpose of execution. It has been held In Ramchandra Dhondbaji Qujar v. Jhibal Shibram Buradkar, AIR 1940 Nag 240 :

"Under Section 2(5), Stamp Act, a bond is said to include three classes, the second of which is applicable in the present case. The definition, it is to be noted, is not exhaustive, nor is it proper to infer from this definition of "bond" in the Stamp Act which deals with stamp matters only, that it means that such a document is required by law to be attested. In the case of mortgages and gifts it is clearly so stated in the Transfer of Property Act and in the case of wills in the Succession Act, but a bond as such is not an instrument required by law to be attested. Therefore, it is Section 72, Evidence Act, which applies and not Section 68."

The same view has been expressed in AIR 1940 240 (Nagpur)

"I am, therefore, of the opinion that a bond is not a document required by law to be attested as contemplated by Section 68, Evidence Act, and it is, therefore, unnecessary to prove its execution by producing an attesting witness."

A Division Bench of the Gauhati High Court in Khuraijam Ongbi Thoibisana Devi and Others Vs. Akoijam Amubi Singh (deceased by L. R''s.) and Others, has also accepted the view expressed by the Nagpur and Madhya Bharat High Courts.

10. The decisions cited by Mr. Pal do not deal with the question involved in the present case. Those decisions were dealing with the question when a document

could be called "bond" within the meaning of the Stamp Act. The decision of Oudh High Court in Dayal and Anr. v. Bhimma (supra) is cryptic and is not very clear. In Wadhawa Mal (supra) Lahore High Court was considering whether a "bond" within the meaning of the Stamp Act would also be a "bond" for the purpose of Limitation Act. In Chetlapalli (supra) Andhra Pradesh High Court was dealing with the problem whether a document would be a "bond" within the meaning of the Stamp Act or not.

11. Lahore High Court in Wadhawal Mal (supra) was further held that the definition of term "bond" In the Stamp Act is not exhaustive and supports the view of the Gauhati High Court In Khuraijam Ongbi Thoibisana Devi and Others Vs. Akoijam Amubi Singh (deceased by L. R''s.) and Others, This Court Is unable to accept the submissions of Mr, Pal that the disputed document was required to be attested by taw and as such hit by Section 68 of the Evidence Act. It appears that the disputed document (Ext. 1) was impounded and required stamp was put on It. in fact, it could have been urged by the plaintiff-respondent that the document not having been attested it was not required to be stamped u/s 2(5)(c) of the Stamp Act.

12. As the disouted grairj-bond (Ext. 1} was not required to be attested in law, its acceptance in evidence is governed by Section 72 of the Evidence Act and not by Section 68. It is now settled that even an attested document which is not required by law to be attested may be proved by any of the modes indicated in Section 67 of the Evidence Act without examining any attesting witness. In the present case, the plaintiff-respondent has examined witnesses including the scribe to prove the disputed grain-bond (Ext. 1). Both plaintiff (P.W. 1) and the scribe (P.W. 2) have clearly stated that the document was executed by the defendants in their presence. Moreover, in their Advocate''s reply (Ext. 6) to the Respondent''s Lawyer''s notice, the appellants have clearly admitted that they executed the grain-bond on June 11, 1980, but claimed that the said document (Ext. 1) was created without any consideration according to the demand of the Respondent, a money lender. Thus, there is no dispute about the execution of the document and the Court of appeal below has not committed any error in accepting the disputed document as evidence and relying upon it.

13. Mr. Pal, learned Advocate for the appellants has, however, urged that the admission, if any, is to be taken as a whole and court below committed error in not considering the other part of the assertion that the disputed bond was without any consideration and no paddy was in fact delivered by the Respondent. It is correct that the admission should be taken as a whole, but once execution of the document is admitted the onus shifts to the executant to prove that the same is without consideration or invalid for any other reason. Recital as to the receipt of consideration in a proved document is presumed to be true unless the person denying its correctness proves that the recital is not true. In the present case the appellants have riot adduced any evidence whatsoever for the said purpose. No witness has been examined by the appellants (Defendants) to prove

their case of borrowing Rs. 2500/-, execution of pro-note and repayment of the said loan amount.

14. However, both the courts below have committed error in referring to Section 118 of the Negotiable Instruments Act. The disputed grain-bond not being a "negotiable instrument", the Negotiable instruments Act does not apply.

15. For the foregoing reasons, the appeal is dismissed. No order as to costs.

