(1969) 02 P&H CK 0010

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 1379 of 1959

Firm Mrri Ram Gian Chand and others APPELLANT

Vs

Kalwant Rai and others RESPONDENT

Date of Decision : 21-02-1969

Acts Referred:
Stamp Act, 1899 — Article 1 Schedule I

Citation : (1969) 02 P&H CK 0010

Hon'ble Judges : D.K. Mahajan, J

Bench : Single Bench

Advocate : D.C. Gupta, for the Appellant; Lalit Mohan Suri, for the Respondent

Final Decision : Allowed

Judgement

D.K. Mahajan, J.—This second appeal is directed against the concurrent decisions of the Courts below dismissing the plaintiff''s suit.

2. The plaintiff brought a suit for recovery of Rs. 1,768/10/3 on the basis of a bahi account. It is no longer in dispute that there were dealings between the parties and there was a running account. According to the defendant''s version, he has cleared the account completely whereas, according to the plaintiff''s version, the amount in suit was due. The plaintiff, in order to get over the bar of limitation, relied on the acknowledgment dated the 15th October, 1954. This acknowledgment reads thus ''baqi lene rahe" and purports to be signed by Kulwant Rai. Kulwant Rai took the stand that he never signed this entry. The Courts below have found that there was a running account and the amount was due and Kulwant Rai signed the entry, but the plaintiff has been nonsuited on the ground that the entry "baqi lene rahe" amounts to an acknowledgment within the meaning of Article 1, Schedule I, of the Stamp Act and, there fore, being unstamped is inadmissible in evidence. For this decision the lower appellate Court has relied on AIR 1942 50 (Lahore) and Shadi Ram v. Prabhu AIR 1963 P&H. 28.

3. The plaintiff has come up in second appeal and Mr. Dalip Chand Gupta, learned counsel for the plaintiff, has strenuously contended that no doubt the entry "baqi lene rahe" is an acknowledgment but it is not an acknowledgment as defined in Article 1, Schedule I of the Stamp Act. His contention is that mere acknowledgment does not require stamp; it is only an acknowledgment which is written in order to supply evidence of a debt in any book that is covered by Article 1 Schedule I of the Stamp Act. Mr. Gupta''s contention is that from the words of the acknowledgment and the surrounding circumstances the Court has to form an opinion whether the alleged acknowledgment is an acknowledgment simpliciter or is an acknowledgment supplying evidence of the debt. In the present case, no finding has been recorded by the Courts below that the acknowledgment was made by the debtor in order to furnish evidence of the debt. It has been assumed that the acknowledgment was so made. I have gone through the plaint and I find that it was not the case of the creditor that the debtor made this acknowledgment for the purpose of supplying evidence of the debt. The suit is based on the fret that it is an acknowledgment pure and simpliciter. There is a very thin line of distinction between an acknowledgment simpliciter and an acknowledgment supplying evidence of a debt, and the determining factor is the intention of the parties. In the present case, there is no difficulty in coming to the conclusion what was the intention of the parties. The stand taken up by the debtor was that he never signed the acknowledgment. In other words, there was no acknowledgment. The creditor''s case was not that the acknowledgment was made to supply evidence of the debt. The Full Bench of the Lahore High Comt in AIR 1942 50 (Lahore) was rot called upon to decide such a case. There the question was whether certain words amounted to an acknowledgment or a bond or an agreement and the words like the present were held to be an acknowledgment; but the further question in what circumstances these words would be an acknowledgment within the meaning of Article 1 Schedule I of the Stamp Act, was not determined. On the other hand, the decision of this Court in Suraj Mal-Kalu Ram v. Vishan Gopal AIR 1968 P&H. 216 wherein the acknowledgment was in these terms '' baqi rahe" was held to be not intended by the debtor to supply evidence of the debt and it was held that such an acknowledgment did not fall within the ambit of Article 1 Schedule I of the Stamp Act. Mr Justice Wanchoo, as he then was, i Ramdayal Vs. Maji Devdiji, held-

A mere acknowledgment, as distinguished from an acknowledgment in which there are words from which an implied promise to pay may be inferred, cannot be the basis of a suit.

Where in an account book after the opening balance there are some items on the credit side as also on the debit side and then the balance is struck showing certain amount as due from the debtor to the creditor and then there is the signature of the debtor acknowledging the balance as due from him, the presumption is that the intention was to accept the correctness of the account and to make it the account of the debtor and not that the intention was to supply evidence of the debt, unless the contrary is proved by clear evidence, and there is no question of any stamp being required on an acknowledgment of this kind.

4. The present acknowledgment is more or less in the same terms as the acknowledgment in the Rajasthan case. In my opinion, the decision of this Court in Suraj Mal-Kalu Ram''s case and of the Rajasthan High Court, wherein all the case-law on the subject has been discussed, clinch the matter. The very fact that the debtor denied his liability altogether, clearly shows that the acknowledgment in question was a mere acknowledgment of the correctness of the account and not an acknowledgment furnishing evidence of the debt.

5. No other question falls for determination.

6. In this view of the matter, I allow this appeal, set aside the decrees and judgments of the Courts below and decree the plaintiff''s suit, but there will be no order as to costs. If the amount is not paid within three months from today, the amount will carry future interest at the rate of six per cent per annum, from today''s date.

