

(2010) 09 P&H CK 0047

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 2298 of 1985 (O and M)

Hari Ram (Dead) through L.Rs.

APPELLANT

Vs

Hakumat Rai Harbhajan lal Soap Merchants and Others

RESPONDENT

Date of Decision : 30-09-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 102
Stamp Act, 1899 — Section 35, 36, 61

Citation : AIR 2011 P&H 291 : (2011) 2 CivCC 251 : (2011) 161 PLR 212 :
(2011) 1 RCR(Civil) 902

Hon'ble Judges : Vinod K. Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Vinod K. Sharma, J.—This regular second appeal, by the Plaintiff/Appellant, is directed against the judgment and decree dated 2.4.1985 passed by the learned lower appellate Court, vide which the suit filed by the Plaintiff/Appellant, for recovery of Rs. 9,000/- (Rupees nine thousand only) along with interest, was ordered to be dismissed. The appeal having been filed in the year 1985, amended provisions of Section 102 of the Code of Civil Procedure, therefore, is not attracted to this case.

2. The Plaintiff/Appellant filed a suit for recovery of Rs. 9,000/- (Rupees nine thousand only), on the pleadings, that a sum of Rs. 9,000/- (Rupees nine thousand only) was advanced to the Defendant/Respondents on 10.3.1979.

3. The translated receipt/pronote executed between the parties reads as under:

Received a sum of Rs. 9,000/- half of which is- Rs. 4,500 from Hari Ram son of Faqir Chand of Ahmedgarh on interest. Money received in cash. Promise shall be of two months. After two months principal and interest shall be paid. Interest shall be paid @ Rs. 1.50 Ps. per cent per mensem. Receipt has been written as evidence thereof.

4. Learned trial Court, on appreciation of evidence, came to the conclusion that the writing referred to above stood proved, which was exhibited in evidence as Ex.P-1. Keeping in view the Ex.P-1 and other evidence led by the Plaintiff/Appellant, the suit was decreed.

5. The Defendant/Respondents preferred an appeal.

6. In appeal, the learned lower appellate Court affirmed the findings of the learned trial Court, on all other issues except the finding on issue No. 1.

7. Issue No. 1 reads as under:-

1) Whether the Defendant-firm secured a loan of Rs. 9,000/- from the Plaintiff vide writing dated 10-3-1979? If so, through whom and its effect? OPP

8. Reason for reversal of finding on this issue was, that the learned lower appellate Court held, that the receipt Ex.P-1 reproduced above was a pronote, therefore, was required a stamp duty of Rs. 22.50 (Rupees twenty two and paise fifty only) as against 80 naya paise, affixed on the document, by treating it to be receipt. The learned lower appellate Court came to the conclusion, that the document was not admissible in evidence, being under stamped and reversed the finding on issue No. 1.

9. Mr. Vivek Suri, learned Counsel, appearing on behalf of the Appellant, contended that this appeal raised the following substantial question of law:

Whether the finding of the learned lower appellate Court is outcome of misreading of Sections 36 and 61 of the Indian Stamp Act, to reject the document Ex.P-1?

10. In support of the substantial question of law, referred to above, the learned Counsel for the Appellant contended, that it was not in dispute, that the document executed, at the time of advancing the loan, was proved by the Plaintiff/Appellant and was duly exhibited by the learned trial Court as Ex.P-1.

11. The learned trial Court decreed the suit by taking into consideration Ex.P-1, as also the other evidence on record.

12. Therefore, it was not open to the learned lower appellate Court to reject this document, in view of Section 36 of the Indian Stamp Act, which reads as under:

36. Admission of instrument where not to be questioned - Where an instrument has been admitted in evidence, such admission shall not, except as provided in Section 61, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped." 9. Section 61 of the Indian Stamp Act reads as under:

61. Revision of certain decisions of Courts regarding the sufficiency of stamps -

(1) When any Court in the exercise of its civil or revenue jurisdiction or any Criminal Court in any proceeding under Chapter XII or Chapter XXXVI of the

Code of Criminal Procedure, 1898, makes any order admitting any instrument in evidence as duly stamped or as not requiring a stamp, or upon payment of duty and a penalty u/s 35, the Court to which appeals lie from, or references are made by, such first-mentioned Court may, of its own motion or on the application of the Collector, take such order into consideration.

(2) If such Court, after such consideration, is of opinion that such instrument should not have been admitted in evidence without the payment of duty and penalty u/s 35 or without the payment of a higher duty and penalty than those paid, it may record a declaration to that effect, and determine the amount of duty with which such instrument is chargeable, and may require any person in whose possession or power such instrument then is, to produce the same and may impound the same when produced.

(3) When any declaration has been recorded under Sub-section (2), the Court recording the same shall send a copy thereof to the Collector, and, where the instrument to which it relates has been impounded or is otherwise in the possession of such Court, shall also send him such instrument.

(4) The Collector may thereupon, notwithstanding anything contained in the order admitting such-instrument in evidence, or in any certificate granted u/s 42, or in Section 43, prosecute any person for any offence against the Stamp-law which the Collector considers him to have committed in respect of such instrument:

Provided that-

(a) no such prosecution shall be instituted where the amount (including duty and penalty) which, according to the determination of such Court, was payable in respect of the instrument u/s 35, is paid to the Collector, unless he thinks that the offence was committed with an intention of evading payment of the proper duty ;

(b) except for the purposes of such prosecution, no declaration made under this section shall effect the validity of any order admitting any instrument in evidence, or of any certificate granted u/s 42.

13. Reading of Sections 36 and 61 of the Indian Stamp Act would clearly show, that it was not open to the learned lower appellate Court to reject the document from being read in evidence, as it was admitted in evidence by the learned trial Court.

14. The learned lower appellate Court at best could have followed the procedure laid down u/s 61 of the Indian Stamp Act. In that event also, the Plaintiff/Appellant could have been asked to pay the stamp duty payable along with penalty and there-after read the document in evidence.

15. In view of Section 36 of the Indian Stamp Act, the learned lower appellate Court had no jurisdiction to reject this exhibit, as done by the learned lower

appellate Court.

16. This view finds support from the judgment of this Court in Bawa Gurdas Ram Bedi Vs. Hans Raj Ram Parshad Khatri and Others, , wherein this Court was pleased to lay down as under:

The short answer to the Respondents' attack against the lower Court's view is found in Section 36 of the Indian Stamp Act, according to which where an instrument has been admitted in evidence, such admission cannot, except as provided in Section 61, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped. That the expression "any stage" covers the stage of appeal is indisputable, and indeed has the support of the Supreme Court in V.E.A. Annamalai Chettiar and Another Vs. S.V.V.S. Veerappa Chettiar and Others, .

17. For the reasons stated above, substantial question of law raised is answered in favour of the Appellant and against the Respondents.

18. Consequently, this appeal is allowed the judgment and decree passed by the learned lower appellate Court is set aside and that of learned trial Court is restored, but with no order as to costs.