
(2008) 07 AHC CK 0140
In the Allahabad High Court
Case No : Second Appeal No. 1438 of 1977

Kanti Prasad Om Prakash and others	APPELLANT
Vs	
Tejpal Gupta and others	RESPONDENT

Date of Decision : 03-07-2008

Acts Referred:

Civil Procedure Code Amendment Act, 1976 — Section 97(2)(m)
Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (2008) 07 AHC CK 0140

Hon'ble Judges : S.P.Mehrotra, J

Final Decision : Dismissed

Judgement

S.P. Mehrotra, J.—It appears that the plaintiffrespondent No. 1 filed, a money Suit for recovery of Rs. 7,978.85 alongwith pendentelite and future interest @ 2.5% per mensem on the basis of the entries made in the Bahi Khata alleged to have been kept in the ordinary course of business.

2. The case of the plaintiffrespondent No. 1 was that it was a registered partnership firm carrying on its commission agents business at Naya Bazar, Bahjoi, District Moradabad; and that the defendant No. 1 in the said Suit was also a registered firm and the defendants No. 2 to 6 in the said Suit were its owners and partners; and that the defendant firm borrowed different sums on various dates, totalling Rs. 4,453/, and it agreed to repay the sum alongwith the interest at the agreed rate; and that these advances were entered in the Bahi Khatas of the plaintifffirm; and that the Bahi Khatas were maintained in the regular course of business in accordance with the Mahajani system; and that the extracts of the Bahi Khatas were filed on record.

3. It was, inter alia, further alleged by the plaintiffrespondent No. 1 that the defendants paid Rs. 1,486.50 on different dates to the plaintiffrespondent No. 1, and further paid Rs. 597/ on 16.11.1968 through a Hundi of Gwalior M/s Mukut Beharilal Pooran Chand; and that a total amount of Rs. 2,083.50 was paid by the defendants which was also entered in the Bahi Khatas; and that the defendants

did not pay the balance despite repeated demands.

4. The said Suit was registered as Original Suit No. 49 of 1972.

5. The defendants Nos. 1 to 6 contested the said Suit on various grounds. It was, inter alia, alleged that the plaintifffirm was not registered and the Suit was barred by Section 69 of the Indian Partnership Act; and that Deoki Nandan alone was not entitled to sue; and that the Bahi Khatas of the plaintifffirm were not maintained in Mahajani system; and that the plaintiffrespondent No. 1 had no cause of action to sue.

6. The defendants, inter alia, categorically denied to have borrowed any amount from the plaintiffrespondent No. 1 prior to 16.11.1968.

7. It was, inter alia, alleged that the defendantfirm had borrowed Rs. 600/only and returned a Hundi of Rs. 600/ of the firm of Gwalior Roop Store the same day to the plaintiffrespondent No. 1 and thus, nothing remained outstanding against the defendants.

8. It was, inter alia, further alleged that the Suit was barred by limitation and the defendant Nos. 3 to 5 and 6 were not partners of the defendantfirm and they were not liable to make any payment; and that the Suit was bad for misjoinder of parties.

9. The trial Court framed the following issues:

(1) Whether the defendants have borrowed a sum of Rs. 4,453/ only from the plaintiff as alleged in para 3 of the plaint? If so, its effect.

(2) Whether the defendants have paid a sum of Rs. 2,083.50 to the plaintiff?

(3) Whether the defendants have made the payment as alleged in para 4 and 5 of the written statement?

(4) Whether the suit is barred by Section 69 of the Indian Partnership Act?

(5) Whether the suit is within time?

(6) To what relief and amount, if any, is the plaintiff entitled?

10. The parties led evidence in support of their respective cases.

11. The trial Court by its judgment and decree dated 18.7.1974 decreed the said Suit filed by the plaintiffrespondent No.1 for recovery of Rs. 6,898.32 only with proportionate costs and with pendente lite and future interest @ 5% per annum on Rs. 4,453.00 against the defendant Nos. 1 to 3 and 5 only.

12. As regards Issue No. 1, the trial Court held that the defendant Nos. 1 to 3 and 5 had borrowed Rs. 4,453/ from the plaintifffirm.

13. As regards Issue Nos. 2 and 3, the trial Court held that the defendants had made the payments in question, and decided the said Issues accordingly.

14. As regards Issue No. 4, the trial Court held that the Suit was not barred under Section 69 of the Indian Partnership Act. In recording the said finding, the trial Court relied upon the statement of Deoki Nandan (P.W.1) as well as on Ext. 13 which was the assessment order of the Income Tax Department wherein the status of the plaintifffirm had been shown as a registered partnership firm.

15. As regards Issue No. 5, the trial Court held that the Suit was within time.

16. As regards Issue No. 6, the trial Court held that the Suit of the plaintiffrespondent No. 1 deserved to be decreed for recovery of Rs. 6,898.32 against the defendant Nos. 1 to 3 and 5 and that the plaintiffrespondent No. 1 was entitled to claim past interest @ 2% per mensem.

17. Thereupon, the defendant Nos. 1 to 3 and 5 filed an Appeal against the said judgment and decree dated 18.7.1974 passed by the trial Court. The said Appeal was registered as Civil Appeal No. 277 of 1974.

18. By the judgment and order dated 23.9.1975, the Lower Appellate Court dismissed the said Appeal and the judgment and decree dated 18.7.1974 passed by the trial Court was confirmed.

19. The Lower Appellate Court, inter alia, held that the Suit was not barred under Section 69 of the Indian Partnership Act.

20. Relying upon various documents on the record including the certified copy filed in the Appeal, the Lower Appellate Court held that the plaintifffirm had been registered with effect from 20.12.1967.

21. The Lower Appellate Court, inter alia, further held that the plaintiffrespondent No. 1 had proved the extracts of Bahi Khatas and the advancing of the amount in question to the defendants.

22. The Lower Appellate Court pointed out that the requirements of Section 34 of the Indian Evidence Act were fully complied with in the present case.

23. The Lower Appellate Court further held that the Suit of the plaintiffrespondent No. 1 was within time and the conclusion of the trial Court in this regard was correct. It was pointed out by the Lower Appellate Court that it was a running transaction between the parties on the basis of the Bahi Khatas entries; and that in the running account, the limitation commenced from the last date of the transaction, which was 16.11.1968 in the present case when a Hundi for Rs. 600/ was given to the plaintifffirm and the same was entered towards these debts as payment of interest; and that the Suit was filed within three years period from 16.11.1968.

24. The Lower Appellate Court further pointed out the admission of DW1 (Gyan Chand) about payment of Rs. 600/ on 16.11.1968.

25. Thereafter, the defendant Nos. 1 to 3 and 5 have filed the present Second Appeal before this Court.

26. As noted in the order dated 2.7.2007 passed on the ordersheet, the learned counsel for the parties did not appear even when the case was taken up in the revised list.

27.1 have perused the record.

28. The present Second Appeal was presented on 17.1.1976.

29. On payment of deficiency in Court Fee on 11.7.1977, the Second Appeal was registered as Second Appeal No. 1438 of 1977.

30. By the order dated 13.1.1978, the Second Appeal was admitted and notice was issued in view of Ground No. 1.

31. It may be mentioned that in view of the provisions of Section 97 (2)(m) of the Code of Civil Procedure (Amendment) Act, 1976, the present Second Appeal would be governed by the provisions of Section 100 6f the Code of Civil Procedure, as substituted by the said amendment with effect from 1.2.1977. This is because even though the Second Appeal was presented on 17.1.1976, it was admitted on 13.1.1978.

32. Subsection (1) of Section 100 of the Code of Civil Procedure, as substituted by the said Amendment Act with effect from 1.2.1977, inter alia, provides that an Appeal shall lie to the High Court from every decree passed in Appeal by any Court subordinate to the High Court, if the High Court is satisfied that the case involves a substantial question of law.

33. Subsection (4) of Section 100 of the Code of Civil Procedure provides that where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

34. Subsection (5) of Section 100 of the Code of Civil Procedure, inter alia, lays down that the Appeal shall be heard on the question so formulated by the High Court.

35. In the present case, as noted above, the Second Appeal has been admitted in view of Ground No. 1. The said Ground No. 1 is as under:

"(1) Because, the suit of the plaintiff was barred by limitation having been filed more than 3 years after the loans alleged to have been advanced and remained unpaid."

36. Therefore, the following substantial question of law may be formulated on the basis of Ground No. 1.

"Whether the Suit of the plaintiff was barred by limitation?" 37.1 have considered the aforesaid substantial question of law in the light of the findings recorded by the Courts below.

38. As noted by the Lower Appellate Court, the present case was a case of running account between the parties. Last entry made in the Bahi Khatas was of

16.11.1968 when a Hundi for Rs. 600/ was given to the plaintifffirm and the same was entered towards the debts in question as payment of interest. Cyan Chandra (DW1) admitted to have paid Rs. 600/ on 16.11.1968. The Suit was filed on 4.11.1971.

39. Thus, the Suit was filed within three years from the last entry made on 16.11.1968 in respect of the running account between the parties. Hence, the Suit was within time. Cogent and detailed reasons have been given by the Lower Appellate Court in its judgment and order dated 23.9.1975 in concluding that the Suit of the plaintiffrespondent No. 1 was within time, and I find no good ground or sufficient reason for differing from the reasons given and the conclusion drawn by the Lower Appellate Court.

40. Therefore, the substantial question of law, formulated above, is answered as follows:

"The Suit of the plaintiff was not barred by limitation."

41. In view of the answer given to the substantial question of law, formulated above, the Second Appeal is liable to be dismissed.

42. The Second Appeal is accordingly dismissed with costs.