

(1953) 04 GUJ CK 0001

In the Gujarat High Court

Case No : Civil Revision Application No. 11 of 1953

Motiboo Safarbhai

APPELLANT

Vs

Fatehkhan Haji Mahmadkhan

RESPONDENT

Date of Decision : 16-04-1953

Acts Referred:

Provincial Small Cause Courts Act, 1887 — Section 25
Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (1953) 04 GUJ CK 0001

Hon'ble Judges : Chhatpar, J

Bench : Single Bench

Advocate : T.P. Kikani, for the Appellant; S.B. Shukla, for the Respondent

Judgement

Chhatpar, J.—This is a revision application u/s 25, Provincial Small Cause Courts Act to revise a decree passed by the Small Cause Court, Junagadh, dismissing the Plaintiff's suit based upon two documents alleged to have been executed by the deceased Khan Shri Fatehkhanji Haji Mahmad Khan. The two documents are Exs. 12 and 13 in the case; the first one is dated 28-4-50 and is in respect of a cash loan, which the deceased had taken from the Plaintiff to pay off certain instalments in respect of some lands. The amount was payable by two six monthly instalments as recited in the deed. The second document is dated 29-3-51 and is for Rs. 125/- in respect of arrears of rent. The first document Ex. 12 is written and attested by one Umar Rajan, while the second is written by one Mahmadkhan and attested by Ibrahimkhan. The suit has been filed against the son of the deceased, whose written statement merely comprises denials based upon want of knowledge of the transactions by his father. The documents are on stamp papers with the endorsement of the stamp vendor that they were purchased by the deceased himself. The Plaintiff was examined in the case and she deposed to the two transactions. In addition, she adduced the evidence of all the three persons concerned in the documents i.e. Umar Rajan, Mahmadkhan and Ibrahimkhan. The evidence of these three witnesses is on the record "in extenso". Except for some minor discrepancy, the witnesses had alleged that the

documents were written or attested by them at the request of the deceased. Umar Rajan says that he wrote and attested the first document at the request of the deceased. He also says that he recognised the handwriting of the deceased. In his cross-examination he, however, says that when he attested the document, the signature of the deceased was not on the document and does not know as to when the deceased actually signed the document. But he nevertheless recognises his signature although he adds and quite naturally that he is not absolutely certain not being an expert in handwriting. He is a respectable person and there is no reason to disbelieve his evidence and he is not connected with any party in any way. The second document was written by Mahmadkhan, who has been examined and he stated that he was present and knows of the transaction. He not only deposes to the second document but also deposes as regards the transaction embodied in the first document of the loan of Rs. 200/- which was given by the Plaintiff to the deceased in his presence in ten rupee notes. His evidence in this respect supports the evidence of the Plaintiff herself. The only thing that can be said against Mahmadkhan is that he is a nephew of the Plaintiff. The second document is attested by Ibrahimkhan. In his examination-in-chief he says that the document was signed in his presence. In his cross-examination he says that he could not then remember whether it was actually signed by the deceased when he put his signature. These witnesses were giving evidence considerably long time after the execution of the documents and this kind of discrepancy was not so great as to affect materially the probative value of their evidence.

2. So we have here a case of two solemn documents executed by the person who had himself purchased the stamp papers. The purpose of the documents as also the manner of payment are also stated therein. The attesting witnesses and the writers are called in evidence and they support the evidence of the Plaintiff in support of the execution of the documents and the consideration for the same. Yet the Small Cause Court Judge dismissed the suit. He has written a very short judgment consisting of the points of determination and his decision thereon without giving any reasons as to why he has disbelieved the mass of evidence which would convince any Court about the truth of the Plaintiffs claim. If such solemn documents by the parties are brushed aside on some minor discrepancy in the evidence, it would indeed be a very serious thing in the administration of justice. The Defendant has not adduced any evidence. His written statement and his own evidence merely show the ignorance of the transactions. No evidence has been brought on the record by the Defendant to show any suspicious circumstance why the two documents should not be considered to be genuine transactions. He has also not produced any specimen signatures of his father which he should normally have in his possession and which might have led the Court to a different conclusion. The tenor of the documents do not cast any suspicion on them. The first is a cash loan taken by the deceased for the purpose of paying an instalment which was payable by him and the Defendant has not adduced any evidence to show that such instalment in fact was not paid. The

second document is in respect of arrears of rent payable by the deceased and how and from what source the amount was to be paid is also mentioned. If the documents were bogus, there would be some circumstances to question their genuineness. The only thing that could be said in favour of the Defendant's contention is that there is some discrepancy in the evidence given by the attesting witnesses and the writers of the documents. This discrepancy is very slight and as stated above does not materially affect the decision of the case. Under the circumstances, it is clear to me that a gross injustice has been done to the Plaintiff in having her suit dismissed. I am, therefore, of the opinion that the judgment of the lower Court is perverse and deserves to be set aside. Although the powers of a Court of revision u/s 25, Provincial Small Cause Courts Act are limited, though more extensive than u/s 115, Code of Civil Procedure, and it is not the practice of the High Court to lightly interfere with findings of fact, yet it has been held by the Bombay High Court in - Nathuram Shivanarayan Vs. Dhularam Hakiram Marwadi, , that although a High Court would be averse to interfering u/s 25 on pure questions of facts, it, cannot be said that the High Court has no power whatever of interfering with decisions on questions of fact. However, interference in regard to appreciation of evidence should in general only be exercised when there appears to the Court to be a very clear case of misappreciation which has resulted in injustice to a party and makes the decree one that cannot be regarded by a Revisional Court as "according to law". In - Mohanlal Maganlal Vs. Jivanlal Amratlal,), a Bench of the Bombay High Court held that the High Court will not interfere solely upon a question of fact where there is no obvious injustice involved or no obvious perversity in the decision upon a finding of fact.

3. In the present case it appears to me that the case comes within the exceptions to the general rule. There is an obvious injustice to the Plaintiff and perversity in the decision by the lower Court as discussed above. Under the circumstances, I set aside the decision of the lower Court and decree the suit of the Plaintiff except as to the interest claimed, as there is no mention of interest in the documents. The Plaintiff will accordingly have a decree for Rs. 325/- with costs of both the Courts and interest on Rs. 325/- from the date of the suit till payment at the rate of 6 per cent per annum.