

(1951) 03 MP CK 0003

In the Madhya Pradesh High Court

Case No : Small Cause Revision No. 32 of 1950

Motiram Kalaram

APPELLANT

Vs

Ratna Mukundi

RESPONDENT

Date of Decision : 12-03-1951

Acts Referred:

Evidence Act, 1872 — Section 68, 72
Presidency Small Cause Courts Act, 1882 — Section 25
Stamp Act, 1899 — Section 2(5)

Citation : (1951) 03 MP CK 0003

Hon'ble Judges : Shinde, J

Bench : Single Bench

Advocate : Sant, for the Appellant; Vidyasagar, for the Respondent

Final Decision : Allowed

Judgement

Shinde, J.—This is a petition in revision by the Plaintiff against the decree of the small cause Court Lashkar. The Plaintiff alleges that on 9-3-48 the Defendant pledged 300 Tolas of imitation silver and borrowed Rs. 300/- on condition of repaying Rs. 303/- after a fortnight. As the Defendant failed to repay the money the suit is filed to recover the amount. The trial Court dismissed the suit of the Plaintiff. Consequently he has filed this revision.

2. The learned Counsel for the applicant contends that the bond in dispute not being a document required by law to be attested it was not necessary for the Plaintiff to prove its execution by producing the attesting witness, and as the execution of the document has been proved by other evidence on record the trial Court has erred in law in dismissing the suit of the Plaintiff. The bond in dispute is no doubt attested by a witness. The learned Counsel for the applicant argues that as the attesting witness was dead he could not be produced. There is, however, no evidence on record to show that it was proved to the satisfaction of the Court that the attesting witness Govind Sumar was dead. We have, therefore, to consider whether it is necessary to produce the Resting witness in

order to prove the execution of the bond.

Section 2(5) of the Stamp Act reads as follows:

"Bond" includes:

(a) any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void, if a specified act is performed, or is not performed, as the case may be;

(b) any instrument attested by a witness and not payable to order or bearer, whereby a person obliges himself to pay money to another; and

(c) any instrument so attested, whereby a person obliges himself to deliver grain or other agricultural produce to another:

The bond in dispute no doubt appears to fall within the definition of "Bond" given in Clause (b). Therefore, it would appear that it is necessary that a bond must be attested. For one thing, the definition of the "bond" does not appear to be exhaustive as is clear from the word "includes". Besides although for the purpose of Stamp Act it may be necessary for a bond to be attested, it does not follow that a bond is required by law to be attested for all purposes. In AIR 1940 240 (Nagpur) (A), Gruer J. observed as follows:

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.

Similar observations were made in AIR 1948 258 (Oudh) (B) by Kaul J. The learned Judge observed:

Reference was made by the learned Counsel for the Appellant to the definition of that term as contained in the Stamp Act and the Limitation Act. As pointed out by the learned Judge in the Court below, none of these definitions are exhaustive. The definitions of these Acts are meant only for the purposes of those Acts and cannot be taken to apply generally to the term "bond".

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.

3. In this case the Plaintiff has produced Gappa and Nathulal in support of his claim and has also examined himself. Gappa and Nathulal both clearly depose that the Defendant pledged certain imitation ornaments and borrowed Rs. 300/- and put his thumb impression on the bond. The learned Judge thought there was a discrepancy in their statements. Gappa has stated that the bond was written in

the Plaintiff's shop. While Nathulal has stated that it was written in his house. But the learned Judge appears to have over-looked the fact that the shop and the house are not two separate buildings. The front of the building is used for shop and the back of the shop is apparently used for residential purposes. This is clear from the re-examination of Nathulal. The Plaintiff also has supported his claim by his statement. In his defence the Defendant has examined himself and produced no other evidence. The Defendant denies the execution of the bond. From the statements of Gappa, Nathulal and Motiram it is clear that the bond Ex. P/1 was signed by the Defendant in their presence. In these circumstances, there is no reason to disbelieve the execution of the document. The learned Judge was prejudiced by the fact that Govind Sunar, the attesting witness, was not produced. But as stated above it is not necessary to prove the execution of the bond by producing an attesting witness. In these circumstances the claim of the Plaintiff must be held to be proved.

4. The learned Counsel for the non-applicant argues that this Court cannot interfere with the finding of fact in revision. Section 25, Small Cause Courts Act, gives power to this Court to interfere in the decision of the lower Court if the decision is not according to law. If therefore, a finding of fact is perverse this Court has power to interfere in the decision of the lower Court. In Nathuram Shivanarayan Vs. Dhularam Hakiram Marwadi, (C), their Lordships of the Bombay High Court held" that although 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. They further held that interference in regard to appreciation of evidence should, in general, only be exercised when there appears to the Court to be 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 Bhagwati Prasad Vs. Abdul Latif, (D) Kendall J. held that the High Court will not interfere in revision with the decision of the Lower Court on a pure question of fact unless the judgment of the lower Court is perverse. As pointed above the trial Court was of the opinion that the attesting witness was necessary to prove the execution of the document. But for that impression there is no doubt that the Court would have come to the conclusion that the execution of the document is proved that the claim of the Plaintiff is true. As the judgment of the lower Court is perverse I have no hesitation in holding that this Court can interfere in revision.

5. In the result I allow the revision and decree the suit of the Plaintiff for Rs. 307-8-0 with interest at the rate of 3 P.C.P.A. from the date of the decree to the date of the payment. Applicant to get his costs of both the Courts from the non-applicant.