
(1980) 03 RAJ CK 0008
In the Rajasthan High Court
Case No : Civil Second Appeal No. 145 of 1968

Sawa and Shankerlal	Vs	APPELLANT
Ganpatram Deceased through Pratapnarin and Others		RESPONDENT

Date of Decision : 13-03-1980

Acts Referred:

Evidence Act, 1872 — Section 35, 73

Citation : (1980) WLN 292

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

Bench : Single Bench

Final Decision : Dismissed

Judgement

K.D. Sharma, J.—This is a civil second appeal filed by Sawa and Shankerlal defendants against the decree and judgment of the learned District Judge Balotra dated 28-9-1967 by which the judgment and decree of the learned Civil Judge Jalore decreeing the suit of the plaintiff for recovery of Rs. 3000/- as principal and Rs. 511/- by way of interest together with pendente lite and future interest at the rate of Rs. 6/- per cent per annum was confirmed.

2. The relevant facts giving rise to the suit out of which this second appeal arises may be briefly stated as follows: Ganpatram instituted a suit against Sawa and Shankerlal defendants for the recovery of sum of Rs. 3511/- on the basis of a promissory note which was alleged to have been executed by the defendants on 3-3-1961 after securing a sum of Rs. 3000/- from the plaintiff for running their business. It was alleged in the plaint that the defendants agreed to pay interest at the rate of Rs. 12/- per cent per annum on the principal amount secured by them from the plaintiff and along with the promissory note gave a receipt also for the amount which they had received. After the execution of the promissory note and the receipt the defendants could not make any payment despite repeated demands by the plaintiff. Eventually the plaintiff caused a notice to be served on the defendants through his Advocate Shri Girdharilal Vyas but the later dishonestly gave a wrong reply through that Advocate Shri Sunderlal Sharma

and desired to inspect the promissory note. The plaintiff thereupon gave a reply through his Advocate that the defendants could see the promissory note at his house at any time but neither the defendants nor their Advocate came to the house of the plaintiff for inspection of the promissory note. Hence the plaintiff had no other option but to sue them for the principal amount plus interest at the stipulated rate.

3. The defendants appeared in the court of Civil Judge in which the suit was instituted and filed their written statement wherein they denied execution of the promissory note and the receipt after securing a loan of Rs. 3000/- from the plaintiff on 3-3-1961. In their additional pleas the defendants further pleaded that the promissory note and the receipt were forged documents as no loan of Rs. 3000/- was ever secured by them from the plaintiff. It was further pleaded that Shanker Lal defendant No. 2 was a minor at the time of execution of the alleged promissory note and receipt because he was born on Chet Bud 8, Samvat 2002 and Sawa defendant No. 1 was residing in Ahmedabad at that time and was under treatment and so no question of the promissory note and the receipt being executed by them could arise. According to their plea the relations between the plaintiffs grand son Sevaram and Shankerlal defendant No. 2 were highly strained and so the plaintiff in order to wreck vengeance had instituted a false and fictitious suit against the defendants who, therefore, are entitled to get compensatory costs.

4. Upon pleadings of the parties the learned Civil Judge framed as many as 4 following issues:

1. Did the defendants executed the promissory note which is the basis of the suit ? 2. Is the aforesaid promissory note without consideration?

3. Was defendant No. 2 a minor at the time of execution of the promissory note in question and so the plaintiff was not entitled to get any decree against him?

4. Relief?

After the issues were framed Ganpatram plaintiff died on 12-2-1964 and his legal representatives, namely, Pratapnarin, Mst. Gajra and Mst. Teeja were brought on record as plaintiffs. Thereafter the learned Civil Judge recorded the evidence of the parties and after careful scrutiny thereof decided issues Nos. 1, 2 and 3 in favour of the plaintiff against the defendants. Accordingly he decreed the suit of the plaintiff for recovery of Rs. 3000/- as principal and Rs. 511/- as interest against the defendants with costs and with pendants lite and future interest at the rate of Rs. 6/- per annum on the principal sum. Aggrieved by the judgment and decree of the learned Civil Judge the defendants preferred an appeal in the court of District Judge Balotra who after going through the record and hearing the learned Counsel for the parties dismissed the appeal and confirmed the judgment and decree of the trial court. As against the decree and judgment of the learned District Judge Balotra Sawa and Shankerlal defendants have come up in second appeal to this Court as stated above.

5. I have carefully perused the record and heard Mr. N.P. Gupta learned Counsel for the appellant and Mr. J.M. Bhandari for the respondents.

6. The first contention put forward by the learned Counsel for the appellants is that both the courts below have committed a grave error in not properly scrutinizing the evidence of the witnesses who claimed to have seen Sawa and Shankerlal executing the pronote and the receipt in question. It was further urged that Sawa was not present at the time of the execution of the alleged promissory note and the receipt and Shankerlal was a minor at that time, as is evident from an entry made in the school register which ought to have been presumed correct in the absence of any evidence to the contrary. The learned Counsel for the respondents on the other hand urged that there is ample evidence on the record from the side of the respondents that the promissory note and the receipt were executed by both the appellants after securing a loan of Rs. 3000/- with stipulation to pay interest at the rate of 12 per cent per annum and both the courts rightly arrived at a conclusion upon evidence that the pronote and the receipts were genuine and executed by the appellants. According to the submissions of the learned Counsel for the respondents this Court should ordinarily be reluctant to interfere with the concurrent findings of fact arrived at by the courts below unless it is shown that the findings are perverse and based on no evidence.

7. I have considered the rival contentions. It may be observed at the out set that the execution of the pronote. Ex. 1 and of the receipt Ex. A. 1 by both the appellants have been satisfactorily proved by Pratapnarain legal representative of Ganpatram deceased and his witnesses Javanmal, Sireymal, Ravatsingh and Shri H.L. Badvar handwriting expert. Javanmal PW 2 is the scribe of the promissory note Ex. 1. His evidence in the trial court was that he wrote pronote Ex. 1 at the instance of Sawa and Shankerlal who put their signatures to it in his presence after it was read over by him to them and was admitted to be correct by them. Javanmal was cross-examined at length by the learned Counsel for the appellants by nothing could be elicited from his cross-examination which may tend to destory his evidence or to impeach his credit. In his cross-examination he further stated that Sawa and Shankerlal appellants came to his house and took him to the house of Ganpatram deceased for writing the pronote and he wrote the pronote in the presence of Ganpatram deceased plaintiff, his son Pratapnarain, Sireymal and Bishansingh. The evidence of Javanmal finds support in all essential particulars from the testimony of Sireymal PW 3 and Pratapnarain, the son of the deceased plaintiff. Sireymal also testified to the fact that the pronote Ex. 1 was written by Javanmal at the instance of Sawa appellant and in his presence both Sawa and Shankerlal appellants had put their signatures to it, after it was read over to them and admitted by them to be correct. Similar is the evidence of Pratapnarain son of the deceased plaintiff. Both the courts below have relied upon the evidence of these witnesses and I see absolutely no reason to take a different view of their evidence specially when the learned Counsel for the appellant could not succeed in challenging it before me on any reasonable

score. Likewise the execution of the receipt Ex. A. 1 by both the appellants has been satisfactorily proved by the evidence of Pratapnarain and Ravatsingh. Pratapnarain clearly stated in his deposition dated 21-5-1966 that Sawa & Shankerlal respondent secured a loan of Rs. 3000/- from his father Ganpatram deceased and executed receipt Ex. A. 1 and put their signatures there to and the receipt was written by Javanmal and attested by Bishan Singh and Sireymal. Bishansingh could not be produced because he has died. His brother Ravatsingh was called upon to identify his signatures on the receipt Ex. A.1 as an attesting witness. Ravatsingh identified the signatures of Bishansingh on the receipt.

8. The plea of Sawa appellant was that on the day when the pronote and the receipt were alleged to have been executed by him he was an indoor patient in a hospital at Ahmedabad and, therefore, the aforesaid two documents were not genuine. Likewise Shankerlal appellant also set up a plea of alibi that he was at Ahmedabad at the relevant date. Their pleas were considered and rightly rejected by both the courts below because they could not produce any reliable evidence to show that Sawa was an indoor patient in hospital at Ahmedabad and Shankerlal had gone to see his father in the hospital and could not have been present at the time when the pronote and the receipt were alleged to have been executed by him and Sawa. As the findings of both the courts below relating to execution of the pronote and the receipt by the two appellants do not suffer from any infirmity I do not find any substantial ground for disturbing them.

9. The learned Counsel for the respondents further urged that Shankerlal was a minor at the date of execution of the pronote as is evident from a transfer certificate issued by the School authorities in which his date of birth was entered as 6-1-1944 and so even if it is proved that the pronote and the receipt were executed by him no liability could be saddled for payment of the loan on him because of his minority. The above contention has no force, It is no doubt true that Kundanlal the then Head Master of Madhyamik Pathshla Bad Gaon appeared in the witness box and deposed that on 29-7-1963 a school leaving certificate was issued to Shankerlal appellant in which his date of birth was recorded as 6-1-1944 but Sawa appellant father of Shankerlal appeared in the witness-box and stated in clear and definite terms in his deposition that the date of birth of his son Shankerlal was Chait Bud 8, Samvat 2002. His evidence finds support from the testimony of his witness Hajarilal DW 2 who also stated that Shankerlal was born in the month of Chait Bud of Samvat year 2002. The date of birth as alleged by Sawa and his witness Hajarilal upon calculation falls in the year 1945 and does not tally with the date of birth recorded in the school leaving certificate. Apart from this, Sawa further admitted in his deposition at the trial that the date of birth of him son Shankerlal was recorded by his mother in a Chopari i.e. Bahi, but he could not produce that Chopari inspite of the fact that it was admittedly in his possession. The entry made in the Chopari relating to the date of birth of Shankerlal would have been the best evidence to prove his minority at the time when the pronote and the receipt were alleged to have been executed by him. It is no doubt true that entries as to age of a scholar in a Government School

Register are admissible u/s 35 of the Evidence Act but an entry made in a school leaving certificate is not of such evidentiary value in the absence of any evidence to show on what material the entry in the certificate about the age of scholar was made. In the present case the Head Master could not produce the entry mentioning date of birth in the application form for admission of Shankerlal in the school. If the application for admission had been produced it would have been a weighty evidence to show that when Shankerlal was admitted in to the School his age was recorded as 6-1-1944 and that on that basis the entry relating to his date of birth was recorded in the school leaving certificate. Consequently I have no hesitation in holding that both the courts below rightly rejected the plea of minority set up by Shankerlal.

10. The learned Counsel for the appellant further contended that this Court should compare the admitted and disputed writings of the appellant and should test and find corroboration or contradiction of the opinion of the handwriting expert examined by the parties in this case. In the course of arguments he placed before me the admitted and disputed writings and the enlarged photos of the two for comparison I cannot function as a handwriting expert myself. It is no doubt true that u/s 73 of the Evidence Act the Court is empowered to compare the disputed signatures with signatures which are admitted or proved in order to find out whether the disputed signatures were made by the persons by whom they were alleged to have been made but the rule of caution is not to rest a conclusion entirely upon the court's own comparison because the Court is not expected to function as an Expert witness in such cases. However, after carefully going through the conflicting opinions of the handwriting experts and taking into consideration the positive evidence of the witness of the plaintiff and all the surrounding circumstances I am of the view that the pronote and the receipt are genuine documents which were executed by both the appellants at the time and place alleged by the plaintiff.

11. The result of the above discussion is that the second appeal filed by the appellants fails and is hereby dismissed with costs.