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In the Madhya Pradesh High Court

Case No : First Appeal No. 234/2013

Sheela Yadav APPELLANT

Vs

Muthoot Finance RESPONDENT

Date of Decision : 17-06-2014

Acts Referred:
Evidence Act, 1872 — Section 101, 102

Citation : (2014) 3 MPHT 437 : (2014) 3 MPLJ 666

Hon'ble Judges : Rohit Arya, J

Bench : Single Bench

Advocate : Rajeev Shrivastava, Advocate for the Appellant; Neeraj Bhargava, Advocate for Respondent No. 1 and Shri S.P. Chaturvedi, Advocate for Respondent No. 2, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Rohit Arya, J.—This appeal by plaintiff is directed against the judgment and decree dated 1/11/2013 in Civil Suit No. 32-A/2013.

2. Plaintiff is the daughter of defendant no. 2 and sister of defendants no. 3 and 4. Defendant no. 1 is a finance company with its local office at City Centre, Gwalior.

3. Plaintiff filed a suit for the relief to the effect that name of defendant no. 2 be obliterated from the debenture certificate and her name be substituted with further declaration that plaintiff is entitled to receive the amount payable vide debenture certificate No. 0532/427 invested with defendant no. 1 and permanent injunction restraining defendants not to interfere in release of the amount in her favour.

4. There is no dispute amongst the parties that defendant no. 1-finance company had issued a debenture certificate no. 0532/427 dated 10/12/2010 in the name of defendant no. 2-Smt. Basso Bai.

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5. It is averred in the plaint that plaintiff is a housewife and lives in Chandanpur. By virtue of gifts of money given to her by her father at times, she has deposited the same with the bank and as on 8/9/2010 she had Rs. 3,25,793/- in her account. Defendant no. 2 is an old lady of 70 years. Since she was being ill-treated by her sons viz. defendants no. 3 and 4, she used to live with the plaintiff. As senior citizens of the age of 60 years and above, as per the banking regulations, are entitled for 1% extra interest, therefore, out of her own savings plaintiff had invested Three Lacs Rupees with defendant no. 1 in the name of defendant no. 2 and, therefore, the original debenture certificate has been issued in the name of defendant no. 2. Since with the change of time defendant no. 2 developed ill-intentions and in collusion with her sons viz. defendants no. 3 and 4 intended to withdraw the amount as secured by debenture, therefore, plaintiff has filed the suit as referred above.

6. Defendant no. 2 has filed written statement denying plaint allegations and asserted that as a matter of fact plaintiff has no source of income much less independent source of income. The debenture has been issued on investment done by defendant no. 2 and not out of the funds allegedly invested by the plaintiff. The plaintiff with an ulterior motive has tried to obliterated the name of defendant no. 2 from the debenture certificate and put her name over that in order to illegally encash the amount. With the aforesaid pleadings, the suit was prayed to be dismissed.

7. Trial Court framed following issues:-

8. While addressing upon the issue no. 1, the trial court has threadbare discussed oral and documentary evidence brought on record by plaintiff as well as defendant no. 2 in paras 8 and 9 of its judgment. While analyzing evidence, trial court bore in mind the concept of burden of proof as to on whom the burden of proof lies as conceptualized in the form of provision contained u/s 101 and 102 of the Indian Evidence Act in given set of facts. Plaintiff has filed the instant suit with assertions that she is a housewife and out of the gift amount given to her by her father, she had made savings of Rs. 3,25,793/-. To fetch 1% more interest on deposits she had invested the aforesaid sum with Muthoot Finance-defendant no. 1 by purchasing debenture certificate in the name of her mother-defendant no. 2, who is more than 70 years of age, vide debenture certificate No. 0532/427, therefore, the burden of proof as regards availability of funds in her account, source thereof and its investment by her in the name of her mother-defendant no. 2 with Muthoot Finance-defendant no. 1 lied upon her. In para 15 of the impugned judgment it has been found that in para 11 of her cross-examination in the application filed before the court below seeking exemption from payment of court fees she has stated that she did not have any independent source of income. She has deposed, contrary to her assertion in the plaint, to the effect that her father did not give any gift amount to her from time to time. In para 17 she stated that she has deposited Rs. 5,000/- on 2/7/2010 and Rs. 82,510/- on 4/9/2010 and claimed it to be out of the salary of her

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husband. In para 22 she stated that she has no other source of income except by sale of milk, however, there is no evidence as regards alleged business of milk much less documentary evidence. She admitted that from her account she has withdrawn an amount of Rs. 9,89,000/- on different dates and had made fixed deposit of Rs. 3,00,000/- out of the said amount. In para 23 she stated that she lives in a tenanted house on payment of hundred rupees per month as rent. She has expressed her ignorance as regards agricultural land admeasuring 8 bigha 11 biswa of her mother in village Dinarpur, which was sold by her (mother DW-2) and an amount of Rs. 14,00,000/- was received by her mother. She has further expressed her ignorance as regards deposit of said amount in Uco Bank. There is no dispute that plaintiff''s husband is a driver and they have two sons.

9. It is further found that after sale of agricultural land by defendant no. 2 on receipt of consideration Rs. 14,00,000/- she has been staying with the plaintiff for at least 15-20 days; from the account of plaintiff an amount of Rs. 9,89,000/- has been withdrawn on different dates; and During stay of defendant no. 2 with plaintiff the debenture certificate was prepared. Looking to the status of plaintiff that her husband is a driver, children are not earning members, she lives in a tenanted house on rent of Rs. 100/- per month, she herself failed to prove that she is in business of sale of milk, she is married for last 25 years, however, uptill the sale of land by defendant no. 2 there was no balance in the account of plaintiff, but suddenly a sum of Rs. 9,89,000/- was withdrawn from her account, as such there is no explanation as to where-from she had procured such a huge amount of Rs. 9,89,000/-, which was withdrawn from her account on different dates. As such, obviously such a huge withdrawal on different dates is on account of the amount of sale proceed of Rs. 14,00,000/- in the hands of defendant no. 2 who stayed with the plaintiff after sale of land. With the aforesaid critical analysis, the plaintiff has been found not to have discharged the burden of proof that out of her own funds, she had invested Rs. 3,00,000/- to purchase of debenture certificate in the name of her mother, as required u/s 102 of the Indian Evidence Act and consequently held that the debenture certificate No. 0532/427 does not belong to plaintiff. Applying the principles of concept of preponderance of probabilities, the trial court further discussed that it is one of the such cases where an old, illiterate and infirm lady of 75 years of age has been cajoled with ulterior motive and collateral purposes by her own daughter and in fact has been cheated, as her own money, which she had received after sale of agricultural land, has been cleverly deposited by the plaintiff in her account and thereafter withdrawals were made for various purposes including one in question playing with the ignorance and helplessness of her mother. Moreover, even her name in the debenture certificate was sought to be obliterated and to put her own name. Earlier this old and infirm widow was routed by her own sons and later on by the daughter after preparation of impugned debenture certificate. It is really an unfortunate situation where an old and infirm lady is sought to be exploited by her own children for personal collateral gains. Under such circumstances, the trial court held that plaintiff has

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failed to prove that the debenture certificate was issued out of her own funds, as required u/s 102 of the Indian Evidence Act and answered issue no. 1. Answer to issue no. 2 is consequential in nature. As it has rightly been found that the plaintiff is not entitled to receive Rs. 3,00,000/- from defendant no. 1-Finance Company against the debenture certificate, trial court has rightly dismissed the suit with the direction that vide Ex. P/1, debenture certificate, the amount shall be payable to defendant no. 2-Basso Bai.

10. This Court has seen the entire evidence on record and endorse the findings recorded by the trial court on both the issues. The entire findings are based upon critical evaluation of evidence on record. No illegality or perversity is found in the impugned judgment. Hence, the First Appeal is dismissed.

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