

**(2003) 07 OHC CK 0002**  
**In the Orissa High Court**  
**Case No : Second Appeal No. 24 of 2000**

|                           |    |            |
|---------------------------|----|------------|
| Sri Dandapani Sahu        | Vs | APPELLANT  |
| Satyabadi Sahu and Others |    | RESPONDENT |

**Date of Decision :** 29-07-2003

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 100, 100(4)

**Citation :** (2003) 07 OHC CK 0002

**Hon'ble Judges :** P.K. Tripathy, J

**Bench :** Single Bench

**Advocate :** S.K. Mohanty, S.P. Mohanty, P.K. Lenka and M. Das, for the Appellant; S.S. Rao, for Respondent 1, for the Respondent

**Final Decision :** Dismissed

## Judgement

P.K. Tripathy, J.—Heard.

2. The Second Appeal has been preferred challenging to the judgment passed by the learned Second Additional District Judge, Berhampur in M.A. No. 2 of 1999 (M.A. No. 2 of 1993 GDC).

3. The fact disclosed from the pleadings and the impugned judgments of the Courts below indicate that Plaintiff filed the suit claiming for recovery of Rs. 6890/- towards the unpaid price of 31-1/2 bags of cashew nut (each bag contains 80 Kgs.) at the rate of Rs. 1051/- per bag along with interest @ 12%. He alleged that Defendant paid a part price of Rs. 25,000/- but did not make payment of the arrear price and executed a receipt on 9.8.1990. In course of hearing that receipt has been marked as Ext.1. Defendant disputed to the contention of the Plaintiff relating to the sale transaction and execution of Ext.1 by him. He stated that Plaintiff by employing the service of his discharged employee Babu Gouda could have obtained or fabricated such a receipt. He has disputed to genuineness of the signature on Ext.1.

4. Both parties adduced their respective evidence in the suit i.e. Money Suit No.

10 of 1991 of the Court of Subordinate Judge, Chhatrapur. On assessment of evidence on record, trial Court recorded the finding that when Defendant No. 1 has not proved that he did not execute Ext.1, therefore, he is liable to make payment of the unpaid price of the goods amounting to Rs. 6457/- along with interest @ 6% with effect from 8.10.1990 till the date of relisation. Learned Second Addl. District Judge on the other hand recorded that when the transaction and execution of Ext.1 has not been admitted by the Defendant, therefore, burden of prove was on the Plaintiff to prove that Defendant had entered into the alleged transaction and he executed Ext.1 undertaking to repay the balance/unpaid price of cashew nuts. On assessment of both oral and documentary evidence, learned Additional District Judge found that Plaintiff has failed to discharge that burden either by examining the scribe of Ext.1 and/or Babu Gouda, the discharged employee of the Defendant inasmuch as according to the Plaintiff that Babu Gouda had dealt with the transaction on behalf of the Defendant. Learned Additional District Judge also found from the case as projected by the Plaintiff that keeping in view the rate per bag and the amount said to have been paid, the unpaid amount should have been much more than Rs. 6457/- and Plaintiff had not led evidence explaining that circumstance. Learned Addl. District Judge therefore allowed the appeal and accordingly set aside the decree passed by the trial Court in favour of the Plaintiff. When the findings of the Courts below stand at that, after going through the relevant portions from the pleadings of the parties and the evidence of the parties, this Court does not find any admission on the part of the Defendant relating to entering into the suit transaction with the Plaintiff so as to bound himself for payment of the claimed amount.

5. Section 100 of the Code of Civil Procedure, 1908 (in short "the Code") provides jurisdiction with the High Court to entertain appeal against judgment and decree passed in appeal by any Court which is subordinate to that High Court. Factual finding recorded by the lower appellate Court which is subordinate to that High Court. Factual finding recorded by the lower appellate Court as the basis for the impugned decree is not to be interfered with in exercise of the jurisdiction u/s 100 of the Code unless High Court finds that such factual findings suffer from illegality or perversity or that impugned decree was passed ignoring or violating any provision of law. Therefore, Sub-section (4) of Section 100 mandates that High Court shall formulate if the Second Appeal involves any substantial question of law and to put on record that substantial question of law for due consideration.

6. In the case at hand challenge to the findings are factual and the incidental provision of law has been noted in the grounds advanced by the Plaintiff-Appellant. This Court finds that the view expressed by learned Addl. District Judge on facts and the law on burden of proof is neither illegal nor on erroneous approach to the facts and law. Hence no substantial question of law is required to be considered while considering correctness of the impugned judgment of the lower appellate Court. For the said reason, the Second Appeal stands dismissed.

No cost.