(1997) 12 PAT CK 0047

In the Patna High Court

Case No : Appeal from Original Decree No. 425 of 1980

State Bank of India APPELLANT

Vs

Raghubar Singh and Others RESPONDENT

Date of Decision : 02-12-1997

Acts Referred:
Bankers Books Evidence Act, 1891 — Section 2(8)

Citation : (2001) 103 CompCas 245

Hon'ble Judges : Ashok Kumar Prasad, J

Bench : Single Bench

Advocate : Shailesh Kumar Sinha, Kishore Kumar Sinha and Bindo Bihari Sinha, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

Ashok Kumar Prasad, J.—This appeal by the plaintiff is directed against the judgment dated March 6, 1980, and the decree thereunder passed by Shri G.N. Gupta, First Subordinate Judge, Chapra, in Mortgage Suit No. 16 of 1977 whereby and whereunder he dismissed the suit ex parte.

2. Briefly put, the case of the plaintiff is as hereunder. Defendants Nos. 1 and 2, the sons of Satya Narain Singh, and his wife were members of a joint Hindu family. Satya Narain Singh, as karta of the joint Hindu family, took an instalment credit loan of Rs. 16,700 on November 7, 1970, through draft No. A. M. 987307, dated November 7, 1970, payable to the managing director, Bihar State Agro Industries Development Corporation Ltd., for purchase of a tractor from Chapra branch of the plaintiff. The instalment credit loan was advanced to Satya Narain Singh on execution of a registered simple mortgage bond dated March 2, 1970 (exhibit 1), by him as karta of the joint Hindu family in favour of the plaintiff for Rs. 16,842 in which he had mortgaged 23 bighas 1 katha 5 dhuas of land detailed in the mortgage deed as security for instalment credit loan. Satya Narain Singh had agreed to repay the loan but he died in the year 1974. The defendant succeeded to estate of the deceased Satya Narain Singh. A sum of Rs. 13,604.44

paise was due to the plaintiff, the State Bank of India, from the deceased Satya Narain Singh, his heirs towards principal and interest the relating to the instalment credit loan on the date of the institution of the suit. Hence, the suit was brought by the plaintiff for recovery of Rs. 13,601.44 paise on the basis of the mortgage deed from the defendants, besides interest pendente lite and future, as detailed at the foot of the plaint,

3. It may be stated that defendant/respondent No. 3 died during the pendency of this appeal.

4. The defendants did not appear in the suit even though noticed. Hence, the suit was heard ex parte in the court below. In the trial court, the plaintiff adduced oral and documentary evidence. One, P.W., namely, P.W.-1, Maheshwari Garai, as assistant in the State Bank of India, was examined. The mortgage deed dated March 2, 1970 (exhibit 1), purported to have been executed by Satya Narain Singh in favour of the plaintiff/State Bank of India and a true copy of the statement of bank account in the name of Satya Narain Singh under agricultural term loan account (exhibit 2) were tendered in evidence by the plaintiff. The mortgage deed was for Rs. 16,842 and the amount which is alleged to have been advanced is Rs. 16,700.

5. On a consideration of the evidence, documentary and oral the court below held that there were different versions in the plaint about the amount and time of the loan advance and, in the mortgage bond (exhibit 2), which is dated March 2, 1970, the loan amount is mentioned as Rs. 16,842, whereas, in the copy of the statement of bank account, the sum of Rs. 17,027 was debited to the account of the borrower, which runs counter to the case of the plaintiff that the sum of Rs. 16,700 was advanced to the borrower on November 7, 1970, and, on scrutiny, it did not find the evidence of P.W.-1 reliable on the point that the principal sum of Rs. 16,700 had been advanced to the borrower on November 7, 1970. Ultimately, it dismissed the suit.

6. Respondent No. 2 did not appear in this appeal in spite of registered notice with acknowledgement due issued to him. Respondent No. 1 alone appeared in the instant appeal through vakalathnama. But none appeared for the respondents at the time of hearing of the appeal.

7. Shri S.K. Sinha, learned counsel for the appellant, has contended that it is the practice of the plaintiff-bank to get certain documents like a mortgage bond executed by a borrower as security in advance for giving instalment credit loan within sanctioned limit and it is the specific case of the plaintiff in paragraph no. 3 of the plaint that Satya Narain Singh, the borrower, had obtained instalment credit loan of Rs. 16,700 on November 7, 1970, through draft No. A. M. 987307, dated November 7, 1970, payable to the managing director, Bihar State Agro Industries Development Corporation Ltd., Patna, and the learned court below ought to have accepted the sworn oral testimony of P.W.-1 which is ex parte, that on November 7, 1970, Satya Narain Singh had taken loan of Rs. 16,700 from

Chapra branch of the plaintiff-bank and that certified copy of entry in the statement of bank account from the bank ledger of the borrower (exhibit 2) is prima facie evidence of the transactions and accounts recorded therein and in the circumstances, according to him, the learned court below should have, at least, given a simple decree for recovery of the principal sum of Rs. 16,700 with interest due thereon, besides pendente lite and future interest and cost and that the learned court below erred in dismissing the suit. He further submitted that the defendants have paid the sum of Rs. 13,601.44 paise, which was claimed in the suit, outside court, but interest pendente lite covering the period between February 15, 1977, and March 6, 1980, and cost incurred by the plaintiff remain unpaid, and hence, the appeal for claim of Rs. 3,027.83 paise only.

8. The main point involved in the instant appeal is with regard to the exact amount of loan advanced to the late Satya Narain Singh by the plaintiff-bank. The simple mortgage bond (exhibit 1) is dated March 2, 1970. The secured loan amount recited therein is Rs. 16,842 only. It is not the case of the plaintiff-bank that this amount of Rs. 16,842 only was actually advanced to late Satya Narain Singh at the time of execution of the mortgage bond. It is the plaintiff''s case that on November 20, 1969, it sanctioned instalment credit loan to him to the limit of Rs. 17,027 only. The plaintiff has alleged in paragraph No. 3 of the plaint that the late Satya Narain Singh has obtained instalment credit loan of Rs. 16,700 only on November 7, 1970, through draft No. A. M. 987307, dated November 7, 1970. P.W.-1 Mahashwari Garai has simply stated that on November 7, 1970, the late Satya Narain Singh had taken a loan of Rs. 16,700 from Chapra branch of plaintiffs-bank on the basis of the mortgage bond (exhibit 1). He has not whispered in his evidence about the mode of payment of such loan amount. He does not claim that he was present when the loan amount was actually paid. In the copy of the statement of account in the name of the late Satya Narain Singh (exhibit 2) there is no entry regarding withdrawal/payment of loan amount of Rs. 16,700 on November 7, 1970, or on any subsequent date instead it shows debit to the extent of Rs. 17,027, that is to say, the sum of Rs. 17,027 only was advanced to the late Satya Narain Singh on November 7, 1970, exhibit 2 does not corroborate the testimony of P.W.-1 that sum of Rs. 16,700 was, in fact, advanced to the late Satya Narain Singh. No voucher, bank draft or receipt has been produced by the plaintiff-bank to prove the actual loan amount paid to the late Satya Narain Singh.

9. The solitary testimony of P.W.-1 that a sum of Rs. 16,700 was, in fact, advanced to the late Satya Narain Singh cannot be accepted. Different loan amounts have been mentioned in the simple mortgage bond (exhibit 1) and the copy of the statement of account (exhibit 2). The plaintiff has failed to prove by reliable evidence the actual amount of the loan which was advanced to the late Satya Narain Singh.

10. Learned counsel for the appellant has contended that the court below ought to have relied upon the copy of the statement of bank account of the borrower

the late Satya Narain Singh (exhibit 2) as prima facie evidence of the transactions and the accounts recorded therein and decreed the claim of the plaintiff. He further submitted that there is presumption of correctness with regard to the transactions and accounts recorded in the certified copy of the statement of account of the bank u/s 4 of the Bankers'' Books Evidence Act, 1891 (for short "the Act"). It would be useful to refer to Section 2(8) of the Act which prescribes the requirements of a valid certified copy of the entry in the books of the bank which can be received as a prima facie evidence in a legal proceeding. Section 2(8) of the Act runs as hereunder :

''2. (8) "certified copy" means a copy of any entry in the books of a bank together with a certificate written at the foot of such copy that it is a true copy of such entry ; that such entry is contained in one of the ordinary books of the bank and was made in the usual and ordinary course of business; and that such book is still in the custody of the bank, such certificate being dated and subscribed by the principal accountant or manager of the bank with his name and official title.''

11. In the present case, there is a short, cryptic and a defective certificate with mere statement "true copy" with signature and seal of the bank. Thus, the certificate thereon is not in terms of Section 2(8) of the Act. It has been noticed that there is no mention in exhibit 2 that the actual amount of Rs. 16,700 was advanced to the borrower on November 7, 1970, or on any subsequent date. Further, P.W.-1 has not whispered in his evidence that the dealings, between the plaintiff-bank and the borrower had been substantially and correctly stated in a nutshell in the statement of accounts (exhibit 2). Hence in the circumstances, no reliance could have been placed on the copy of the statement of accounts (exhibit 2) for decreeing the claim of the plaintiff.

12. In the instant appeal, the appellant/plaintiff has claimed a sum of Rs. 3,027.83 paise being the amount of interest pendente lite and cost. Learned counsel for the appellant has urged that the defendants/respondents paid the sum of Rs. 13,601,44 paise, which was the claim amount in the suit, to the plaintiff bank outside court. There is a petition dated June 28, 1979, filed by the plaintiff-bank on the lower court record which is to the effect that, after institution of the suit, the defendants paid Rs. 15,500 to the bank towards the principal amount, interest thereon and cost but the date of deposit of such amount by the defendants with the plaintiff-bank is not stated in the petition dated June 28, 1979, or in the memorandum of appeal. P.W.-1 has simply stated in his evidence that the defendants had paid Rs. 15,500 to the plaintiff-bank.

13. The plaintiff, as stated above, has failed to prove, by reliable evidence, the actual amount which had been advanced to the borrower. Further, it has failed to bring on record the actual date on which the payment of a further sum of Rs. 15,500 was made to the plaintiff. Under the circumstances, the claim of the plaintiff for interest pendente lite as well as cost cannot be allowed.

14. In the result, the appeal fails and it is dismissed.

