
(2000) 05 RAJ CK 0065
In the Rajasthan High Court
Case No : Civil First Appeal No. 42 of 1983

Vardhichand Jain

APPELLANT

Vs

Madan Lal Mahendra Kumar, Partnership Firm

RESPONDENT

Date of Decision : 11-05-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10

Citation : AIR 2000 Raj 324

Hon'ble Judges : Sunil Kumar Garg, J

Bench : Single Bench

Advocate : Rameshwar Chouhan, for the Appellant; B.N. Kalla, for the Respondent

Final Decision : Dismissed

Judgement

Sunil Kumar Garg, J.—This is a first appeal filed by the appellant-defendant against the judgment and decree dated 31-3-1983 passed by the learned District Judge, Udaipur by which he decreed the suit of the plaintiff-respondent for Rs. 11,900.50 along with interest and litigation expenses etc. against the defendant-appellant on the basis of agreement Ex. 3 dated 27-11-1976.

2. The first appeal arises in the following circumstances:--

The plaintiff-respondent filed a suit on 11-8-1978 against the defendant-appellant for Rs. 12,418/- stating that plaintiff-respondent firm is a registered firm, the Registration Certificate is Ex. 2. The defendant-appellant deals in the business of Kirana and Clothes. There was a Truck RJQ 2587 (hereinafter referred to as "the Truck") registered in the name of Nazarali and Sobhalal and this Truck was financed by the plaintiff-respondent firm and the defendant-appellant wanted to purchase that Truck in the name of his minor son Ramesh Chandra, but on that Truck, Rs. 10,348/- of plaintiff-respondent firm were due against Nazarali and Sobhalal therefore, defendant-appellant was ready to make that payment of Rs. 10,348/- which was due in favour of the plaintiff-respondent

firm and he wanted to make that payment through twelve monthly Instalments of Rs. 864/-. The proposal of the defendant-appellant was accepted by the plaintiff-respondent. Thereafter, defendant-appellant executed agreement dated 27-11-1976 (Ex.3) in favour of the plaintiff-respondent firm stating that he will make payment of Rs. 10,348/- in twelve monthly instalments of Rs. 864/- and incase the defendant-appellant fails to make payment of two instalments, one of the partners of plaintiff-respondent firm Nathulal (PW-1) was authorised to recover the whole amount in one time. The defendant-appellant has not made any payment after execution of the agreement Ex. 3 dated 27-11-1976 and since he has failed to make the payment of two instalments, therefore, the plaintiff-respondent is entitled to recover the whole amount in one time. The plaintiff-respondent has charged interest (c) 12% p.a. The plaintiff-respondent also gave a notice Ex. 4 dated 9-1-1978 to the defendant-appellant and the same was received by him on 12-1 -1978, but no reply was given by the defendant-appellant to that notice. Thereafter, the plaintiff-respondent firm filed this suit against the defendant-appellant in the Court of District Judge, Udaipur for recovery of Rs." 12.418/-(Rs. 10,348 as principal amount and Rs. 2070/- as Interest).

4. The suit of the plaintiff-respondent was contested by the defendant-appellant by filing a written statement on 15-3-1979, in which he has denied all the allegations put forward by the plaintiff-respondent firm in its plaint. It is further stated by the defendant-appellant that the Truck was never registered in the name of his son and he has taken some legal pleas also stating that in this suit, Nazarali and Sobhalal are necessary parties and without impleading them, the suit of the plaintiff-respondent is not maintainable and the plaintiff-respondent firm is a moneylender firm and therefore, in absence of licence, the suit is not maintainable. Hence, the suit of the plaintiff-respondent firm be dismissed.

5. On the pleadings of the parties, the learned District Judge framed the following issues on 10-5-1979 :--

1. D;k V?d uEcj vkj-ts- D;w- 2587 utj vyh o "kksHkkyky ds uke ij jftLVMZ Fkh o ml oj oknh dk QkbusUI Fkk] vkSj bl V?d ij oknh ds 10]348@&i;s ckdh fudyrs Fks \\

2. D;k izfroknh V?d ua- vkj-ts- D;w dks vius vo;Ld iq= jes"k pUn ds uke ij ?; djuk pkgkr Fkk] vkSj mlus oknh ls ;g vuqcU/k rkjh[k 27&11&76 dks fu"ikfnr fd;k fd og 10]348@&i;s dh vnk;xh isjk ua- 3 vthZ nkos ds eqrkfcd fd"rksa ls vnk dj nsxk \\

3. D;k oknh izfroknh ls 10]348@&i;s vly o 2070@&i;s C;kt dqy 12]418@&i;s izkIr djus dk vf/kdkjh gS \\

4. D;k utj vyh o "kksHkkyky nkos esa vko";d i{kdkj gS \\

5. D;k oknh ds fy; euh ysf.Mx yk;lsUI ysuk vko";d Fkk] o fcuk euh ysf.Mx yk;lsUI ;g okn ugha py ldrk\\

6& ;fn rudhg ua- 5 dk QSlyk izfroknh ds i{k esa gks] rks D;k oknh us euh
ysf.Mx ,DV dh /kkjk 22] 23] 36 dh ikyuk ugha dh] ;fn gkW rks bldk nkos ij D;k
izHkko gS \\\

7& oknh fdl lgk;rk dk vf/kdkjh gS \\\

6. In support of the case, three witnesses were produced in the lower Court on behalf of the plaintiff-respondent firm and 8 documents were got exhibited and on behalf of the defendant-appellant, two witnesses were produced and one document Ex. A-1 was also got exhibited.

7. The learned District Judge vide his judgment dated 31-3-1983 decided all the issues in favour of the plaintiff-respondent firm and thus, decreed the suit of the plaintiff-respondent as stated above against the defendant-appellant.

8. Aggrieved from the judgment and decree dated 31-3-1983 passed by the learned District Judge, Udaipur, the defendant-appellant has preferred this first appeal in this Court on 4-5-1983.

9. In this first appeal, the learned Counsel for the appellant-defendant has challenged the findings of the learned lower Court on almost all the issues, while the learned Counsel for the respondent-plaintiff has supported the impugned judgment and decree passed by the learned District Judge, Udaipur.

10. In this case, the main issue is issue No. 2. which relates to execution of agreement Ex. 3 dated 27-11-1976, therefore, first it would be seen as to whether the learned District Judge has decided this issue rightly or not.

11. PW-1 is one of the partners of the plaintiff-respondent firm, PW-2 is the scribe of Ex.3 agreement dated 27-11-1976 and PW-3 is Sobhalal, who also states that this Ex.3 was got exhibited in his presence by defendant-appellant (DW-1).

12. Apart from the oral evidence, there are some documentary evidence in this case which favours the case of the plaintiff-respondent. The simple case of the plaintiff-respondent is that the Truck in question was in the name of Nazarali and Sobhalal and defendant-appellant wanted to purchase that Truck and since Rs. 10,348/- were due to plaintiff-respondent firm against Nazarali and Sobhalal, therefore, in case defendant-appellant wanted to purchase that Truck, he has to pay that amount which was due in favour of the plaintiff-respondent firm and for that purpose, he executed an agreement Ex.3 dated 27-11-1976.

Note :-- in this case there is a total denial by the defendant-appellant of the case of the plaintiff-respondent and he has bluntly refused that he ever signed Ex.3 agreement dated 27-11-1976 and furthermore, other documents etc.

13. Ex.7 is a certified copy issued by the Transport Department which shows that the Truck in question is registered in the name of M/s. Ramesh Chandra and Brothers.

14. Ex. A-1 is a document filed by the defendant-appellant which is an intimation of transfer of ownership of the Truck in question in the name of M/s. Ramesh Chandra and Brothers.

15. Thus, these two documents which are certified copies issued by the Transport Department clearly go to show that the Truck in question was registered ultimately in the name of M/s. Ramesh Chandra and Brothers and It was the case of the plaintiff-respondent firm that the defendant-appellant wanted to purchase that Truck in the name of his son Ramesh. Therefore, these documents proved what the defendant-appellant wanted and the circumstances in which Ex.3 agreement dated 27-11-1976 was got executed. Since the documents Ex. 7 and Ex.A-1 are the certified copies issued by the Transport Department, therefore, their genuineness cannot be doubted and reliance can be placed on them.

16. In the light of the above, it will be seen now whether Ex.3 agreement dated 27-11-1976 was executed by the defendant-appellant in favour of the plaintiff-respondent or not.

17. On behalf of the plaintiff-respondent firm, PW-1, who is partner of the plaintiff-respondent firm, has clearly stated that the defendant-appellant has put his signatures at place A to B on Ex.3 agreement in his presence. PW-2 is the scribe of Ex.3 and he has stated that Ex.3 agreement was written by him at the instance of defendant-appellant (DW-1). PW-3 is a witness in whose name, the Truck in question was originally registered i.e. Nazarali and Sobhalal. Hestates that defendant-appellant wanted to purchase the Truck in question in the name of his son Ramesh Chandra and plaintiff-respondent firm wanted Rs. 10,348/- from him and this amount was to be paid by the defendant-appellant as agreed by him and in these circumstances, agreement Ex.3 was executed by defendant-appellant in favour of the plaintiff-respondent firm. He further states that the possession of the Truck was also given to the defendant-appellant.

18. In my opinion, the learned District Judge has rightly believed the statements of PW-1 to PW-3 on the execution of agreement Ex.3, and has rightly held that this agreement Ex.3 was got executed by the defendant-appellant in favour of the plaintiff-respondent firm.

19. In rebuttal, the evidence of the defendant-appellant is very shaky and unreliable, as rightly held by the learned lower Court. The defendant-appellant in his statement as DW-1 has totally denied the case of the plaintiff-respondent firm, but he has admitted only to the extent that he received the notice Ex. 4 and Ex, 8 is not the reply of the notice. Ex.8 is a letter alleged to have been written by the defendant-appellant and it bears his signatures.

20. As stated earlier that since documentary evidence apart from Ex.3 i.e. Ex.7 Registration Certificate and Ex. A-1 intimation of transfer of ownership of vehicle clearly go to show that the Truck in question was ultimately registered in the name of M/s. Ramesh Chandra and Brothers, therefore, the case of the plaintiff-respondent firm stands proved and oral evidence of PW-1 to PW-3 in these

circumstances becomes reliable in comparison to the evidence led by the defendant-appellant, which is a total denial. The execution of agreement Ex.3 by the defendant-appellant in favour of the plaintiff-respondent should be held proved because the subsequent acts resulted in the transfer of Truck in question in the name of M/s. Ramesh Chandra and Brothers. The document Ex.7 and furthermore Ex.A-1 by which ownership has been transferred go to show that in pursuance of the terms of the agreement, these two documents have come into existence. Therefore, the learned District Judge has rightly observed that Ex.3 agreement was executed by the defendant-appellant in favour of the plaintiff-respondent and his findings on issue No. 2 are liable to be confirmed.

21. The argument that stamp of agreement Ex.3 was purchased by Sobhalal and not by the defendant-appellant therefore, its execution by the defendant-appellant should not be held to be proved, in the above circumstances, cannot be appreciated and the learned District Judge has rightly rejected this argument and in my opinion, the observations of the learned District Judge on this point are correct one. Therefore, this argument is also of no help to the learned Counsel for the appellant-defendant.

22. So far as the argument of learned Counsel for the appellant-defendant that Nazarali and Sobhalal are necessary parties to the suit is concerned, in my opinion, the learned District Judge has rightly observed that they are not necessary parties as the case of the plaintiff-respondent firm is based on the execution of agreement Ex.3. Therefore, it is held that the issue No. 4 was rightly decided by the learned District Judge holding that Nazarali and Sobhalal are not necessary parties to the suit. Moreover, in this respect, it can be said that Sobhalal has been examined as PW-3, who has fully supported the case of the plaintiff-respondent firm. From this point of view also, the submission that Sobhalal and Nazarali are necessary parties to the suit, stands nowhere.

23. So far as the issue No. 1 is concerned, it stands proved when it is held that Ex.3 agreement dated 27-11-1976 was executed by the defendant-appellant in favour of the plaintiff-respondent. Therefore, the findings recorded by the learned District Judge on issue No, 1 are also upheld.

24. So far as the submission of the learned Counsel for the appellant-defendant that suit of the plaintiff-respondent firm is not maintainable as it has not produced money lending licence is concerned, this submission is not at all tenable and the learned District Judge has rightly observed that this suit is based only on the execution of Ex.3 agreement and in such case, no licence is required. Thus, the findings recorded by the learned District Judge on issue No. 5 are also liable to be confirmed,

25. Therefore, the findings of the learned District Judge on all the issues are correct one and they are based on the oral and documentary evidence produced by both the parties and they do not suffer from any Infirmary in any way.

Hence, there is no force in this first appeal filed by the appellant-defendant and

the same is dismissed with costs by affirming the judgment and decree dated 31-3-1983 passed by the learned District Judge, Udaipur.