(1993) 12 KL CK 0022

High Court Of Kerala

Case No: A.A. No. 583 of 1993

Alikunju Hamsa		APPELLANT
	Vs	
Varghese George		RESPONDENT

Date of Decision: Dec. 1, 1993

Acts Referred:

- Negotiable Instruments Act, 1881 (NI) - Section 4
- Stamp Act, 1899 - Section 2(22), 2(5)

Citation: (1994) 1 CivCC 527 : (1994) 1 KLJ 110

Hon'ble Judges: K.K. Usha, J

Bench: Single Bench

Advocate: B. Krishnamani, for the Appellant; S. Venkitasubramonia Iyer and V. Giri, for the Respondent

Final Decision: Dismissed

Judgement

K.K. Usha, J.

The question arising in this appeal is whether Ext. A1 document is a promissory note as contended by the Plaintiff/respondent herein or a bond as contended by the Defendant/Appellant herein. The trial Court found that Ext.A1 satisfies all the requirements of a promissory note as defined in Section 4 of the Negotiable Instruments Act and decreed the suit in favour of the Plaintiff. The Appellant contends that the trial Court has wrongly interpreted Ext.A1 as a promissory note. Since Ext.A1 document was attested by two witnesses and it contained a default clause, that in case of default of the executant to pay the amount his assets will be liable for the amount due thereunder, the document could be only a bond and it could not have been admitted in evidence as a promissory note.

2. The relevant portion of Ext.A1 document is as follows:

Text in vernacular-Not Printed. Editor

It was attested by two witnesses. The learned Counsel appearing on behalf of the Appellant relied on two decisions of the Bombay High Court in support of the contention of the Appellant. In Jaikumar Shivlal Shah and Others Vs. Motilal Hirachand Gandhi and Another, the document which came up for interpretation before the Court contained attestation and it was not made payable to order or bearer. Under these circumstances the Bombay High Court held that if a promissory note falling u/s 4 of the Negotiable instruments Act, 1881 and therefore u/s 2(22) of the Indian Stamp Act, 1899 is attested and not made payable to order or bearer it would be a bond falling u/s 2(5) (b) of the Indian Stamp Act and would therefore found to be a bond for the purpose of that Act. So also the document which was not found to be a promissory note in K. Mallaya Lachmayya Corporation Vs. Prbhakarrao Marotrao Dhote, did not satisfy the necessary requirement of a promissory note as it was not made payable to order or bearer. Though the document was styled as a promissory note, the document contained acknowledgment of payment of certain amount and liability to pay the same within the time stipulated in the document. In case of default, it was provided that recovery be made as may be permissible by means of law. It was also attested by two witnesses. I am afraid these two decisions can be no help to the Appellant. Those decisions did not turn on attestation of the document by witnesses but on the lack of an undertaking to pay to order or bearer, which is the basic requirement to bring the document under the definition of a promissory note. In Kartey Singh Vs. Iftikhar Ahmad, it was held that absence of the word "payable to order or bearer" in a document which contained attestation would indicate that the parties intended to execute a bond rather than a promissory note.

3. The presence of a default clause by itself will not make a document not a promissory note, if it otherwise satisfied the mandatory requirement of a promise to pay to the order or bearer. The above view has been taken in Subramonia Iyer Kesava Iyer v. Muthuperumal Pillai Maharaja Pillai AIR 1955 TRAV-CO 141 and in Muthu Thevar v. Singaram (1966) 1 MLJ 406. I am in full agreement with the above view.

4. So also I find no merit in the contention that merely because the document is attested by witnesses it can no longer be a promissory note. According to me even though the promissory note is riot liable to be attested the fact that it is attested by witnesses will not make it any the less a promissory note if the instrument is made payable to order or bearer. The High Court of Jammu & Kashmir has taken the same view in Suraj Parkash Kapoor v. Om Prakash Kapoor AIR 1983 NOC 88 (J. & K.). Therefore, I find no merit in the contention taken by the Appellant that Ext.A1 document should have been construed by the trial court as a bond and not as a promissory note.

5. Relying on the decision of the Supreme Court in The State (Delhi Administration) Vs. Pali Ram, it was contended on behalf of the Appellant that the trial should not have ventured to compare the disputed signature of the Defendant in Ext.A1 with

signature in the Vakalath and also the handwriting in Ext.A1, with the specimen handwriting taken in the open court. It was observed in the above case that although there is no legal bar to the Judge using his own eyes to compare the disputed writing with the admitted writing, even without the aid of the evidence of any hand-writing expert, the Judge should, as a matter of prudence and caution, hesitate to base his finding with regard to the identity of a handwriting which forms the sheet-anchor of the prosecution case against a person accused of an offence, solely on comparison made by himself. In the present case the Plaintiff had examined himself as PW1 and PW2 a person at whose instance Plaintiff advanced the amount to the Defendant for his rice business and also PW3 an attestor to Ext.A1 to prove that Ext.A1 was written by the Defendant in his own handwriting and it bears his signature. Reliance was placed by the trial court on their evidence also in coming to the conclusion that Ext.A1 was executed by the Defendant. The finding was not based solely on comparison of the handwriting and signature made by the court. Therefore it cannot be held that the trial court gone against the dictum laid down by the Supreme Court.

No grounds are made out by the Appellant for interference by court in the judgment and decree of the trial court. In the result, the first appeal fails and it stands dismissed.