(1967) 12 MP CK 0005

Madhya Pradesh High Court

Case No: S. A. No. 255 of 1964

Kiranohandba Pal		APPELLANT
	Vs	
Bhondu		RESPONDENT

Date of Decision: Dec. 4, 1967

Acts Referred:

- Evidence Act, 1872 - Section 155

Citation: (1970) JLJ 277 : (1970) MPLJ 263

Hon'ble Judges: A. P. Sen, J

Bench: Single Bench

Advocate: N. S. Kale, for the Appellant; A. R. Choubey, for the Respondent

Final Decision: Dismissed

Judgement

A. P. Sen, J.

This is an appeal by the plaintiff against a decree of the 2nd Additional District Judge, Raipur, affirming a decree of the 1st Civil Judge, Class I, Raipur.

The facts, briefly stated are: The suit relates to a portion of Khasra No. 257 which is the embankment of Kukri Talao, situate in Raipur. The plot has been in occupation of the defendant Bhondu since the time of his father Thansingh. The plaintiff served the defendant with a notice of ejectment demanding arrears of rent. The plaintiff claims that the defendant has been his tenant since 1954 on a monthly rent of Rs. 2 and sued for ejectment since the defendant has defaulted in payment of rent since 1st June 1958. The defendant denied the tenancy and claimed to have been in possession of the suit plot in his own right for the last 20 years. On these facts, both Courts have concurrently found that the relation of landlord and tenant has not been established, and hence non-suited the plaintiff.

Being faced with a pure question of fact, Shri N. S. Kale, learned counsel for the appellant assailed the decree on a rather ingenious ground, namely, the refusal by

the first Court to permit the plaintiff u/s 155 of the Evidence Act to call other independent evidence to impeach the testimony of P. W. 4 Chhotelal, has vitiated the trial. According to the learned counsel, the evidence of Chhotelal had a direct bearing on the case of the plaintiff who alleges that after the death of Thansingh, the tenancy was split up between his two sons, the defendant and Chhotelal and since 1954 they are admittedly in occupation of adjacent plots over which they have their respective huts. This would be a piece of circumstantial evidence lending support to the plaintiff''s case. In his statement, the plaintiff has stated that Chhotelal had agreed to pay Re. 1 per month as rent. The plaintiff has filed a receipt Ex. P-6 which purports to be signed by P. W. 4 Chhotelal, but in the witness-box Chhotelal denied the execution of this receipt and stated that he does not know English at all. The plaintiff, accordingly, applied on 18th July 1963, for an opportunity for his comparing his signature and to seek the opinion of the expert as the witness knew English and has appended his signature at "so many places in the office and elsewhere" but being brother of the defendant falsely denied execution of the rent receipt Ex. P-6, proof of which would have made the plaintiff''s testimony probable.

Shri A. R. Choubey, learned counsel for the respondent strenuously opposes the suggestion that the trial of the suit is, in any manner, vitiated by the rejection of the plaintiff''s application dated 18th July, 1963, and contends the rejection was justified because the application came after closure of the plaintiff''s case. He further urges that the signature of Chhotelal on Ex. P-6 will have no bearing on the real question in controversy between the parties namely, whether the defendant was a tenant of the plaintiff. Apart from this, the learned counsel argues that the finding reached by the Courts below that the contract of tenancy is not established, is a finding of fact.

For a proper appreciation of the contentions raised on this aspect of the case, it is necessary to set out the circumstances under which the application was rejected. After the closure of evidence on 18th July 1963, the plaintiff moved the application for calling other independent evidence to impeach the testimony of P. W. 4 Chhotelal. The application was rejected forthwith by the first Court with the following reasons:

The credibility of the said witness is not in issue in this case. Moreover when the witness denies the knowledge of English language itself question of getting handwriting expert''s opinion has no meaning. A party cannot also be allowed to discredit his own witness unless the said witness has, with the permission of the Court, been declared hostile

The appeal Court reiterated this action, by stating:

Strangely enough this witness was not declared hostile by the plaintiff and, therefore, the learned lower Court rightly disallowed the attempt by the plaintiff to impeach this witness by examining the hand-writing expert to prove that Chhotelal has signed this receipt. This leaves the plaintiff''s testimony alone

This brings me to the question whether the plaintiff had the right to impeach the testimony of the witness u/s 155 and if so, what was the stage when the right should have been exercised. There is no manner of doubt that the Courts were wrong in rejecting the application on the ground that the plaintiff could not be allowed to discredit his own witness unless he was, with the permission of the Court, declared hostile. Such a view of the right given to a party u/s 155 of the Evidence Act is wholly unwarranted. That section nowhere requires the exercise of the right dependent upon fulfilment of this condition.

The meaning of section 154 is that with permission of the Court a party may treat its own witness hostile and cross-examine him A hostile witness is one who from the manner in which he gives his evidence shows that he is not desirous of telling the truth. Where a witness stands in the situation which naturally makes him adverse to a party desiring his testimony, the party calling the witness is not entitled as of right to cross-examine him. The matter is entirely in the discretion of the Court whether it would permit the witness to be cross-examined or not.

Putting leading questions to one''s own witness or rather cross-examining him, is different from discrediting or contradicting the witness and the former is dealt with in section 154, although the latter may be done by cross-examination without giving independent evidence u/s 155. Section 155 mainly deals with the impeachment of credit of a witness by a mode other than cross-examination. The credit may be impeached by offering independent evidence u/s 155.

The learned counsel rests his case u/s 155 and, according to him the plaintiff was entitled to impeach the credit of his own witness Chhotelal by calling other independent evidence, and suggests that the matter is covered by the 3rd clause to section 155, which reads ''by proof of former statements, inconsistent with any part of his evidence, which is liable to be contradicted''. The contention is devoid of and substance and must be rejected,

It is well settled that the provision contained in section 155 must be strictly construed and narrowly interpreted [see, Bhogilal v. Royal Insurance Co. AIR 1928 P C 54], for the reason stated by their Lordships viz. that the Courts may be "spared the task'''' in many suite "of prosecuting", on most imperfect material, issues which have "no bearing upon that really in contest" between the parties. If so read, the question is narrowed down to this: can the credit of Chhotelal be impeached by tendering other independent evidence of his hand-writing with a view to prove his signature on Ex P-0. The answer must be in the negative. In AIR 1945 174 (Privy Council) , the Privy Council stated that a letter written by a witness is no evidence of the facts therein stated, and the only legitimate use to which the letter can be put would be to use it in cross-examination for the purpose of discrediting the witness if what he had written was inconsistent with his evidence. By parity of reasoning, the hand-writing of a witness is not his "former statement" within the meaning of the 3rd clause and evidence of such writing cannot be let in u/s 155 as other

independent evidence for the purpose of impeaching his credit.

Apart from this, the application came after the closure of evidence; by then the stage of exercising the right u/s 155, was past. The law is stated in Sarkar''s Evidence, 10th Edition, p. 1224, thus:

With regard to the mode of throwing discredit on the testimony of a witness Taylor says:- After a witness has been examined in chief, his credit may be impeached, not only by means of cross-examination, but in various other modes. First, witnesses may be called to disprove such of the facts stated by him, whether in his direct or cross-examination, as are material to the issue, next, proof may be given, under certain restrictions before pointed out, of statements made by the witness inconsistent with the testimony at the trial; and thirdly, evidence may be adduced reflecting on his character for veracity. But here the evidence must be confined to his general reputation, and will not be permitted as to particular facts.

The right must be exercised immediately after the examination-in-chief of a witness and before his cross-examination begins.

For the foregoing reasons, the contentions of the appellant on this aspect of the case must be rejected. The learned counsel then proceeded with the merits but he is concluded by a finding of fact which cannot be upset in second appeal as the finding, that the contract of tenancy is not established, is based on appreciation of evidence.

The appeal fails and is dismissed with costs. Counsel''s fee Rs. 50, if certified.