Radhyshyam Mishra Vs Premnarayan Sharma

Court: Madhya Pradesh High Court (Gwalior Bench)

Date of Decision: Sept. 14, 2010

Acts Referred: Evidence Act, 1872 â€" Section 67, 68, 73
Negotiable Instruments Act, 1881 (NI) â€" Section 4
Stamp Act, 1899 â€" Section 36, 61

Citation: (2011) ILR (MP) 732 : (2011) 3 MPHT 115 : (2010) 4 MPJR 237 : (2011) 1 MPLJ 292 : (2011) 2 RCR(Civil) 501

Hon'ble Judges: Abhay M. Naik, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Abhay M. Naik, J.

This appeal has been preferred by the defendant/appellant against a money decree granted against him by the Trial Court for a sum of Rs.

1,55,000/- with interest from the date of suit @ 9% p.a.

Plaintiff instituted a suit against defendant with allegations that the defendant acknowledged on 10.07.1993 to have received Rs. 1,55,000/- from

the plaintiff vide written agreement. Money was repayable in monthly installments of Rs. 1,000/- with an agreement that on receipt of payment from

the GPF, he would refund the entire money. Defendant is an employee of police department. He did not make payment of installment, but assured

that he would return the entire money on receipt of money from the head of GPF. Plaintiff made a complaint on 14.09.1993 to the Deputy

Inspector General of Police in writing. Plaintiff was asked to institute civil suit, hence the same for recovery of Rs. 1,55,000/- towards principal

amount plus Rs. 45,390/- towards interest, after issuing notice dated 18.08.1994 by registered A/D.

Defendant/appellant submitted his written statement denying inter-alia the claim of the plaintiff. He denied to have borrowed any amount from the

plaintiff. Execution of the alleged agreement dated 10.07.1993 was also denied. Instead, it has been pleaded that the plaintiff forcibly obtained the

signature of defendant on plain stamp paper on 10.07.1993, which was reported to Police Station Janakganj. Since, defendant did not owe any

amount to the plaintiff, there was no question of making promise to repay the same, after receipt of amount from GPF.

Learned Trial Judge after recording the evidence granted a decree to the tune of Rs. 1,55,000/- with interest pendente lite @ 9% p.a. till

realisation. Aggrieved by it, plaintiff has submitted the present Appeal.

It has been contended on behalf of the appellant that the case of the plaintiff is not proved, at all. Defendant denied his signature and therefore,

learned Trial Judge ought to have exercised powers u/s 73 of the Indian Evidence Act, 1872.

On perusal, it is found that in paragraph 1 of written statement, it has been stated that the plaintiff obtained signature of the defendant forcibly on

plain stamp paper on 10.07.1993. Though, in the statement on oath, defendant has stated that his signature was obtained on plain paper, his

version is not liable to be accepted in the light of the specific pleadings that he has put his signature on plain stamp paper on 10.07.1993. The

agreement dated 10.07.1993, setup by the plaintiff is Ex.P-1. It has been attested by two witnesses. Plaintiff has proved Ex.P-1 by his own

statement as well as by the statement of attesting witnesses, namely, Anil Vijayvargiya (PW-2) and R.S. Gupta (PW-3).

Division Bench of this Court in the case of Ramibai v. Life Insurance Corporation of India 1981 JLJ 388 has observed the following with regard to

proof of the document:

Before we proceed to dwell upon the evidence relating to the proof of the signature of the deceased on these deeds, it would be pertinent to point

out that these deeds do not fall into the category of those documents which by law are required to be attested and, therefore, for the proof of these

deeds Section 68 of the Evidence Act would not apply. It is Section 67 which would apply. Section 67 does not lay down any particular mode of

proof for proving that a particular writing or signature is in the hand of a particular person. Thus, the signatures may be proved in any one or more

of the following modes:

(i) By calling a person who signed or wrote a document;

(ii) By calling a person in whose presence the documents are signed or written;

(iii) By calling handwriting expert;

(iv) By calling a person acquainted with the handwriting of the person by whom the document is supposed to be signed or written;

(v) By comparing in Court, the disputed signature or handwriting with some admitted signatures or writing;

(vi) By proof of an admission by the person who is alleged to have signed or written the document that he signed or wrote it;

(vii) By the statement of a deceased professional scribe, made in the ordinary course of business, that the signature on the document is that of a

particular person;

A signature is also proved to have been made, if it is shown to have been made at the request of a person by some other person, e.g. by the scribe

who signed on behalf of the executant;

(viii) By other circumstantial evidence.

Considering the aforesaid law, Ex.P-1 is found duly proved. Though, the defendant drew attention of this Court to minor discrepancies in the

evidence but over all effect of such discrepancies is not found vital more so because the defendant himself has nowhere stated in the chief-

examination that he did not borrow the money from the plaintiff and further did not owe the amount as claimed in the plaint.

This being so, exercise of powers u/s 73 of the Indian Evidence Act, 1872 is not warranted, at all.

Further submission on behalf of appellant is that Ex.P-1 is a bond since it has been attested by two witnesses and the same is not admissible for

want of proper stamp duty.

Defendant/appellant placed reliance in the case of R.V.E. Venkatachala Gounder v. Arulmigu Viswesaraswami and V.P. Temple and Anr. (2003)

8 SCC 753 to contend that Ex.P-1 being not duly stamped, is inadmissible in evidence and the impugned judgment based on it, is liable to be set-

aside. In the alternative, prayer has been made to remand the matter for deciding admissibility of document (Ex.P-1).

In the case of R.V.E. Venkatachala Gounder (supra), the court was dealing with a case when photocopy of a document was tendered and

admitted in evidence without objection. In the case in hand, no objection was raised for want of proper stamp duty. Section 36 of the Indian

Stamp Act, 1899 clearly lays down that where an instrument has been admitted in evidence, such admission shall not, except as provided in

Section 61, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped.

I may successfully refer to the Apex court decision in the case of Javer Chand and Others Vs. Pukhraj Surana, wherein it has been observed:

...In our opinion, the High Court misdirected itself, in its view of the provisions of Section 36 of the Stamp Act. Section 36 is in these terms:

Where an instrument has been admitted in evidence, such admission shall not, except as provided in Section 61, be called in question at any stage

of the same suit or proceeding on the ground that the instrument has not been duly stamped.

That section is categorical in its terms that when a document has once been admitted in evidence, such admission cannot be called in question at

any stage of the suit or the proceeding on the ground that the instrument had not been duly stamped. The only exception recognized by the section

is the class of cases contemplated by Section 61, which is not material to the present controversy.

..Once a document has been marked as an exhibit in the case and the trial has proceeded all along on the footing that the document was an exhibit

in the case and has been used by the parties in examination and cross-examination of their witnesses, Section 36 of the Stamp Act comes into

operation. Once a document has been admitted in evidence, as aforesaid, it is not open either to the Trial Court itself or to a Court of Appeal or

revision to go behind that order. Such an order is not one of those judicial orders which are liable to be reviewed or revised by the same Court or

a Court of superior jurisdiction.

Essentials of a bond are described by the Full Bench of this Court in the case of Santsingh Ladharam v. Madandas Gyandas Panika and Anr.

1976 MPLJ 238, in the following manner:

1. There must be an undertaking to pay;

The sum should be a sum of money but not necessarily certain;

The payment will be to another person named in the instrument.

The maker should sign it;

The instrument must be attested by a witness; and

It must not be payable to order of bearer.

On perusal of Ex.P-1, it is found that the defendant has acknowledged the borrowing in various installments in all to the tune of Rs. 1,55,000/-.

The agreement was executed between plaintiff and defendant, wherein it was agreed that defendant would pay entire amount after withdrawing the

amount from his GPF account. Thus, in the light of the Full Bench decision in the case of Santsingh Ladharam (supra), Ex.P-1 cannot be treated as

a bond, but is an agreement containing acknowledgment as well as promise by the defendant to make repayment after withdrawal from the GPF

account.

Defendant further contended that Ex.P-1 may be treated as a promissory note, therefore, the same is not admissible for want of proper stamp

duty.

Promissory note is defined in Section 4 of the Negotiable Instruments Act, 1881, which reads as under:

4. Promissory note"". - A ""promissory note"" is an instrument in writing (not being a banknote or a currency-note) containing an unconditional

undertaking signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.

Hon"ble Supreme Court of India in the case of V.E.A. Annamalai Chettiar and Another Vs. S.V.V.S. Veerappa Chettiar and Others, has

observed, that nature of transaction has to be judged from the intention of the parties and circumstances of the case. It has been observed in para

9:

9. The words ""we shall pay the said sum"" did not make any difference to the position. Even though the transaction was a transaction of deposit as

above stated the deposit could be coupled with an agreement that it would be payable on demand. Such an agreement could be express or implied

and if an express agreement in that behalf was recorded in the document in the terms above, the transaction of deposit could not be thereby

converted into a transaction of loan and the words ""we shall pay the said sum"" could not convert the document into a promissory note.

It has been further observed in para 10:

There is also a further difficulty in the way of the appellants and it is that the document having been admitted in evidence such admission could not

be called in question at any stage of the proceedings on the ground that it had not been duly stamped. The provisions of Section 36, Stamp Act

preclude the appellants from raising any objection against the admission of the document at this stage and the appellants are not entitled now to

urge this objection before us.

This Court considered the language of Ex.P-1. It is mentioned in it, that the plaintiff and defendant were having family terms and cordial relations.

Defendant was in receipt of a sum of Rs. 1,55,000/-, which was received by him in various installments, for the purpose of vehicle. He has suffered

a loss, therefore, he agreed that he would repay the same after withdrawal from his GPF account. Until such withdrawal, he would make payment

@ Rs. 1,000/- per month and no interest would be payable on the said amount. It is further mentioned that if the defendant fails to comply with the

terms and conditions contained in Ex.P-1, the plaintiff shall have a right to recover it from the defendant''s department or from the movable or

immovable property belonging to him. Document contained in Ex.P-1 is an agreement and not a bond or promissory note. In view of the terms and

conditions contained in Ex.P-1, it cannot be construed even as a promissory note, but it has been rightly treated by the Trial Court as an

agreement.

Full Bench of this Court in the case of Balkrishna v. The Board of Revenue, M.P. Functioning as the Chief Revenue Controlling Authority, under

the Indian Stamp Act and ors 1969 14 MPLJ 827, has laid down principles governing the application of stamp duty to the instrument in the

following manner:

7. The following principles govern the application of the Stamp Act to instruments:

(i) The first is that duty is payable on the instrument and not on the transaction. The leading case on this point is Commissioner of Inland Revenue v.

Angus. In that case, Esher M.R., observed thus:

The first thing to be noticed is, that the thing which is made liable to the duty is an "instrument" It is not the transaction of purchase and sale which is

struck at; it is the instrument whereby the purchase and sale are effected which is struck at.

It is not open to the revenue to say that the instrument should be deemed to be that which it is not on the record and that the object of the

transaction was to achieve a purpose not disclosed in the instrument.

(ii) The second rule is that the Court is not bound by the apparent tenor of the instrument; it is the real nature of the transaction which will determine

the stamp duty. See, for instance, Mortgage Insurance Corporation v. Commissioner of Inland Revenue (2); Inland Revenue v. James John Oliver

(3) and Deddington Steamship Co. Ltd. v. Commissioner of Inland Revenue (4). But the true meaning of this rule is really this that the recitals in the

instrument should not be lost sight of merely because the parties gave a particular description of its nature. But the rule does not go beyond this.

Here may be recalled the weighty observations of Lord Cairns, who said many years ago in Partington v. The Attorney-General (5):

As I understand the principle of all fiscal legislation, it is this: If the person sought to be taxed comes within the letter of the law he must be taxed,

however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown, seeking to recover the tax, cannot bring the

subject within the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be.

It was observed in Bank of Chettinad v. I.T. Commissioner (1):

Their Lordships think it necessary once more to protest against the suggestion that in revenue cases "the substance of the matter" may be regarded

as distinguished from the strict legal position.

Their Lordships then referred to Inland Revenue Commissioners v. Duke of West-minister (2). See also Board of Revenue v. Narsimhan (3).

(iii) The third rule is that the Court must look at the document itself as it stands and it is not permissible to show, by evidence, any collateral

circumstances. The nature of the document can be determined only from the language it employs and the purpose which it is intended to serve.

Although it is permissible to look behind the from and at the substance of the transaction, this can be done only by construing the instrument itself

and not by taking into consideration any collateral or other evidence de hors the instrument. In Chandrakant v. Kartickchram (4), Peacock C.J.,

said:

It appears to me that in applying the stamp law the stamp must be paid upon what is stated in the instrument and cannot depend upon collateral

evidence....

(iv) The fourth rule is that in determining stamp duty, the substance of the transaction as disclosed by whole of the instrument has to be looked to,

and not merely the operative part of the instrument.

(v) The fifth rule is that stamp duty is payable on an instrument according to its tenor and it does not matter that it cannot be given effect to for

some independent cause.

(vi) The sixth rule is that there can be no objection to a device effectuating a transaction in a manner that lower rate of duty is attracted. See, for

instance, Littlewoods Mail Order Stores Ltd. v. Inland Revenue Commissioners (5).

Applying the aforesaid principles, Ex.P-1 is found to be a duly stamped agreement in view of the conditions.

It has been further contended that the plaintiff did not make compliance of the provisions of Madhya Pradesh Money Lenders Act, 1934,

therefore, he is not entitled to interest and cost of the suit.

It is true that for want of registration as money lender, a suit may not be maintainable. However, there is no evidence on record, as rightly observed

by the learned Trial Judge in paragraph 17 of the impugned judgment that the plaintiff was engaged in the business of money lending and the

amount in question was advanced in the course of such business. This being so, there is no force in the contention of the appellant.

In the result, the appeal has no force and is liable to be dismissed with cost. Appellant to bear expenses of the respondent. Lawyers fee as per

schedule, if pre-certified.