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(2017) 04 MP CK 0093

MADHYA PRADESH HIGH COURT

Case No: 209 of 2004

M.P. Housing Board	APPELLANT
Vs	
Shyam Sunder Chourasia and other	RESPONDENT

Date of Decision: April 7, 2017

Acts Referred:

- Madhya Pradesh Stamp Rules, 1942, Rule 17

Citation: (2017) 04 MP CK 0093

Hon'ble Judges: Vivek Agarwal

Bench: Single Bench

Advocate: Harish Dixit, R.K. Soni

Judgement

1. This civil revision has been filed by the revisionist-plaintiff being aggrieved by the judgment and decree dated 13.09.2004 passed by the Additional District Judge, Karera, District Shivpuri in Civil Appeal No.50-B/2002 arising out of the judgment and decree dated 18.07.2002 passed by the Court of Civil Judge Class-I, Karera, District Shivpuri in Civil Suit No. 14-B/99.

2. It is the contention of the revisionist-plaintiff that he had extended a loan of Rs.4,000/- to the defendant on 11.09.1996 with interest @ 1% PM and the defendant had executed a promissory note and receipt in favour of the plaintiff. Since the money was not repaid, the plaintiff issued a demand notice on 08.04.1999 and thereafter instituted a suit for recovery of loan amount with interest.

3. Learned trial Judge after framing several issues dismissed the suit holding that the plaintiff has failed to prove lending of money on 11.09.1996 so also he had failed to prove execution of the promissory note. It was also held by the trial Court that the plaintiff had

prepared a forged and fabricated promissory note and receipt by keeping the defendant in dark. Civil Revision No.209/2004 It has also come in the judgment of the trial Court that the plaintiff had not produced a carbon copy of the notice as was allegedly given to the defendant but had only produced a postal receipt and on the basis of the postal receipt, the trial Court held that it is not possible to make a conclusion that notice was given to the defendant and what were the contents of such notice. It has also come on record that in the light of the decision in the case of Ismail Khan v. Ram Prakash Verma : 2000 (I) MPJR 51, the learned Trial Court held that it cannot be said that the pronote was properly stamped as it was not having any revenue stamp on the pronote and dismissed the suit on the ground that since the document Ex.P/1, pronote, is not admissible in evidence, therefore the suit is not worth decreeing.

4. Plaintiff had filed first appeal against the said order and in the first appeal, the learned Additional District Judge maintained the findings of the trial Court and relying on the same judgment of Ismail Khan (supra) held that since the revenue stamp was not affixed on the promissory note Ex.P/1, therefore the findings recorded by the trial Court are just and correct.

5. In the Full Bench judgment dated 28.02.2011 passed in Civil Revision No.49/2009 M/s. Gurunanak Medical & Surgical Agency v. Sitaram Shivhare, the reference was answered as under :-

(i)That, keeping in view the two kinds of stamps mentioned in sub-rule 2 of Rule 3 of the Madhya Pradesh Stamp Rules, 1942, the "special adhesive stamp" be treated as in addition to "adhesive stamp" not opposed or in Civil Revision No.209/2004 contradistinction to "adhesive stamp" as required for promissory note.

(ii) That, word "may" used in Rule 17 of the Madhya Pradesh Stamp Rules, 1942 is an enabling word and implies a discretion.

(iii) That, the decisions of the learned Single Judge in the case of Ismail Khan vs. Ram Prakash Verma, 2000 (i) MPJR 51 and Division Bench in the case of Khamir Singh vs. Radheshyam Bansal, 2010 (5) M.P.H.T.249 (DB) are not good law in view of earlier Division Bench"s judgment of this Court in the case of Ganpatsingh and another vs. Gurucharansingh and another, AIR 1973 MP 3 and also on the basis of our findings recorded above in the judgment."

6. Therefore, in view of such findings of the Full Bench of this Court and also in the light of the judgment in the case of Ganpat Singh & Another v. Gurucharan Singh & Another : AIR 1973 MP 3 (DB), this Court is of the opinion that both the trial Court and the first

appellate Court erred in relying on the judgment in the case of Ismail Khan (supra), which has not taken into consideration the judgment of the Division Bench in the case of Ganpat Singh (supra), wherein it has been clearly held that the "special adhesive stamp" is to be treated as in addition to "adhesive stamp" not opposed or in contradistinction to "adhesive stamp" as required for promissory note. Since there is no requirement for affixing the revenue stamp, the findings of both the trial Court and the first appellate Court are perverse and therefore the judgment and decree passed by the Courts below on the basis of the ratio in Civil Revision No.209/2004 the case of Ismail Khan (supra) being not good law, are set aside. This revision is allowed and the suit of the plaintiff is decreed. Plaintiff will be entitled to recover the amount of Rs.4,000/- with interest @ 12% per annum from the date of lending money to the defendant, i.e., 11.09.1996.