

* **HIGH COURT OF DELHI AT NEW DELHI**

+ **R.S.A. No.155/2013**

Decided on : 07.08.2013

SMT. UMA DEVI Appellant

Through: Mr.R.M.Singla and Mr.Manish
K.Choudhary, Advocates.

Versus

SMT.SMITA CHAUDHARY Respondents

CORAM:
HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (ORAL)

1. This is a regular second appeal filed by the appellant against the judgment and decree dated 20.03.2013 passed by the learned ADJ in RCA No. 96/2011 upholding the judgment and decree dated 01.04.2011 by virtue of which the suit of the respondent/plaintiff for a sum of Rs.1 lakh was decreed along with pendent lite and future interest at the rate of 12% per annum.
2. Mr.Singla, the learned counsel for the appellant, has raised three questions stating that these are substantial questions of law.

“i) That the respondent/plaintiff did not discharge his onus of proving the documents on the basis of which the entire suit was based and, therefore, the suit could not have been decreed.

ii) That the execution of the documents, which are the basis of the suit, and the contents thereof had to be proved by the respondent/plaintiff.

iii) Whether an adverse inference could be drawn against the appellant who was the defendant in the suit specifically when the onus was not put on the appellant.”

3. I have heard the learned counsel for the appellant. He has also placed reliance on *Dattatraya Vs.Rangnath Gopalrao Kawathekar (dead) by his legal representatives and Ors.*; AIR 1971 SC 2548.

4. At the outset, it must be pointed out that none of the three questions which have been raised by the learned counsel for the appellant constitute substantial questions of law warranting issuance of notice to the respondent. However, in order to address

the grievance of the appellant, it would be pertinent to refer to the facts of the case briefly.

5. The respondent/plaintiff filed a suit for recovery of a sum of Rs.1 lakh along with interest. The suit was based on two documents purported to have been signed by the appellant/defendant. These documents were – a promissory note and a receipt – both dated 27.02.1996. The appellant/defendant had denied the liability to pay the amount to the respondent/plaintiff on the ground that these documents were not signed. On the basis of the pleadings of the parties, the following issues were framed:

“i) Whether the suit is filed within time?
OPP

ii) Whether the plaintiff is entitled to recover any amount from the defendant? If so, how much? OPP

iii) Whether the plaintiff is entitled to any interest? If so, at what rate? OPP

iv) Relief”

6. The respondent/plaintiff in support of his case examined himself as PW-1, Mr.R.S.Yadav as PW2. It may be pertinent to mention here

that PW-2 R.S.Yadav, who was examined as a witness, is the brother-in-law of the appellant/defendant.

7. So far as the appellant/defendant is concerned, she had entered into the witness box as DW-1 and examined two more witnesses – one Mr.Hitesh Gupta as DW-2 and his father Mr.Raj Kumar Gupta as DW-3.
8. The learned trial court, after analyzing the evidence of the respective sides, had given a clear cut finding holding that the promissory note and the receipt both dated 27.02.1996 were signed by the appellant/defendant and, therefore, the respondent/plaintiff was entitled to a decree of the amount claimed along with interest. Accordingly, the suit was decreed against the appellant/defendant for an amount of Rs.1 lakh along with pendent lite and future interest at the rate of 12% per annum from the date of filing of the suit till the date of realization.
9. The appellant/defendant feeling aggrieved by the same, preferred first appeal to the court of learned ADJ. The learned ADJ dismissed the appeal by a detailed speaking order. It may be

pertinent to mention here that the learned ADJ has taken note of the fact that so far as the evidence of the appellant/defendant is concerned, it was a contradictory defence taken by the appellant/defendant. In this regard, it is pertinent to reproduce the para 21 of the judgment, which reads as under:

“21. Coming to the case of the defendant, she has in her written statement made the following averments in respect of the above mentioned documents:-

A) In para 4 of the preliminary objections in the written statement the defendant has averred as under:-

“4. That the Promissory Note dated 27.02.1996 has not been executed by the defendant nor signed by her as the defendant has never taken any loan far less a loan in the sum of Rs.one lac as falsely alleged. It may be submitted that the Promissory Note is not in the handwriting of the defendant which further proves that the signature of the defendant as also the contents of the promissory note are forged and fabricated.

B) In para 5 of the preliminary objections in the written statement the defendant has averred as under:-

“5. In this context, it is submitted with greatest respect to this Hon’ble Court that the father of the plaintiff Shri Satish Chandra Yadav along with Shri R.S. Yadav, the brother-in-law of the Defendant got some blank papers signed from the Defendant. Later it is clear that documents such as Promissory Note, receipt and Agreement to Sell have been fabricated by Shri Satish Chandra Yadav for the sale of the share of the Defendant in her ancestral property situated at 727-737, Church Mission Road, Fatehpuri, Delhi-110066.”

C) In para 2 of the reply on merits the defendant has averred as under :-

“2. On seeing this action of the Defendant, Shri Satish Chandra Yadav and Shri R.S. Yadav that they have failed in their conspiracy against the Defendant entered into another conspiracy and fabricated the present Promissory Note and the letter and got the details filled up in English (a language the Defendant does not understand) got the suit filed through the Plaintiff, (daughter of Sh. Satish Chandra Yadav) for

the recovery of the alleged loan. The suit of the Plaintiff is based on falsehood, and mischievous and ought to be rejected and dismissed with costs and with heavy costs in favour of the Defendant.”

D) In para 3 of the reply on merits the defendant has averred as under :-

“3. As stated hereinabove Shri Satish Chandra Yadav and Shri R.S. Yadav had obtained the signature of the Defendant in Hindi and have made those signatures on the Promissory Note and the receipts and fabricated a letter dated 12.10.1998 to suit their convenience, and to cheat the Defendant. The story of witnessing the said documents by Shri R.S. Yadav, the brother-in-law of the Defendant is a clean pointer to the fact that the loan seems to have been paid to Shri R.S. Yadav with whom the Plaintiff had entered into a forgery and fabrication of documents.”

10.A perusal of the aforesaid para 21 would show that the appellant/defendant had taken a contradictory stand.

11.Be that as it may, the appellant/defendant had also examined two witnesses – DW-2 Mr.Hitesh Gupta and his father as DW-3 Mr.Raj

Kumar Gupta. The testimony of both these witnesses was also examined in the light of the defence taken by the appellant and the trial court as well as the first appellate court came to a definite finding that both these witnesses were not speaking the truth before the court. As a matter of fact, the observations of the first appellate court is that both these witnesses are false witnesses and, therefore, their testimony was totally discarded. The first appellate court was consequently left only with the testimony of DW-1. So far as, DW-1 is concerned, she had earlier made a statement before the court below that she had not signed the promissory note and the receipt though a contradictory defence was also taken that here signatures were obtained on a blank paper. To justify her stand, she had categorically asserted in her written statement that she would take steps to have her alleged signatures compared by a hand writing expert with her genuine signatures to prove that the alleged signatures were forged. However, no hand writing expert was examined before the trial court. No application was also ever made before the first appellate court to have the questioned documents examined by a hand writing expert. In the light of the

stand taken by the respondent, the trial court has relied upon the testimony of DW-2/Raj Kumar who had filed an affidavit and was subjected to cross-examination. Similarly PW-2 R.S.Yadav, who was the brother-in-law of the appellant/defendant, had also filed an affidavit and was subjected to cross-examination. So the trial court as well as the first appellate court arrived at a concurrent finding with regard to the appreciation of evidence and so far as the credibility to be attached to the testimony of both these witnesses is concerned, arrived at a finding that the respondent/plaintiff was able to prove his case with regard to all the three issues. The points which have been urged before this court, which are apparently urged to be substantial questions of law, are essentially pertaining to appreciation of evidence by the trial court.

12.It is not a case where it can be said that there is no evidence against the appellant/defendant with regard to the amount having been taken and the documents having been signed. The question of appreciation of evidence cannot be done by the second appellate court. The second appellate court would interfere with a finding

of fact only if it is perverse. The finding of fact would be considered to be perverse if there is not even an iota of evidence on record and certainly the present case does not fall in such a category.

13. Now, so far as the question of onus of proof and the drawing of adverse inference is concerned, I do not find any fault so far as the analysis of evidence which has been done by the trial court or the first appellate court. The initial burden of proof in order to get a decree or a favourable order was essentially on the respondent/plaintiff as is apparent from the issues which are framed. The respondent/plaintiff entered into the witness box and testified and was thereafter subjected to cross-examination. By doing so, the initial onus was discharged by the respondent. The appellant/defendant had to dislodge the case of the respondent/plaintiff by entering into the witness box and producing her evidence. It is in this context that the evidence which has been produced by her has been examined by the first appellate court and the testimony of DW-2 and DW-3 has been discarded as being

false. So far as the appellant/defendant is concerned, her own testimony has also not been found to be credible on account of the contradictory stands having been taken and it is in this context that the trial court as well as the first appellate court were absolutely justified in observing that when there was onus on a party to discharge and the said onus is not discharged, obviously, an adverse inference can be drawn against him or her. This is precisely the observation. I do not think that any fault can be found with the same.

14. So far as the judgment which has been referred to by the learned counsel for the appellant is concerned, I do not find that the said judgment in any manner helps the appellant/defendant. The proposition of law which has been laid down in the said case is with regard to the proof of execution of documents. Obviously, in the instant case, two courts below have found that the respondent/plaintiff has not only proved the documents by way of proving the signatures of the appellant/defendant but the contents

thereof. It is only in that context that the documents have been executed.

15. I do not find any merit in the appeal as no substantial question of law is involved.

16. Dismissed.

V.K. SHALI, J.

AUGUST 07, 2013
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