IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 470 of 2015 (O&M)
Date of decision: 31.03.2015

Mool Chand and another

... Appellants

versus

Joginder Singh and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Shailendra Sharma, Advocate for the appellants.

K.Kannan, J.

The contesting defendants are the legal representatives of the deceased defendant-vendor. They resisted the action for specific performance on the plea that the deceased-defendant had only borrowed ₹ 80,000/- and signed several papers and he never intended to sell the property by the agreement propounded by the plaintiff. The plaintiff, in order to prove his agreement, examined one of the witnesses to the document and the scribe, apart from examining himself. It was sought to be elicited through the scribe that on the same day when the agreement was executed on 18.01.2015, an advance of ₹2,80,000/- had been paid and a receipt, therefore, had also been written at the same time. It was sought to be elicited that he had not himself seen the actual money transaction between the plaintiff and the deceased-defendant. The trial Court held that the intention of the parties had to be examined while considering the agreement for specific performance and considered the fact that the deceased-defendant's signature to the document had been admitted and a witness and scribe had also spoken about the agreement. There was nothing amiss to reject the claim of the plaintiff's specific performance and granted the decree. The Appellate Court also affirmed the said decision.

Learned counsel appearing on behalf of the defendants would argue that when the written statement was filed denying the alleged agreement to sale and setting up a plea of the transaction as one of loan from the plaintiff, there was no replication filed. The counsel would also state that even in the chief-examination brought out through an affidavit, the plaintiff had not explained or refuted the defendants' contentions that there was any form of loan transaction and that it was only an agreement of sale. The counsel would point out that the evidence in chief-examination was a repetition of what was contained in the plaint making no specific reference to the defence set up by the defendant. The counsel would urge that the evidence of the scribe revealed that he admitted that he had not known the money transaction between the plaintiff and the defendant. He further pointed out the fact that agreement had not been proved.

The contention that if the plaintiff failed to file a replication to the defendants' plea, it must be taken that the defendants' contention was accepted is itself, in my view, a fallacious argument. Pleadings are defined under Order 6 Rule 1 to mean plaint and written statement. An additional written statement or a replication are not strictly even within Order 6 Rule 1 and their reference will be sourced to other provisions. If the defendant comes up with the plea denying certain recitals and makes some fresh assertions, the duty to respond by means of replication will arise only if such a written statement is coupled with the prayer for a counter claim which is in the nature of plaint under the provisions of Order 8 Rule 6A. If the defendants takes a plea and plaintiff does not choose to file a replication, there is no rule of evidence or procedure that the assertions of the defendants are admitted. The effect of an absence of specific denial is not brought anywhere under Order 6 itself, but, comes only in Order 8 Rule 3 which is another way of saying that the denial by specific averments shall be only with reference to the plaintiff's case. If the defendants makes an emphatic denial of some aspect, it is more a matter of practice than a legal mandate of having to join any such assertion by a denial through a replication. The defendants have a duty to deny by specific expressions under Order 8 Rule 3 but the failure of the plaintiff choosing not to file a replication has not the same effect of defendant not denying the plaintiff's assertions specifically. This was brought out in a ruling of Division Bench of Madras High Court in Veerasekhara Vs. Amritha Valliammal, AIR 1975 MAD 51. It has been held in the said judgment that an absence of replication by the plaintiff cannot be taken as an admission of what is asserted in the written statement.

If the defendant states, therefore, in response to the plaintiff's case of the agreement as enforceable that there was no agreement but was only a financial transaction, the appropriate issue would be only whether the agreement is true and whether it is enforceable. It is even unnecessary to frame an issue whether it was a monetary transaction meant to be a loan. The burden is always on the plaintiff to seek for its enforcement and the burden of proof does not ever go on a flux. In this case, the Court found the agreement to be established by the fact of evidence of the plaintiff and the two witnesses who are immediately connected to the document. That would itself take care of what was required to be proved and I will find nothing appropriate about the plaintiff not filing a replication or not setting out in his own chief-examination any denial about the defendant's assertions regarding the alleged status between the parties as lender and a borrower. Even the argument that a scribe did not know of the money transaction does not carry conviction, for, the two courts have upheld the agreement to have been established to the hilt. The truth of the document is surely only a question of fact that raises no substantial question of law for consideration.

The regular second appeal is dismissed.

(K.KANNAN)
JUDGE

31.03.2015
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