

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.181 of 2019

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Shree Chand Gupta @ Shree Prasad, S/o Late Dusadhi Ram, Resident of Mohalla- Gola Road, P.O. and P.S.- Sheikhpura, Distt.- Sheikhpura.

... .. Appellant

Versus

Om Prakash Gupta, S/o Late Dashrath Prasad Halwai, Resident of Mohalla- Station Road, P.O. and P.S.- Sheikhpura, Distt.- Sheikhpura.

... .. Respondent

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Appearance :

For the Appellant : Mr.Vidya Sagar, Advocate.

For the Respondent : Mr.Devendra Prasad Singh, Advocate.

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CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
CAV ORDER

5 16-01-2020

1. Heard the parties.

2. The present appeal has been filed by the defendant/appellant/appellant against the judgment and decree dated 16.02.2019, passed in S.T.A. No. 07/2017, by the learned District & Sessions Judge, Sheikhpura, whereby the learned District & Sessions Judge, Sheikhpura, dismissing the appeal has affirmed the judgment and decree dated 19.09.2017 and 12.10.2017 passed in Title (Money) Suit No. 14/2009 by the Sub Judge-I, Sheikhpura, whereby the suit was decreed in favour of the plaintiff/respondent.

3. The plaintiff/respondent has filed the Title Suit for declaration, that the Deed of Agreement dated 22.09.2003 is valid, operative, and binding upon the defendant, and for further direction that the defendant be directed to pay the lent amount



along with interest with relief to cost of litigation and any other reliefs.

4. Plaintiff case in short, that the plaintiff and defendant had cordial relation being friends, plaintiff used to run a sweet shop, whereas the defendant having grocery shop just adjacent, as there had friendly relation defendant taken amount of Rs. 1,10,000/- in the month of September 2003 as lent and has executed a Deed of Agreement on 22.09.2003 putting signature in the presence of the witnesses with assurance to return the amount within six months, but the defendant failed to pay the said amount within time, then plaintiff sent Legal Notice to the defendant and ultimately when amount was not paid plaintiff filed Criminal Case No. 291(C)/2008 which was dismissed by the learned Chief Judicial Magistrate, Sheikhpura on 12.1.2009 with an observation that the complainant (plaintiff of this case) can file Money Suit and as such the plaintiff filed suit for aforesaid reliefs.

5. Defendant/appellant/appellant appeared, filed written statement denying case of the plaintiff stating therein that the suit is not maintainable as framed and also barred by law of limitation, principle of waiver, estoppels and acquiescence, also barred by res-judicata as well as the suit is



barred by Section 4/5 of the Bihar Money Lending Act. It was further pleaded by the defendant that there had no good relation between the parties or having friendly relation though the defendant has admitted that the plaintiff having sweet shop and defendant used to take sweets from the shop, but defendant had no grocery shop and he never borrowed any money for the purpose of his own business. The defendant further pleaded that he never executed the said Deed of Agreement dated 22.09.2003 nor there is any signature of the defendant. It was further case of the defendant/appellant that adjacent west to the shop of the plaintiff there is a rest house belonging to one Kedar Prasad. It was further pleaded by the defendant in his written statement that actually in the year 2002 the plaintiff himself expressed desire to start a grocery shop in partnership and accordingly a grocery shop was started in partnership between the plaintiff and defendant and for that purpose a Non-Judicial Stamp of Rs. 100/- was purchased which could not been used and remained blank, therefore, a doubt arose that the plaintiff might have obtained signature of the defendant under influence of intoxication, and it was further pleaded that the defendant for the first time had come to knowledge only when he got legal notice of the plaintiff and as such the defendant claimed that he



never put his signature in any alleged Deed in his sense. The defendant further admitted that a wholesale business of grocery was started in partnership but the plaintiff fraudulently grabbed all the profits showing loss in the partnership business and lastly the defendant pleaded that he never took any single pie from the plaintiff, never executed any Deed and the alleged agreement is not binding upon the defendant/appellant.

6. The plaintiff/respondent/respondent in support of his case examined three witnesses and exhibited altogether three Exhibits including the Deed of Agreement dated 22.09.2003.

7. On the other hand, the defendant/appellant/appellant in support of his case, has been examined himself as D.W.1 but no documentary evidence has been brought on record rather in his cross examination has identified his own signature and signature of his counsel which was marked as Exts.- 2 and 2/A.

8. After hearing both sides the learned Trial Court has decreed the suit in favour of the plaintiff.

9. The defendant/appellant/appellant being aggrieved from the judgment and decree of the Trial Court preferred Title Appeal which was numbered as S.T.A. No. 07/2017 but the Appellate Court has also dismissed the appeal



affirming the finding of the Trial Court hence the present appeal has been filed.

10. The learned counsel for the appellant has formulated following questions of law which are as follows:-

- (i) Whether the impugned agreement dated 22.9.2003 is valid, genuine, enforceable in view of interpolation made in the year 2004 by committing forgery and changed the year of agreement so as to by-pass limitation and as such impugned judgment is fit to be set aside.
- (ii) Whether the First Appellate Court has failed to consider and appreciate the burden of onus to prove and as such the judgment is fit to be set aside.
- (iii) Whether a person who advanced loan will come under the definition of money lender and the alleged loan of Rs. 1,10,000/- alleged to have been given by the plaintiff to the defendant is recoverable or not in absence of proper and valid money lending license.

11. With regard to the first question of law formulated by the learned counsel for the appellant, it appears from the pleading of defendant that the defendant has not taken any plea in his written statement that interpolation has been made in the alleged Deed of Agreement and it has been tampered, nor any evidence either documentary or oral was brought in support of his case. Furthermore, it appears from the pleading of the defendant that the defendant has not denied his



signature, and has taken plea that it might be possible that the plaintiff had taken signature of the defendant under influence of intoxication and as such in my opinion when the defendant is taking specific plea that the plaintiff might had taken signature from the defendant in intoxicated condition the onus lies upon the defendant to prove the same. But from the pleading and evidence adduced on his behalf and from perusal of the judgment of both courts, it appears that there is nothing on record to show that the signature was obtained when the defendant was under influence of intoxication and as such, I find there is no substance in this argument and it is settled law that the plea which has not been taken in the trial and appeal cannot be taken in second appeal.

12. So far the second question formulated by the learned counsel for the appellant obviously the burden of proof lies upon the person who claimed that the document is forged and as such I find that there is no substance in this argument.

13. So far third question raised by the learned counsel for the appellant that the suit was hit from the Sections 4 and 5 of the Bihar Money Lenders Act, 1974. which reads as section-2(i):-

“Loan” means a loan on interest advanced by a money lender whether



of money or in kind and shall include mandeorha, sawaiya, rehan, Bandhak, pauni, sundbharna, kishti and any transaction on a bond bearing interest executed in respect of a past liability and any transaction which, in substance, is a loan but shall not include-

(i) a loan advanced by the State Government or by any local body authorized by the State Government;

(ii) a deposit of money in a Post Office Saving Bank or a deposit of money or any other property in any other bank or on any Company or with a Co-operative Society registered, or deemed to be registered, under the Bihar and Orissa Co-operative Societies Act, 1935.

Explanation.- (i) A bond bearing interest executed in respect of goods taken on credit constitutes a loan.

(iii) To supply goods on credit is not a loan.

(k) "Money lender" means a person advancing loan and shall include a Hindu undivided family and the legal representatives and successors in interest, whether by inheritance, assignment or otherwise of a person who advances a loan;

14. From perusal of the Trial Court and Appellate Court's judgment and pleading of the parties, it appears that the defendant has also admitted that there was a partnership business of grocery between the plaintiff and defendant and as such it is admitted that there was a friendly relation between the parties and also considering that the defendant has not denied



his signature it appears that there was some transaction as a lent amount and Deed was executed between the parties. In case of Shridhar Singh Vs. Manu Singh, 2008 (1) PLJR 127 it has been held that if occasionally amount was given to his friend whether interest charged or not the person cannot be said to be money lender reference may be made to a decision of this Court in case of AIR 1942 Patna 384 Sano Kashinath Chaudhary Vs. Pattito Sabuto. Further it appears from the evidence adduced on behalf of the parties that no evidence was brought by the defendant that the plaintiff is carrying the business of money lending, the plaintiff cannot be said to be money lender and as such the argument advanced by the learned counsel for the appellant having no substance.

For the above reasons, I find no merit in the appeal. The appeal is accordingly, dismissed at the admission stage itself. Pending application(s), if any, shall also stand disposed of.

(Sudhir Singh, J)

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