

14.12.2020
Item no. 24

Aloke
Ct. no.12

(Via Video Conference)

SA 41 of 2012

IA No: CAN 1 of 2011 (Old CAN 8874 of 2011);

IA No: CAN 2 of 2011 (Old CAN 8880 of 2011)

Syed Shamsul Arefin & Anr.

Versus

Sri Amitava Singha & Anr.

Mr. Jiban Ratan Chatterjee

...for the appellants

This second appeal has come up for admission. In a suit for damages filed by the appellants against the defendants, the learned civil Judge on consideration of the evidence both oral and documentary dismissed the suit on the ground that the plaintiffs had failed to prove the case.

The decree was affirmed by the first appellate court. This second appeal is preferred against the appellate decree of affirmation. In a second appeal the Court should be extremely careful in interfering with a decree of affirmation unless perversity writ large on the face of the order. Moreover the second appeal should be admitted only on substantial questions of law.

In order to appreciate the arguments made by Mr. Jiban Ratan Chatterjee, learned senior counsel that the ownership of the plaintiffs over the articles is not necessary when a claim is based on tort and that the appellate court exceeded its jurisdiction in dismissing the

first appeal preferred by the appellants with costs, we feel it necessary to discuss the relevant facts leading to the orders impugned.

The plaintiff no. 1 claims to be the owner of one Ambassador and the plaintiff no. 2 was his driver. It is alleged that the plaintiff no. 1 while he was away on 21st December, 1996 to perform his duty as a Commissioner appointed by the Court, he received a complaint from the plaintiff no. 2 that the defendants had assaulted the plaintiff no. 2 and caused damage to one bicycle owned by the plaintiff no. 2 and one generator owned by plaintiff no. 1 parked and kept in the passage of the premises of the appellants. The plaintiff no. 2 alleged to have purchased the bicycle 2-3 months back at Rs.1200/-. In order to repair the generator set a sum of Rs.800/- would be required based on an estimate given by the mechanic. Accordingly, the suit for damages was filed on claiming a sum of Rs.2,000/- towards compensation.

The defendants have contested the said suit and denied the ownership of the plaintiff no. 1 amongst others, the generator and car and also the ownership of the plaintiff no. 2 of the bicycle.

The trial Judge on the basis of the documents returned the finding that the reported damage to the said goods could not be established and in this regard he had relied upon the report of the Commissioner

appointed in the suit. The finding of the learned trial Judge seems to be that the suit was filed on 20.01.1997. The alleged incident occurred on 21.12.1996. The Commission was held on 21st September, 2002 which is nearly about six years from the date of incident. No report from the mechanic is forthcoming regarding the damages. The cycle shown to the Commissioner was broken, unusable according to the report but on 4th July, 2002 prior to the Commission work the plaintiff no. 2 as P.W. 2 had deposed in his cross-examination that he attended court by the said damaged cycle. More so, he could not show his ownership of the cycle. Furthermore the plaintiff no. 2 attended court on the damaged cycle that was shown to the Commissioner which is after 17 days from the date his cycle was claimed to have been used by him. It transpired before the appellate court the information regarding damaged articles was gathered from the plaintiff no. 2 by the plaintiff no. 1 and his oral evidence was based on evidence given by P.W. 2 who claimed that he was asked to remove the cycle and later on he found the cycle and generator in broken condition.

It was thus clear that P.W. 2 did not have any personal knowledge about the incident. No independent eye witness was produced to demonstrate that any untoward incident claimed to have happened on the fateful day. On 4th July, 2002 P.W. 2 himself admitted that he came to depose in Court by riding the same

cycle. P.W. 2 claimed that handle of the said cycle was turned around and generator was over turned but no specification has been given to the cycle which as alleged damaged by defendants and the cycle which was shown to Commissioner appears to be not the cycle by which the P.W. 2 went to depose in court within seventeen days but another unused cycle which appears to be quite old and rusted was shown. This clearly falsify that the cycle which was alleged to have been damaged was purchased by the plaintiff no. 2, 2-3 months back prior to the alleged incident. It further transpired from record that the generator was kept in unattended condition for long and was not in any usable condition. The ownership of the said generator was also not produced.

On such consideration, the learned appellate court dismissed the appeal and affirmed the decree of the trial court. These findings of fact are unassailable. No perversity of any kind was demonstrated before us. Both the courts on application of fact and evidence have disbelieved the plaintiffs and dismissed the suit. The appeal was dismissed with costs assessed at Rs.5100/- to be paid to the District Legal Aid Fund, Burdwan. This was on the basis that the suit was frivolous and fictitious. The power of the court to impose costs is based on the principle that frivolous and fictitious litigation should be nipped in the bud and awarding of

cost is clear and right signal to a litigant not to file frivolous litigation.

We do not find any substantial grounds of law on which this second appeal can be admitted.

On such consideration, the finding and reasons described above the second appeal is dismissed.

(Saugata Bhattacharyya, J.)

(Soumen Sen, J.)