



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

Second Appeal No. 164 of 2007

Sau. Sakhubai w/o Pralhad Rode,
aged about 48 years,
Occupation Agriculturist,
resident of Chinchpur, Tahsil Khamgaon,
District Buldhana

... Appellant

- Versus -

(1) Govind son of Sahebrao Deshmukh,
aged about 26 years, Occupation labourer,

(2) ~~Sahebrao son of Kisanrao Deshmukh,~~
~~aged about 70 years, occupation Agriculturist,~~

(3) Mohan s/o Sahebrao Deshmukh,
aged about 40 years, occupation agriculturist,
all residents of Chinchpur, Tahsil Khamgaon,
District Buldhana.

... Respondents

Respondent
no. 2 deleted
as per Court's
order dtd.
24-1-2008

Ms. Anshula Paunikar, Advocate h/f Mr. S. V. Sirpurkar, Advocate for the
appellant

Mr. S. S. Deshpande, Advocate for the respondent nos. 1 and 3

CORAM : ANIL L. PANSARE, J.

Date of reserving judgment : 27-02-2024

Date of pronouncing judgment : 05-03-2024

JUDGMENT

The appeal has been admitted on the following substantial
questions of law.

Whether an admission by juvenile offender of having committed an offence in the Juvenile Court thereby causing damage to the well can be considered as an admission in the civil proceedings for having the liability on him or his parents for the damage caused ?

2. This question has been dealt with by the Hon'ble Supreme Court in the case of ***Seth Ramdayal Jat Vs. Laxmi Prasad [(2009) 11 SCC 545]***. The Court held thus :

“20. It is now almost well-settled that save and except for Section 43 of the Indian Evidence Act which refers to Sections 40, 41 and 42 thereof, a judgment of a criminal court shall not be admissible in a civil suit. What, however, would be admissible is the admission made by a party in a previous proceeding.

21. The admission of the appellant was recorded in writing. While he was deposing in the suit, he was confronted with the question as to whether he had admitted his guilt and pleaded guilty of the charges framed. He did so. Having, thus, accepted that he had made an admission in the criminal case, the same was admissible in evidence. He could have resiled therefrom or explained away his admission. He offered an explanation that he was wrongly advised by the counsel to do so. The said explanation was not accepted by the trial court. It was considered to be an afterthought. His admission in the civil proceeding was admissible in evidence.

22. Section 58 of the Indian Evidence Act reads as under:

"58. Facts admitted need not be proved.- No fact need to be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the

hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings:

Provided that the court may, in its discretion, require the facts admitted to be proved otherwise than by such admission."

In view of the aforementioned provision, there cannot be any doubt or dispute that a thing admitted need not be proved. [See *Kendriya Vidyalaya Sangathan and Another v. Girdharilal Yadav*, *L.K. Verma v. HMT Ltd.*, *Avtar Singh v. Gurdial Singh* and *Gannmani Anasuya v. Parvatinin Amarendra Chowdhary*.)]

23. We, therefore, are of the opinion that although the judgment in a criminal case was not relevant in evidence for the purpose of proving his civil liability, his admission in the civil suit was admissible. The question as to whether the explanation offered by him should be accepted or not is a matter which would fall within the realm of appreciation of evidence. The Trial Court had accepted the same. The first appellate court refused to consider the effect thereof in its proper perspective. The appellate court proceeded on the basis that as the judgment of the criminal court was not admissible in evidence, the suit could not have been decreed on the said basis. For the said purpose, the admission made by the appellant in his deposition as also the effect of charge had not been taken into consideration. We, therefore, are of the opinion that the High Court cannot be said to have committed any error in interfering with the judgment of the first appellate court."

3. Thus, the Supreme Court has held that although the judgment in a criminal case was not relevant in evidence for the purpose of proving his civil liability, his admission in the civil suit was admissible.

4. I will come to the admission given by the appellant in the present case a little later. Prior thereto, it will be appropriate to refer to the facts necessary to answer the question.

5. The appellant – plaintiff lodged suit against the respondents – defendants for recovery of damages and compensation. The case of the appellant was that he had dug a bore-well in her agricultural land to take yield of irrigated crops. The bore-well was of 6 Inch diameter and 300 feet depth. It had sufficient water for irrigation. On 28-9-1994, respondent no. 1 thrust mud, cow dung and dust in the bore-well with an intention to make it unworkable. The appellant's husband lodged report at Police Station, Hiwarkhed. The respondent no. 1 was prosecuted in Juvenile Court, Buldana. He pleaded guilty to the charge that he committed mischief by throwing stones, sand and cow-dung cakes in bore-well and caused damages of Rs. 15,000/-. The trial Court decreed the suit on the basis of said admission. The first appellate Court reversed the findings.

6. The first appellate Court has considered the evidence of the respondents. The second witness of the respondent is brother of respondent no. 1. His evidence indicates that upon his advice, respondent no. 1 pleaded guilty. The witness advised respondent no. 1 to plead guilty to avoid the requirement of attending the Court, the

witness was of the view that respondent no. 1, being minor, could be released on bond and accordingly, he admitted the guilt.

7. The first appellate Court was of the view that in the aforesaid background, the appellant was duty bound to prove her case by examining independent witness to prove damages. The appellate Court noted that the appellant herself has not seen the incident. She has admitted so in cross-examination. The incident was narrated to her by one Gajanan Jankiram Thete, the appellant's worker. The appellant, however, did not examine the said worker. The first appellate Court then noted that appellant had admitted that after 4-5 days of lodging the report with police, panchanama was drawn and at that time, well was 172 feet deep and contained water. Thus the bore-well was functional. The first appellate Court has then noted that the trial Court has disbelieved the theory of damages of Rs. 80,000/- for want of evidence. Despite such status, it has partly decreed the suit on the basis of admission given by respondent no. 1 in the criminal proceedings.

8. The first appellate Court relied upon three judgments of the Supreme Court viz.

(1) *Krishnawati Vs. Hans Raj [AIR 1974 SC 281]*. The Supreme Court held that previous self-serving statements by a party in other

proceedings cannot be used as substantive evidence in subsequent proceeding against that party.

(2) *C. Koteswara Rao Vs. C. Subbarao [AIR 1971 SC 1542]*. The Supreme Court, by referring to Section 17 of the Evidence Act, held that admission must be clear in their meaning.

(3) *K.S. Shrinivasan Vs. Union of India [AIR 1958 SC 420]*. The Supreme held that an admission is not conclusive proof of the matter admitted, though it may in certain circumstances operate as an estoppel.

9. Considering the above judgments and further considering the fact that the respondent no. 1 has given admission with specific object of getting relieved, the first appellate Court held that the admission cannot be decisive evidence and accordingly, set aside the decree passed by the trial Court.

10. Learned counsel for the appellant has placed heavy reliance in the case of *Seth Ramdayal Jat* (supra). In my view, the Supreme Court in the said case as well, has held that the question as to whether the explanation for admission offered by the party should be accepted or not is a matter which would fall within the realm of appreciation of evidence. The Supreme Court has reproduced Section 58 of the

Evidence Act, 1872. The proviso indicates that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions. In the present case, the trial Court has permitted the appellant to lead evidence. Thereafter, the respondents have led evidence. Thus, in a way, the trial Court has not straightaway decreed the suit on the basis of admission but has called upon plaintiff to prove her evidence. Having taken recourse to proviso to Section 58, the trial Court ought not to have decreed the suit only on admission.

11. The trial Court has disbelieved the theory of damage to the tune of Rs. 80,000/- on the count that appellant failed to establish the claim. Thus, the evidence of appellant on damages has been disbelieved. Once the theory of damages goes, the question of payment of money towards damages is immaterial in the sense whether the damages is of Rs. 15,000/- or Rs. 80,000/- will be dependent upon establishing the actual damage caused to the bore-well. The appellant has not witnessed the incident. The worker, who has narrated the incident to appellant, has been not examined. Thus, there is absolutely no evidence on the point of the incident of damage caused by respondent no. 1 to the bore-well. In the circumstances, the admission given by the respondent no. 1 before the criminal court ought to have been considered in the background in which such admission was given.

The admission, in this case, is not sufficient to prove the incident of damage caused to the bore-well.

12. The appellate Court has rightly dealt with and appreciated the evidence. The first appellate Court, being last Court on the facts, I need not interfere with its findings either on the count that different view is possible or that the findings suffers from some error. The substantial question of law having been already dealt with by the Hon'ble Supreme Court in the case of ***Seth Ramdayal Jat***, I need not answer the same, as well.

13. The appeal is without any substance and stands dismissed accordingly.

(Anil L. Pansare, J.)

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