

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Judgment : 05.7.2010*

+ **RSA No.14/1983**

**SHRI HUKAM SINGH
through LRs.**

.....Appellant
Through: Mr.Shiv P.Pandey, Advocate.

Versus

**1.SHRI BADRI PERSHAD TANDON
2.SHRI SOHAN LAL**

.....Respondents
Through: None.

**CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR**

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

INDERMEET KAUR, J.(Oral)

1. Plaintiff Hukam Singh was the owner and proprietor of a house No.1298, Rohtash Nagar, Village Saqdarapur, Varinder Block, Illaqa Shahdara, Delhi. He has become owner of this plot of land vide registered sale deed dated 29.10.1953 upon which the aforementioned house had been constructed by him. In October, 1958, plaintiff was in need of money on account of the marriage of his son. He requested Badri Pershad Tandon, defendant no.1 to advance him a loan. Defendant no.1 asked the plaintiff to mortgage his house to which the plaintiff agreed. Plaintiff was an illiterate man. On 24.10.1958 a sale deed described as a mortgage deed was executed between the parties. It was registered on 31.10.1958. Plaintiff was under the impression that this was a mortgage which has been executed by him in favour of defendant

no.1. A sum of Rs.1000/- was advanced by defendant no.1 in favour of the plaintiff. Possession of the house, however, continued with the plaintiff.

2. As per the pleadings in the plaint, defendant no.1 later on asked the plaintiff to sell half portion of the house to him in order that the mortgage (in fact a sale) could be redeemed. Plaintiff agreed. On 21.12.1967 an unregistered sale deed qua half portion of the said house was executed by the plaintiff in favour of defendant no.1.

3. In December 1967, defendant no.1 suffered a financial crisis. He requested the plaintiff to mortgage the entire house to Sohan Lal, defendant no.2, for Rs.7000/- and that the said amount would be shared equally by both the plaintiff and defendant no.1. Plaintiff agreed to this proposal. On 21.12.1967 a mortgage deed was executed between the plaintiff and defendant no.1 in favour of defendant no.2 wherein it was stated that the plaintiff and defendant no.1 were both co-owners of the house. This document was registered on 29.12.1967. Resultant to this registered mortgage a sum of Rs.7000/- was advanced by defendant no.2 to defendant no.1 and the plaintiff. As per the averments in the plaint, the plaintiff was hoodwinked by defendant no.1 and he did not receive a single paisa.

4. Defendant no.2 was actually a tenant of the plaintiff at a monthly rent of Rs.50/-.

5. Suit was accordingly filed by the plaintiff seeking a declaration that the sale deeds executed by the plaintiff in favour of defendant no.1 i.e. the sale deeds dated 24.10.1958 registered on 31.10.1958 be declared null and void. Secondly, the

unregistered sale deed executed by the plaintiff on 21.12.1967 qua half portion of his property in favour of defendant no.1 also be declared null and void. Lastly, the mortgage deed executed and registered on 21.12.1967 and 29.12.1967 by the plaintiff and defendant no.1 in favour of defendant no.2 also be declared void ab initio.

6. Defendant no.1 denied that there was any loan transaction between the parties. He stated that he was the sole owner of the suit property vide sale deed dated 24.10.1958. Further that he had not received any amount from defendant no.2.

7. Defence of defendant no.2 was that he was in possession of the one half of the suit property in terms of the mortgage deed dated 21.12.1967 and he had pursuant to this document advanced a sum of Rs.7000/- to plaintiff and defendant no.1. He denied that he was a tenant of the plaintiff.

8. Before the trial court eight issues were framed. Three witnesses were examined by the plaintiff and three witnesses have been examined in defence.

9. Trial court vide judgment dated 23.9.1981 held that the plaintiff and defendant no.1 are co-owners of the suit property. The prayers of the plaintiff seeking a declaration of the cancellation of the sale deed dated 24.10.1958, 31.10.1958, 21.12.1967 as also the mortgage deed dated 21.12.1967 registered on 29.12.1967 was dismissed. While deciding issue no.3, the trial court held that Sohan Lal, defendant no.2, was a tenant of the plaintiff.

10. Defendant no.2 was aggrieved by this finding of the trial court. He filed an appeal. The appeal had been confined to the

finding of the trial court on issue no.3 alone. The first appellate court disposed of the appeal on 7.11.1981. Vide the impugned judgment, the order of the trial court was modified. The first appellate court had inter alia held as follows:-

“Admittedly findings on issue No.3 are against defendant No. 2 and it is a settled law that against a proforma defendant as if any finding is given then the same is res judicata in any subsequent proceedings and as the finding on issue No.3 is against defendant No.2 which affects his right in the case, so certainly he has a right to appeal. The question is whether defendant no.2 is in possession as tenant or as a mortgagee. The mortgage is admitted in the plaint and also in the written statement by defendant No.2. I am failing to understand as to what further was required for proving of the mortgage deed. It appears that the learned trial court thought that even admitted fact requires proof which was not in dispute at all and accordingly, it is clear that from the very pleading it is established that defendant No.2 is in possession as mortgagee and as per agreement the interest on the mortgage money and rent were to be equalized. That fact does not mean that defendant No.2 has become a tenant. Absolutely no evidence has been produced on record that defendant No.2 is tenant what to speak of old tenant excepting what has been pleaded and accordingly, the findings of the learned trial court on issue No.3 cannot be sustained. The approach appears to be erroneous and findings of the learned trial court on issue No.3 are set aside and I hold that defendant No. 2 who is appellant before me is in possession as mortgagee and not as tenant.”

11. This judgment has now been impugned before this court. On behalf of the appellant, it has been submitted that admittedly the mortgage deed dated 21.12.1967 did not see the light of the day i.e. neither the plaintiff nor the defendant no.2 had cared to prove this document in their evidence.

12. The first fact finding court had correctly held that in the

absence of the documents having been proved on the record it could not be said that there was any mortgage transaction entered between the plaintiff and defendant no.2 and the finding of the trial court that Sohan Lal was a tenant of the plaintiff was the correct appreciation of facts; the appellate court could not have reversed such a finding in the absence of any documentary evidence having been placed before the trial court.

13. It was on this pleading of the appellant that the following substantial question of law has been framed by this court which inter alia reads as follows:-

“Whether respondent no.2/Sohan Lal was in possession of the disputed property as a mortgagee/ a tenant and whether any such finding of his being a mortgagee could have been founded on no documentary evidence?”

14. Perusal of the record shows that the submissions made by the learned counsel for the appellant are completely devoid of any force. The impugned judgment has correctly stated the position at law which has been engrafted in Section 58 of the Indian Evidence which reads as follows:-

“Facts admitted need not be proved.- No fact need to be proved in any proceedings 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.”

15. Under Order 6 Rule 5 of the Code of Civil Procedure, every allegation of fact in the plaint must be taken as admitted unless denied or stated to be not admitted in the pleadings of the defendant. Para 6 of the amended plaint clearly and categorically states that on 21.12.1967 the plaintiff and defendant no.1 had executed a mortgage deed in favour of defendant no.2 for Rs.7000/- alleging that the both the plaintiff and defendant no.1 were co-owners of the house and this mortgage was registered on

29.12.1967. In the corresponding para of the written statement filed by defendant no.2 he has admitted that he is the mortgagee of one half portion of the suit property for Rs.7000/- and was in possession of the said portion in terms of the agreement dated 21.12.1967. Further a registered mortgage deed had been executed by the plaintiff and defendant no.1 in his favour and defendant no.2 is in physical possession of the said one half portion of the suit property since that date.

16. These are clear, categorical and unambiguous admission made by the parties to the *lis*. Section 58 of the Indian Evidence Act clearly states that the admissions made by a party which may also be by way of pleading are facts which need not be proved. In AIR 1920 PC 181 Quebec Railway, Light, Heat and Power Company Ltd. Vs. Vandry and Ors., where the provisions of Article 10 of the Quebec Code (Section 58 of the Evidence Act) were under consideration, it had been held that an admission in the pleadings to the execution of a document dispenses with the necessity of proof of such a document. In this case it was held that merely because the private statute had not been proved the fact could not be dispensed that there was an admission of the text of this document and as such evidence was not required to be given. In AIR 1934 Lahore 898 Bahadur Shah and Ors. Vs. Mulk Raj & Ors. while interpreting Section 115 of the Indian Evidence Act it was held that where the defendants who were mortgagees had in their written statement admitted the mortgage, it was not necessary for the plaintiffs/mortgagors to tender formal evidence either to prove the loss of the original deed or to prove the contents of its certified copy.

17. Findings of the Appellate Court cannot in any manner be faulted with. Facts admitted are not required to be proved. Where the plaintiff himself in his pleadings has acknowledged a particular fact which is undisputed by the contesting defendant, the question of formal proof is dispensed with. The predominant characteristic of such an evidence is that it is binding in its character to the parties to the suit. This statutory provision contained in Section 58 of the Indian Evidence Act has been engrafted to save time of both the parties as also the expenses at the trial.

18. There is no merit in the appeal. It is dismissed.

INDERMEET KAUR, J.

JULY 05, 2010
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