

Sitaramacharya (Dead) Through Lrs.

Vs

Gururajacharya (Dead) Through Lrs.

Civil Appeal No. 103 of 1997

(K. Ramaswamy, G. T. Nanavati JJ)

06.01.1997

ORDER

1. Leave granted.

2. We have heard learned counsel on both sides.

3. This appeal by special leave arises from the judgment dated 18-9-1995 made in RSA No. 679 of 1994 by the Karnataka High Court. The appellant's father filed the suit for declaration and rendition of account from the respondent. According to him, he had purchased the business of the restaurant on 2-7-1951 for a consideration of Rs. 2000 out of his own funds under Ex. P-7. Since he was employed as a teacher and the respondent was loitering jobless, he put the respondent in charge of the business. However, due to mismanagement of the business on the part of the respondent, the appellant's father filed the suit with the above relief. The trial court decreed the suit on 28-10-1986, but on appeal the Additional District Judge by his judgment and decree dated 28-2-1994 reversed the decree and dismissed the suit and in the second appeal it was confirmed. Thus this appeal by special leave.

4. In the earlier proceedings, the respondent had made an unequivocal admission in the written statement as under :

"2. In 1946 P. Vasudevacharya had taken a loan from Sitaramacharya, the elder brother of the opponent. Since P.V. Rusdevacharya happened to be the relative of the opponent and his elder brother, the dealings were continued for a long time.

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6. The opponent was never a servant of the deceased P. Vasudevacharya. He came down to Bijapur in August 1951 at the instance of his elder brother just to carry on the business on behalf of his said elder brother who was by that time the sole proprietor of the shop. Since the elder brother could not do the business of the hotel, the opponent has been doing it on his behalf. He has since obtained the requisite licence from the authorities in his name and he has himself taken the same premises on use from the landlord."

5. The respondent had also set up the plea in the written statement that he had sufficient funds to purchase the property in question. The trial court had considered his evidence, On his own admission that there were several decrees pending execution against him at Udipi, the trial court

found it unlikely that he would have necessary funds to purchase the property in plaintiff's name. His plea that he had borrowed from his brother-in-law was negated on the ground that his brother-in-law was not examined. The appellate court relying upon the judgments of this Court, wherein it was held that an admission made in an earlier proceeding could be considered as conclusive, held that the respondent has sufficiently explained the admission and that, therefore, his admission was conditional. The appellate court has recorded in this behalf as under :

"But in this case opined that the present defendant made admission in Ex. P-10 under constraint and compelling circumstances."

6. The appellate court has not explained any of the circumstances much less compelling ones under which he came to make such an admission. Under Section 18 of the Evidence Act the admission made by the party would be relevant evidence. Section 31 provides that "admissions are not conclusive proof of the matters admitted but they may operate as estoppel under the provisions hereinafter contained". In view of the admissions referred to earlier they appear to be unequivocal and the finding recorded the appellate court is cryptic. On the other hand, the trial court has gone into the evidence on issues in extenso and considered the evidence and the appellate court has not adverted to any of those valid and relevant considerations made by the trial court. The High Court has dismissed the second appeal holding that they are findings of fact recorded by the appellate court on appreciation of evidence. We think that the view taken by the High Court is not correct in law. The admissions in the written statement in the earlier proceedings, though not conclusive, in the absence of any reasonable and acceptable explanation, it is a telling evidence heavily loaded against the respondent.

7. The appeal is allowed. The judgment of the High Court and the appellate court stand set aside and that of the trial court stands confirmed. No costs.