

## **Narbada Devi Gupta vs Birendra Kumar Jaiswal And Anr on 3 November, 2003**

**Equivalent citations: AIR 2004 SUPREME COURT 175, 2003 (8) SCC 745, 2003 AIR SCW 5861, 2004 SCFBRC 163, (2004) 13 ALLINDCAS 320 (SC), (2003) 8 JT 267 (SC), 2003 (9) SCALE 210, 2004 (13) ALLINDCAS 320, (2004) 1 ALLMR 51 (SC), (2004) 1 CLR 228 (SC), (2004) 1 JCR 205 (SC), 2004 (3) SRJ 276, 2004 (1) ALL CJ 301, 2003 (6) SLT 527, 2003 (8) JT 267, (2004) ILR (KANT) (1) 183, (2004) 1 CIVILCOURTC 337, (2004) 1 PUN LR 405, (2003) 2 RENCER 564, (2003) 7 SUPREME 664, (2003) 9 SCALE 210, (2004) 1 WLC(SC)CVL 114, (2004) 1 CIVLJ 708, (2004) 1 ANDHLD 64, (2004) 13 INDLD 627, (2004) 2 ACC 4, (2004) 2 JCR 113 (JHA), (2004) 1 JLJR 9, (2004) 1 LANDLR 491, (2004) 4 MAD LW 167, (2004) 1 PAT LJR 108, (2004) 1 RENTLR 206, (2003) 4 RECCIVR 683, (2004) 1 ICC 619**

**Bench: Shivaraj V. Patil, D.M. Dharmadhikari**

CASE NO.:

Appeal (civil) 315 of 1998

PETITIONER:

NARBADA DEVI GUPTA

RESPONDENT:

BIRENDRA KUMAR JAISWAL AND ANR.

DATE OF JUDGMENT: 03/11/2003

BENCH:

SHIVARAJ V. PATIL & D.M. DHARMADHIKARI

JUDGMENT:

JUDGMENT 2003 Supp(5) SCR 90 The Judgment of the Court was delivered by DHARMADHIKARI, J. The suit for recovery of possession of the suit premises on the allegation of taking wrongful and forcible possession by the contesting respondent was decreed by the city civil court, Calcutta by its judgment dated 29.6.1984. The Division Bench of the High Court of Calcutta by judgment dated 12.01.1996, has set aside the judgment of the city civil court and allowed the appeal of the respondent. The petitioner, being plaintiff in the trial court has, therefore, approached this Court in the present appeal.

The suit premises belong to the deceased Foul Chand. On his death, it was inherited by his wife Ram Moony Devi. She also died and the original plaintiff- Gangadhar Halder (who is proforma

non-contesting respondent no. 2 in this appeal), claims to be her successor-in-interest as the adopted son. The present appellant is transferee of the suit property from the original plaintiff - Gangadhar Halder.

The contesting respondent resisted the suit claiming to be in possession of suit premises as tenant. Apart from leading oral evidence to prove tenancy, he produced rent receipts marked as Exs. A, A-1, and A-2. An Agreement of tenancy dated 12.12.1970 marked as Ex-C was also produced to prove his status as tenant in the suit premises.

The main question raised by the appellant before this Court is on the admissibility and evidentiary value of the three rent receipts relying on which the High Court has dismissed the suit.

In paragraphs 8 & 9 of the plaint, anticipating the plea of the defendant, following averments are made:

"8. That the defendant is a near relation of Anil Kumar Gupta, tenant of the northern shop room and was working in the said shop and became friendly with said Ram Moony Devi and the plaintiff and after death of Gokul Chand he volunteered to help per in various pending litigations and administration of the estate left by said Gokul chand and said Ram Moni Devi, and illiterate lady and the plaintiff being practically an illiterate man deposed utmost faith upon the defendant.

9. That after death the plaintiff's adoptive father for looking after the village properties he began to stay at his native village at Kashinagar and in this absence for conducting the litigations at the instance of the defendant for authorising him to represent said Ram Moni Devi the defendant took thumb impression of Ram Moni Devi on some blank stamp papers and blank papers with one or two signatures of the plaintiff also thereon." [Underlining for pointed attention] The defendant Birendra Kumar Jaiswal in the written statement made specific reference to the rent receipts issued in his favour by landlady late Ram Moni Devi with thumb impressions on the stamps affixed on them and endorsements of the plaintiff by putting his signatures on the back portion of those rent receipts. The defendant thus denied the allegation of the plaintiff that he had trespassed into the suit premises taking advantage of the absence of the original plaintiff-Gangadhar Halder.

The specific plea of the defendant based on the rent receipts contained in paragraph 16 of the written statement reads thus:

" 16. The allegations contained in para 9 of the plaint are specifically denied. The defendant have no concern or any knowledge about the plaintiff or that the plaintiff was adopted son of Gokul Chand. It is absolutely false that the defendant took thus impression of Ram Moni Devi on some stamp blank paper. As a matter of fact, the defendant was the monthly tenant under Smt. Ram Moni Devi in respect of two rooms on the ground floor at 76, Amherst street, Calcutta-9 at a monthly rental of Rs.

100 according to English Calendar. At the time of payment of rent the rent receipts were also endorsed by the plaintiff by putting his name. The defendant further states that on the request for Ram Moni Devi, he paid Rs. 5,200 on a pro- note date 21.7.1971 and after receiving the said amount the said Ram Moni Devi duly put her left thumb impression and the said pro-note was also signed by the plaintiff as a witness.

Despite the above specific plea of tenancy based on the rent receipts taken by the defendant in the written statement, the plaintiff did not make any consequential amendment to his plaint and offered no explanation how blank printed rent receipts came to be thumb marked and signed on their back portions by the plaintiff.

On the above pleadings, the parties went to trial. On the question of admissibility of the rent receipts, the Order No. 53 of the trial court dated 3.9.82. (wrongly mentioned by the High Court as dated 5.9.82) reads as under:

"53/3.9.82.....PW-2 Gangadhar Holder is examined and cross-examined. Documents are marked as Exs. A (2) and B-B(1) on admission. No other witnesses are present today. Adjourned to 7.9.1982 for further hearing.

The trial court on appreciation of oral and documentary evidence on record came to the conclusion that the defendant had somehow access to the rent bills kept by plaintiff-Gangadhar Halder and those seem to have been utilised for fabricating the rent receipts. The relevant portion of the finding of the trial court reads thus:

"The evidence on record, therefore, shows that defendant Biren Jaiswal had access to the rent bill kept by Gangadhar. The evidence on record further shows that defendant utterly failed to prove formally rent receipts dated 18th March, 1972, 2nd Feb., 1974 and 8th May, 1976 and the genuineness of these rent receipts. Considering the facts of the case, I am inclined to observe that the rent receipts produced by the defendant have been manufactured by him on abusing a faith reposed on him by plaintiff Gangadhar holder".

[Underlining to highlight the conclusion] The Division Bench of High Court, in appeal, re-appreciated the oral and documentary evidence and reversed the finding of the trial court. On the admissibility and reliability of the disputed rent receipts, the High Court made the following comments in paragraph 7 of its judgement:

"7. Upon consideration of the rival submissions it appears to us that the propriety of the decision of the learned trial judge turns on our conclusion about the status of the defendant. The defendant has claimed a tenancy and in support thereof rent receipts have been produced, admitted signatures whereon were of Gangadhar Halder and thumb impressions of Ram Moni Devi could not be shown to be not genuine. The only ground on which such receipts have been discarded by the learned trial judge is a finding of fraud by conversion of blank stamp papers into rent receipts through

perpetration of fraud in that way was never pleaded in the plaint. It is well settled that a case which has not been pleaded in the plaint cannot be made out by evidence. It is also well settled that signatures to the documents having been admitted or proved the contents thereof automatically go into evidence, when documents were admitted into evidence without objection (See Order No. 53 dated 5.9.1982) (vide AIR 1972 S.C. 608 P.C.- Purushothama Reddiar, Appellant-v-S. Perumal, Respondent.) The same reasonings apply to the agreement in questions. If the existence and genuineness of the rent receipts cannot be doubted then the existence of the agreement also has to be accepted because of its consistency in facts. According to our view, therefore, the net effect of the above renders the case of tenancy as pleaded by the dependent credible and the case of the plaintiff of the defendant being trespasser cannot but has to be rejected. We do not agree with the reasonings of the learned trial Judge because his entire approach was vitiated by non-consideration of absence of specific plea of fraud and surmises and presumption.

[Underlining to add emphasis] The main thrust of the argument strenuously advanced by the learned counsel appearing for the plaintiff as appellant is that mere admission of the signatures of the plaintiff on the back portion of the rent receipts and their marking as exhibits by the court cannot be taken as due proof of execution of the rent receipts by the original landlady Ram Moni Devi. It is argued that the defendant failed to lead any evidence to prove writings on the rent receipts and their due execution and issuance by the landlady with her thumb impression. It is argued that exhibits are marked to the admitted signature of the plaintiff on the back portion of the rent receipts and such marking could not be taken to be proof of the due execution and issuance of the rent receipts. Learned counsel contends that marking documents as exhibits and their proof are two different legal concepts. Reference is made to Section 66 of the Evidence Act and reliance is placed on Dattatraya v. Ranganth Gopalrao Kawathekar (dead) Thr LRs., AIR (1971) SC 2548; Kamji Dayawala & Sons (P) Ltd. v. Invest Import, [1981] 1 SCC 80 and Om Prakash Berlla and Anr. v. Unit Trust of India and Ors., AIR (1983) (Bombay) 1. Learned counsel appearing for the contesting respondent supported the judgement of the High Court and submitted that the plaintiff having not disputed his signatures on the back portion of the three rent receipts and the documents having been admitted and marked as exhibits by order No.53 dated 3.9.82 of the trial court, there was no necessity to lead any further evidence by the defendant to prove writings on the rent receipts and their due execution in favour of the tenant by the landlady.

We have purposely reproduced the relevant parts of the pleadings of the plaintiff in the plaint and of the defendant in the written statement to show the rival cases respectively set up by the contesting parties. At the earliest stage, in the written statement, the defendant has clearly pleaded that he is in occupation of the suit premises on a monthly rental of Rs. 100 per month and had been paying rent and obtaining rent receipts which were thumb marked by the original landlady late Ram Moni Devi and signed on the back by the original plaintiff - Gangadhar Halder.

As seen above, it was pleaded in the plaint that certain blank stamp papers thumb marked and signed by the plaintiff were given to the defendant authorising him to represent them in various pending litigations. Even after the specific plea in the written statement of the defendant claiming status of a tenant on the basis of rent receipts, the pleadings in the plaint were not amended by the plaintiff to explain how on back of printed rent receipt, he happened to put his signatures. No consequential amendment was made in the plaint taking a plea of fraud and forgery of rent receipt. There is also no evidence to that effect.

Reliance is heavily placed on behalf of the appellant on the case of Ramji Dayawala & Sons (P) Ltd., (supra), The legal position is not in dispute that mere production and marking of a document as exhibit by the court cannot be held to be a due proof of its contents. Its execution has to be proved by admissible evidence that is by the 'evidence of those persons who can vouchsafe for the truth of the facts in issue'. The situation is, however, different where the documents are produced, they are admitted by the opposite party, signatures on them are also admitted and they are marked thereafter as exhibits by the court. We find no force in the argument advanced on behalf of the appellant that as the mark of exhibits has been put on the back portions of the rent receipts near the place where the admitted signatures of the plaintiff appear, the rent receipts as a whole cannot be treated to have been exhibited as an admitted documents. We have already reproduced above the contents of the order no. 53 dated 3.9.82 of the trial court. The appellant cannot be allowed to question the correctness of the said order. The documents were admitted and then exhibited. The plaintiff did not dispute his signatures on the back of them. There was, therefore, no further burden of proof on the defendant to lead additional evidence in proof of the writing on the rent receipts and its due execution by the deceased landlady.

The High Court rightly took a view that in face of the specific plea of tenancy by the tenant based on rent receipts, onus of proof, in fact, lay on the plaintiff to explain how blank printed rent receipts came to be signed by him on their back portions. We have extracted above the relevant pleadings in the plaint. What has been pleaded in that certain signed stamped blank papers were given to the defendant to be used for the pending litigations of the landlady and for administration of her estate. The plaintiff failed to lead any evidence to show what were those pending litigations and what was the occasion and necessity to sign printed blank receipts at their back by the plaintiff.

The High Court being the first court of appeals was fully within its powers to re-examine and re-appreciate the documentary and oral evidence. It could come to a conclusion contrary to the one reached by the trial court. As discussed above, we find that the High Court was fully justified in taking a contrary view as it did and upsetting the judgment of the trial court resulting in dismissal of the suit. In the result, the appeal fails and is, accordingly, dismissed but in the circumstances, we leave the parties to bear their own costs in this appeal.