1969 KHC 163
Kerala High Court
V. R. Krishna Iyer, J.

RAMAN PILLAI KUTTAN PILLAI v. GOVINDAN NANOO
Parallel citation(s) : 1969 KHC 163 : 1969 KLT 787
CaseNo : C. R. P. No. 1372 of 1968
Date : 12/03/1969

Code of Civil Procedure, 1908 -- O.20 R.4 -- Judgment -- Mere statements that reasons are conflicting and contradictory and to State testimony of plaintiff is interested cannot be foundation for any judicial conclusion

Important Para(s):1

Code of Civil Procedure, 1908 -- O.23 R.3A -- Party agreeing to make oath resiling -- Circumstance which can be relied upon against him while deciding case on merits -- Can be taken due note of and can be relied upon as evidence by conduct of a party

Important Para(s):1, 3

Advocates:

K. George Varghese; Thomas V. Jacob; For Petitioner
M. Krishnan Nair; P. Gopalakrishnan Nair; For Respondent

ORDER

1. Dismissing a suit on a promissory note the learned Munsiff purported to discuss the evidence of three witnesses who swore in support of the promissory note by merely observing that,
'The versions of pws. 1 and 2 regarding the execution of Ext. P1 are conflicting and contradictory. Hence I am not inclined to place any reliance on them. There remains only the interested testimony of plaintiff as pw. 1 and on the basis of it alone, it is not safe to conclude that Ext. P1 is executed by the defendant Accordingly I hold that the plaintiff has failed to prove that Ext. P1 is executed by

the defendant as alleged by him."
The only manner in which this judgment can be vindicated is by placing reliance on O.20 R.4(1) CPC. seeking refuge in the circumstance that the Munsiff was dealing with a small cause suit and was therefore not called upon to do anything more than mention the points for determination and the decision there. In the present case, however, 3 witnesses have sworn in support of a promissory note and have been disbelieved for reasons not disclosed, and, to the extent disclosed, untenable. Merely to state that the versions of pws. 1 and 2 are conflicting and contradictory and to state that the testimony of the plaintiff is interested cannot be the foundation for any judicial conclusion that a promissory note is a forgery for, that is the effect of the decision. I do not, however, propose to discuss the evidence adduced in the case because that would prejudice the parties, the case having to go back for fresh consideration in the light of the evidence adduced and sought to be supplemented if permitted by the Court, All that f need say now is that it is too big a draft upon the learned Munsiff's sense of judgment that I am called upon to make when asked to uphold this judgment. Some relevant reasoning as to why the witnesses speak falsehood and as to why the promissory note has to be held not genuine should be furnished before the revisional Court can feel assured that there is no perversity in the conclusion. I, therefore, set aside the decree of the lower court and direct the Court to reconsider the evidence already on record but in a judicial manner. If either party makes out a case for adducing supplementary evidence it is for the lower Court to consider whether that should be allowed or not.

2. Counsel for the respondent has brought to my notice a material circumstance of which the judgment under revision makes mention. The petitioner plaintiff while he was in the witness box was asked whether he was prepared to take oath in support of his version and he agreed. The respondent, when he was examined, swore that he was prepared to abide by the oath of the plaintiff. Thereafter, it is stated, the defendant respondent filed a statement of oath to be taken but nothing is known to have been done pursuant thereto. Counsel for the respondent, therefore, states that this piece of conduct on the part of the plaintiff in resiling from the oath, which he agreed to take, should be relied upon as a strong evidence against the veracity of the plaintiff's version.

3. O.23 R.3A CPC. deals with agreements by parties to have the suit decided by oath. But it contemplates tendering a written agreement, signed by both the

parties, setting forth the terms of the oath etc. If such a written agreement is presented, the Court may accept such agreement and proceed to take action in the manner indicated there. If any party withdraws or refuses to take the oath without lawful excuse, the Court is empowered to decide the case against him or pass such other order as it deems proper. In the present case, however, parties had not tendered a written agreement signed by both and therefore O.23 R.3A CPC. cannot apply in terms. The Indian Oaths Act 1873 (Act 10 of 1873), in S.8 to 12 thereof, deals with special oaths being taken by the parties by agreement. If one party agrees to abide by the oath of the other and that other agrees to make oath, the Court is permitted to proceed to administer the oath or to issue a commission to any person to administer it. The evidence so given is statutorily made conclusive proof of the matter stated. If the party refuses to make the oath he cannot be compelled to make it but "the Court shall record, as part of the proceedings, the nature of the oath ..... facts that he was asked whether he would make it, and that he refused it, together with any reason which be may assign for his refusal." (S.12). Unfortunately, in this case, although the statement of oath was furnished by the defendant, the Court did not proceed further under S.12 although it should have done so. If a party agrees to make oath and then resiles, what is the consequence? In my view that is a circumstance which can be relied upon against him while deciding the case on the merits. The mere failure to make the oath is not fatal to his case nor can the case be decided on that fact alone. But the party's conduct in running away from his agreement to take oath will, to say the least, have some effect damaging to his case unless he tenders an acceptable explanation for such conduct. Decisions go to the extent of saying that when one party offers to make oath and the other agrees to abide by such oath a concluded contract comes into existence binding both parties. These aspects were pressed into service by counsel for the respondent by relying upon the rulings in Saheb Ram v. Ram Newaz (AIR 1952 Allahabad 882 FB), Shanmuga Reddiar v. Perumal Reddiar (1935 Madras Weekly Notes 370) and Gudla Venkataratnamma v. Sindhiri Satyanarayana (AIR 1957 Orissa 226). Even the decision cited for the revision petitioner to extricate him from his agreement to make oath viz., Sankaran Narayanan v. Kochu Pillai Kochu (AIR 1957 TC 315), Ali Mammad Kunhi v. Kunhi Raman Nair (1958 KLT 704) and Sundaram Raman Minor by his mother and Guardian Parvathi v. Bhayavathiamma Subbamma (AIR 1965 Mad. 412) do not take the view that a party so resiling can get away with it, without any injury to his case. While the

duty of the Court, when oath is not taken, is to decide the case on the merits the circumstance that a party withdrew from his earlier agreement to make oath can be taken due note of and relied upon as evidence by conduct of a party. Of course, in the present case, the Court could not proceed under O.23 R.3A CPC. and did not take any steps under S.12 of the Indian Oaths Act. Since I am sending back the case for a fresh trial I leave it open to the Court, on the invitation by the parties by appropriate proceedings, to go further into the matter under either enactment adverted to above.

4. With these observations, I allow this Civil Revision Petition and direct the lower Court to rehear and dispose it of according to law. There will be no order as to costs.