

SITARAMACHARYA (DEAD) THROUGH LRS.

v.

GURURAJACHARYA (DEAD) THROUGH LRS.

JANUARY 6, 1997

[K. RAMASWAMY AND G.T. NANAVATI, JJ.]

*Evidence Act, 1872 : Sections 18 and 31—Admission made in earlier proceedings—Relevance and evidentiary value of—Appellant's father purchased business of restaurant—Respondent put in charge of business—Allegation of mismanagement against respondent—Suit filed by appellant for declaration and rendition of accounts—Admission by respondent in earlier proceedings—Respondent also setting up plea in his written statement that he had sufficient funds to purchase the property in question—Suit decreed by Trial Court holding that on respondent's own admission that there were several decrees pending execution against him it was unlikely that he would have necessary funds to purchase the property—Appellate Court dismissed the suit holding that the respondent has sufficiently explained the admission and that, therefore, his admission was conditional—High Court dismissed the second appeal—Appeal before Supreme Court—Held 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 consideration made by the trial Court—Earlier admissions appear to be unequivocal and the finding recorded by the appellate Court was cryptic—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 was a telling evidence heavily loaded against the respondent—The judgment of the trial Court stands confirmed.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 103 of 1997.

From the Judgment and Order dated 18.9.95 of the Karnataka High Court in R.S.A. No. 679 of 1994.

R.S. Hegde and P.P. Singh for the Appellants.

S.N. Bhat for the Respondents.

The following Order of the Court was delivered :

Leave granted. We have heard learned counsel on both sides.

This appeal by special leave arises from the judgment dated September 18, 1995 made in R.S.A. No. 679/94 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 July 2, 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 respondent, the appellant's father filed the suit with the above relief. The trial Court decreed the suit on October 28, 1986, but on appeal the Addl. District Judge by his judgment and decree dated February 28, 1994 reversed the decree and dismissed the suit and in the second appeal it was confirmed. Thus this appeal by special leave.

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.

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 license from the authorities in his name and he has himself taken the some premises on use from the landlord".

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."

The appellate Court has not explained any of the circumstances much less compelling one 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 by 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 consideration 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.

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.

appeal allowed.