

(1985) 07 GAU CK 0002

In the Gauhati High Court

Case No : Second Appeal No's. 7, 8 and 9 of 1981

Huidrom Achou Singh, Thoudam Mangol Singh and Smt.
Longjam Ningol Yeendrebam Ongbi Nungshi Devi

APPELLANT

Vs

Smti. Thokchom Ningol Ningthemcha Ongbi Ibempishak Devi
and Others
 Smti. Thokchom Ningol Ningthemcha
Ongbi Ibempishak Devi and Others Vs Huidrom Achou Singh,
Thoudam Mangol Singh and Smt. Longjam Ningol
Yeendrebam Ongbi Nungshi Devi

RESPONDENT

Date of Decision : 23-07-1985

Acts Referred:

Evidence Act, 1872 — Section 3, 4, 67, 68, 90

Citation : (1986) 1 GLR 98

Hon'ble Judges : K.N. Saikia, J

Bench : Single Bench

Advocate : N. Kerani Singh, for the Appellant; R.K. Nokulsana Singh, for the Respondent

Final Decision : Dismissed

Judgement

K.N. Saikia, J.—These three second appeals and a cross-objection are from the common judgment and decree of the Additional District Judge, Manipur dismissing the appeals affirming those of the Munsiff decreeing the Plaintiff's suit, and are disposed of by this common judgment.

2. The Respondent No. 1, as Plaintiff. Instituted Original Suit No. 2/77 on the footing, inter alia, that she purchased the suit land with her own money in the name of her eldest son Rajakumar Surjamani Singh, Defendant No. 4, then a minor aged about six years, to save her husband, who was a Government servant from criticism, and got the name of Defendant No. 4 mutated and had been possessing the suit land enjoying the usufruct thereof as her absolute property; that the land was under two plots, namely, old patta No. 87/423 corresponding to new patta No. 87/869 I.W., and old patta No. 87/283 corresponding to new patta No. 87/868 I.W.T. measuring 12.48 acres which

constituted the suit land; that the Defendant No. 4 by three different sale deeds transferred portions of the suit land to Defendants 1, 2 and 3, namely, by sale deed dated 15.9.76 he transferred 2.50 acres under new patta No. 87/868" I.W. to Defendant No. 1 for Rs. 5100/-, by sale deed dated 15.9.76 he transferred another 2.50 acres to Defendant No. 2 for Rs. 3,100/-, and by another sale deed dated 15.9.76 he transferred 2.50 acres to Defendant No. 3 for Rs. 5,500/-; that the Defendant No. 4 was also trying to sell the remaining 4.98 acres of the suit land; that at the time of the sales the Defendant No. 4 had been (suffering from lunacy/mental disorder; and that the Respondent No. 4 having been a benamidar be had no right to transfer those lands and that too when he was mentally deranged. The Plaintiff prayed a decree declaring the aforesaid sale deeds to be sham and the transfers to be null and void against the Plaintiff, and for injunction restraining the Defendant 1, 2 and 3 from interfering with her peaceful possession of the suit land for permanent injunction restraining the Defendant No. 4 from transferring the remaining portion of the suit land measuring 4.98 acres.

3. The Defendants 1, 2 and 3 jointly resisted the suit denying all the averments of the Plaintiff and further stating, inter alia, that the Defendants acquired perfect right and title by virtue of the respective sale deeds; they took delivery of possession of their respective lands, after purchase and had been in peaceful possession of their respective lands as of right; that the suit was bad for misjoinder of parties; and that H the Plaintiff having not prayed for declaration of her title over the suit land with prayer for consequential relief, the suit was liable to be dismissed.

4. The trial Court settled eight issues including whether the Plaintiff was the owner of the suit land; whether the Defendant No. 4 was the ostensible owner or absolute owner of the suit land; and whether the Defendant No. 4 was lunatic at the time of execution of the sale deeds dated 15.9.76 in favour of the Defendant No. 1, 2 and 3 in respect of the suit land.

5. The trial Court, on the basis of evidence, held that the Plaintiff was the owner of the suit land while the Defendant No. 4 was the ostensible owner thereof; that the Plaintiff had been able to prove that the Defendant No. 4 was suffering from lunacy/mental disorder at the time of the sales to the and Defendants 1, 2 and 3 on 15.9.76; that the Plaintiff had been in possession of the suit land at the time of sale by Defendant No. 4 on 15.9.76; that she had locus standi to file the suit. The suit was accordingly decreed holding that the Plaintiff was the real owner of the suit land and Defendant No. 4 had no right to sell the, same; and that the sale deeds dated 15.9.76 executed by Defendant No. 4 were null and void.

6. On appeals by Defendants 1, 2 and 3 the learned Additional District Judge, Manipur in his common judgment formulated two questions, namely, whether the sale transaction by the registered sale deed dated 7.4.41 purchasing the suit land in the name of Defendant No. 4 was a benami transaction and whether the Defendant" No. 4 was suffering from lunacy/mental disorder at the time of

execution of the sale deeds dated 15.9.76? Relying on the oral evidence adduced and on a certified copy of the registered sale deed dated 7.4.41 (Ext. A/1) and its original called from the Record Keeper of the Deputy Commissioner as it was a document 30 year old, drawing presumption u/s 90 of the Indian Evidence Act, the learned Additional District Judge concluded that the sale deed dated 7.4.41 was genuine, was benami in the name of Defendant No. 4 and the Plaintiff provided funds for the purchase. It was further held that the suit land was under possession of the Plaintiff all along; that the Defendant No. 4 had no right, and title when purported to sell the land to Defendants 1, 2, and 3 and that he was of unsound mind at the time of sales on 15.9.76; and, therefore, the sale deeds were null and void, Thus concurring with all the findings of the trial court the lower appellate court dismissed the appeals with costs to the Plaintiff. Hence these three second appeals and the cross objection.

7. Mr. N. Kerani Singh, the learned Counsel for the Appellants in all three appeals, admits that both the learned courts below have concurrently found that the Plaintiff purchased the suit land with her own funds by the sale deed dated 7.4.41; that she acquired right and title over the suit land by virtue of the purchase; that she had been in possession of the suit land since the date of purchase; that the purchase was benami being in the name of Defendant No. 4; that Defendant No. 4 did not have the right and title to convey in the impugned sales; that the Defendant No. 4 suffered from lunacy/mental disorder at the time of the sales on 15.9.76; that, therefore, the Defendants 1, 2 and 3 did not derive any title by dint of their purchases dated 15.9.76; and that the impugned sale deeds were sham documents and hence null and void. Counsel also admits that the above being concurrent findings of fact are not amenable to interference in these second appeals. Counsel however, submits that the finding that the Plaintiff purchased the suit land in 1941 was not based on admissible evidence. At para 9 of the judgment the learned Additional District Judge concluded that the sale deed dated 7.4.41 was genuine and it was 30 years old and had been produced by the Plaintiff from, the custody where it ought to be and which he considered proper and the contents of the said sale deed had been proved by production of the original and, therefore, there was no doubt that the Plaintiff had proved the sale deed dated 7.4.41. Counsel assails this finding on the ground that the Plaintiff did not prove the contents of the sale deed dated 7.4.41 (Ext. A/1). No witness, according to the counsel, was produced to prove the contents of the sale deed and as such the contents having not been proved according to law the learned courts below were wrong in holding that the Plaintiff purchased the suit land by the sale deed dated 7.4.41. Mr. Kerani Singh relies on AIR 1929 70 (Lahore) , Kotiswar Mukherjee and Others Vs. Paresh Nath Mukherjee and Others, and Ghurahu and Others Vs. Sheo Ratan and Others, in support of his contention.

8. Mr. R.K. Nukuleana Singh, the learned Counsel for the Respondent, demurs submitting that the Plaintiff filed and exhibited the certified copy of the sale deed dated 7.4.41. The Court called for the original from the Record Keeper of the

Deputy Commissioner's office and the original was compared with the certified copy and the court found that everything tallied. The contents having thus found to be genuine there was no need of further proof of the contents.

9. The question, therefore, arises whether when a document proved to be 30 years old is produced from proper custody, there is need for producing further evidence to prove the contents of the document? Section 3 of the Indian Evidence Act interprets a "document" to mean any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter. According to the illustration, a writing is a document; words printed, lithographed or photographed are documents; a map or plan is a document; an inscription on a metal plate or stone is a document; a caricature is a document. There is, therefore, no doubt that the matter expressed or described upon any substance by means of letters or figures, intended to be used for the purpose of recording that matter is a document. The sale deed, therefore, is a document, because therein the sale is expressed or described on a paper by means of letters, figures etc. It is not the paper but the matter so expressed or described is the document.

10. Section 90 of the Indian Evidence Act deals with presumption as to documents thirty years old. Under it where any document, purporting or proved, to be thirty years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the signature and every other part of such document, which purports to be in the handwriting of any particular person, is in that person's handwriting, and, in case of document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested. Explanation to the Section says that documents are said to be in proper custody if they are in the place in which, and under the care of the person with whom, they would naturally be but no custody is improper if it is proved to have had a legitimate origin, or if the circumstances of the particular case are such as to render such an origin probable. In the instant case Mr. Kerani Singh admits that the original document was produced from proper custody and that the Court correctly drew the presumption that the signature, its execution and attestation were presumed to be valid. In other words counsel admits that there is presumption of its due execution and attestation and also that it was in the handwriting of the scribe. His submission is that there is no presumption as to genuineness of its contents. As we have seen, a document means the matter expressed or described upon the paper. There cannot be different contents than what has been described or expressed on the paper. Counsel also admits that the document is 30 years old and is produced from proper custody. In *Kotiswar Mukherjee and Others Vs. Pares Nath Mukherjee and Others*, it has been held that Section 90 makes it clear that the presumption which is to be raised relates only to the signature, execution or attestation of a document. It does not involve any presumption that the contents of the document are true or that it had been acted upon. Such

allegation has to be proved on adducing proper and relevant evidence. In AIR 1929 78 (Lahore) , it was held that if a document purporting to be 30 years old is not duly tendered, proved, or exhibited, Section 90 cannot cure the defect. That section only gives discretion to Courts to dispense with proof as to the execution of a document. It raises no presumption whatever as regards the accuracy of the document and cannot be used so as to dispense with formal proof of the contents of the documents as required by law. In Ghurahu and Others Vs. Sheo Ratan and Others, , it was held that if a document is thirty years old and the Court is satisfied of its proper custody it may be presumed that signature and any other part of the document which purports to be in handwriting of any particular person is in that person's hand-writing, that the document was executed by the person by whom it purports to have been executed and that the document was attested by the person by whom it purports to have been attested. Section 90 dispenses with proof of document as required in Sections 67 and 68 and what is required to be done is deemed to have been done by operation of law. But the proof of signature or handwriting does not establish that whatever is stated in document is also correct. That has to be proved not only by production of document but by proving its contents as well.

11. Phipson on Evidence, Ninth Edn, at page 547, states the principles related to ancient documents. Private documents twenty years old (Evidence Act, 1938; Section 4), produced from proper custody, and otherwise free from suspicion, prove themselves, and no evidence of the handwriting, signature, sealing or delivery need, in general be given. The twenty years date from the execution of the document, and, even in the case of wills, not from the death of the testator. In the case of documents of title, however, acts or possession thereunder should be shown, though the absence of such evidence goes merely to weight, and not to admissibility. The rule, established for the sake of general convenience, is founded on the great difficulty and often impossibility of proving handwriting after long lapse of time; and on the presumption, that the attesting witnesses, if any, are dead a presumption which is not allowed to be rebutted by proof that such witnesses are alive and actually in Court, From the foregoing discussion there is no doubt that the contents of a document has different aspects. So far as handwriting is concerned, u/s 90 the presumption is that it was written by its scribe. So far as the truth of its contents is concerned, it is to be proved by evidence.

12. IN the instant case the Plaintiff proved that the land had been purchased" by, and delivered possession to her and since purchase she had been in possession and the learned courts below concurrently found that fact. The certified copy of the registered sale deed was compared by the Court with the original called from the Record Keeper and no discrepancy was found. The reason for the rule as to thirty years old document is the great difficulty, indeed in many cases the impossibility, of proving the handwriting, execution and attestation of documents in the ordinary way after the lapse of thirty years. Another ground is the circumstance of age or long existence of the document together with its place of

custody, its unsuspecting appearance, and perhaps other circumstances, suffice, in combination, as evidence to be submitted to the Court. This rule deals only with the amount of credit which is to be attached to the document. The document is said to prove itself, i.e. no witnesses need, unless the court so requires. Prove It. This section was designed to meet situation varying character, where passage of time might have obliterated the proof of the genuineness of any disputed document and wide powers are conferred on the Court. The section only says that the Court may raise the presumptions mentioned in it, not that it must do so, and the expression "may presume" ought generally to be construed in the more rigorous of the senses allowed by Section 4 of the Act. The presumption is rebuttable. The Court must examine the surrounding circumstances tending to establish the connection of the party producing the document with the person with whom the document should naturally have been.

13. The presumption as to the genuineness of a document is a matter for judicial discretion and where the trial Court has exercised a proper discretion in raising the presumption of the genuineness of a document ordinarily it is not proper for the appellate Court to overrule the discretion of the trial Court. In *Shofiqunnisa v. Shaban Ali Khan* 30 I.A. 217 ;I.L.R. 26 All 581 (P.C.) It was observed that where a document more than thirty years old, purporting to come from proper custody, is required by the Court before which it is produced, to be proved, and is left unproved and there are circumstances, both external and internal, which throw great doubts upon the genuineness of the document, the Court can, in the exercise of the discretion vested in it under the Section, decline to admit it in evidence without formal proof, and their Lordships of the Privy Council will be always slow to overrule the discretion exercised by a Judge u/s 90. However, a Judge should not reject a document without giving the party producing it an opportunity for supporting the presumption. Where the discretion has been exercised with due care and the presumption allowed by law has been made, an appellate Court should be slow to interfere with such discretion, but where it is shown that the exercise was made arbitrarily and not on judicial grounds it may be challenged even in second appeal, as was held in *Maharajadhiraj Sir Kameswar Singha Vs. Hriday Nath Sahoo and Others*, . Where the trial Court exercises its discretion u/s 90 and admits a document and the first appellate Court finds no reason to interfere with It, the High Court should not overrule the discretion and reject the document, as was ruled In AIR 1940 160 (Privy Council) , of course whether the presumption u/s 90 can be raised or not is a question of law and can be urged at any stage of the litigation. In AIR 1935 132 (Privy Council) it was ruled that the presumption enacted in the section can be raised only with reference to original documents and not to copies thereof. This was followed in *Harihar Prasad v. Duo Narain Prasad* AIR 1956 SC 305.

14. In the instant case the contents of the document were proved by the Plaintiff and the learned Court below drew a presumption of genuineness of the document being satisfied after production of the original sale deed. It cannot, therefore, be said that the Plaintiff failed to prove the contents of the deed and

the presumption was drawn u/s 90 arbitrarily or not in accordance with law. The Courts below having rightly drawn the presumption, there is no material to justify any interference with the presumption drawn by the learned courts below at this second appellate stage. The submission is accordingly rejected.

15. In the result these second appeals are found to be without merit and are dismissed, but without costs in this Court. The Cross Objection is also dismissed.