
(2009) 07 AP CK 0061

In the Andhra Pradesh High Court

Case No : Second Appeal No. 1432 of 2006

Lagadapati Dhanalakshmi and Others

APPELLANT

Vs

Lagadapati Anjaneyulu

RESPONDENT

Date of Decision : 24-07-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 31

Citation : AIR 2010 AP 14 : (2009) 5 ALD 542 : (2009) 5 ALT 812

Hon'ble Judges : R. Kantha Rao, J

Bench : Single Bench

Advocate : P. Venkat Reddy, for the Appellant; S. Narendranath Reddy, for the Respondent

Final Decision : Dismissed

Judgement

R. Kantha Rao, J.—The Second appeal is directed against the judgment dated 29.09.2006 passed by the III Additional District & Sessions Judge at Ongole in A.S. No. 1 of 2002.

2. For the sake of convenience, the parties will be referred to as plaintiff and defendants i.e., as they were arrayed in the original suit filed before the trial Court.

3. The brief facts leading to filing of the present appeal may be stated as follows:

The plaintiff filed the suit for specific performance of agreement dated 11.07.1987 against the first defendant, pending suit the first defendant died and defendants 2 to 4 are brought on record as legal representatives. According to the plaintiff, the first defendant agreed to sell the plaint schedule property to the plaintiff for an amount of Rs. 30,000/- and executed an agreement to sell on 11.07.1999 in favour of the plaintiff and received the sale consideration of Rs. 29,000/- from the plaintiff. As per the stipulation mentioned in the agreement, the plaintiff has to pay the balance of sale consideration of Rs. 1,000/- by 15.09.1997 and obtain registered sale deed from the first defendant. However,

though the plaintiff expressed the readiness and willingness to perform his part of contract, the first defendant postponed the execution of sale deed on one pretext or other and thereafter the plaintiff got issued a registered lawyer's notice on 08.09.1997 to the first defendant calling upon him to receive the balance of sale consideration and to execute the registered sale deed in his favour. Having received the said notice, the first defendant sent a reply on 17.09.1997 contending inter alia that the alleged agreement to sell is forged document, that on account of the disputes between him and the plaintiff, the plaintiff brought into existence the said agreement to sell. Thereafter, the plaintiff filed the suit for specific performance of the agreement to sell dated 11.07.1997 and for possession of the plaint schedule property.

4. Before the trial Court, P.Ws-1 to 4 were examined on behalf of the appellant and Exs.A-1 to A-4 were marked. Whereas D.Ws-1 to 4 were examined on behalf of the defendants and Exs.B-1 to B-3 were marked on his behalf.

5. After considering the entire material on record, the trial Court decreed the suit filed by the plaintiff with costs directing the plaintiff to deposit the balance of sale consideration of Rs. 1,000/- into Court within one month and further directing the defendant to execute the sale deed in favour of the plaintiff regarding the plaint schedule property and deliver possession of the same within one month from the date of deposit of balance of sale consideration. Aggrieved by the said judgment, the defendants filed A.S. No. 1 of 2002, which was heard and disposed of by the III Additional District & Sessions Judge, (Fast Track Court), Ongole confirming the decree and judgment passed by the trial Court.

6. Against the said decree and judgment, the defendants preferred the second appeal.

7. While admitting the second appeal, the following substantial questions of law were formulated by this Court:

(a) Having allowed the appellants to lead additional evidence in the appeal, whether the First Appellate Court erred in not considering the expert evidence to the effect that the disputed signatures on suit agreement (Ex.A-1) are forged?

(b) Having regard to the expert evidence establishing that the disputed signatures on Ex.A-1 are forged and fabricated whether the first appellate Court is justified in dismissing the first appeal?

(c) Whether the First Appellate Court is justified in dismissing the First Appeal on the premise that pending disposal of the appeal the trial Court has executed the sale deed in favour of the respondent pursuant to the decree dated 19.11.2001 made in O.S. No. 629 of 1997 impugned therein?

(d) Whether the finding of the courts below are perverse in law?

8. I have heard the learned Counsel appearing for the defendants/appellants as well as the respondent/plaintiff.

9. Apart from urging to consider the above substantial questions of law, the learned Counsel appearing for the defendants would contend that the trial Court dismissed the suit on the sole ground that on failure by the defendants to execute the sale deed pending the present appeal, the sale deed was executed by the trial Court and therefore no cause survives in the appeal which is erroneous in law and the judgment passed by the First Appellate Court confirming the decree of the trial Court is liable to be set aside.

10. On the other hand, the learned Counsel appearing for the plaintiff would submit that the trial Court as well as the first appellate Court evaluated the evidence independently and arrived at concurrent findings on questions of fact and law and in this appeal, in fact, no substantial question of law arises for consideration and, therefore, it is liable to be dismissed.

11. I have perused the judgment of the trial Court as well as the First Appellate Court and the material papers.

12. In the first place, I shall deal with the submission made by the learned Counsel appearing for the defendants/appellants that the First Appellate Court dismissed the appeal on the sole ground that the sale deed was executed by the trial Court in favour of the plaintiff after passing of the judgment by the First Appellate Court.

13. Perusal of the judgment of the trial Court leave no manner of doubt whatsoever in regard to the fact that after discussing in detail, the entire evidence in the light of the pleadings of both parties a decree was passed in favour of the plaintiff and against the defendants. Similarly, the judgment of the learned First Appellate Court also indicates that on an reappraisal of the evidence on record, the learned First Appellate Court independently arrived at the conclusion that the findings of the trial Court in regard to the facts and the law governing the subject are quite appropriate and accordingly concurred with the findings of the learned trial Court. Therefore, the submission made by the learned Counsel appearing for the defendants that the First Appellate Court solely rested its decision on the fact that the trial Court executed the sale deed in favour of the respondent has no substance.

13-A. Coming to the questions (a) and (b) that the First Appellate Court having allowed the additional evidence petition filed by the defendants erred in not considering the expert evidence which is to the effect that the disputed signatures on the suit agreement Ex.A-1 are forged and is not justified in dismissing the first appeal.

14. Perusal of the judgments passed by the learned trial Court and the learned First Appellate Court clearly indicates that the respondent examined the scribe of Ex.A-1 agreement as P.W-2, the mediator as P.W-3 and the attesor as P.W-4 besides examining himself as P.W-1. The learned trial Court having regard to the facts and circumstances of the case and on appraisal of the oral and documentary evidence adduced on either side came to the conclusion that the

plaintiff proved the execution of Ex.A-1 agreement by the deceased defendant No. 1 and passing of part of sale consideration thereunder. In the appeal, the learned First Appellate Court reassessed the evidence independently and affirmed the findings arrived at by the learned trial Court. Therefore, in this case apart from the evidence of hand writing expert, there is other evidence adduced by the plaintiff in proof of execution of Ex.A-1 agreement to sell by the deceased/ first defendant.

15. Reliance is placed by the learned Counsel appearing for the appellants in *Gorrella Durga Vara Prasada Rao v. Indukuri Rama Raju* 2002 Supp. (2) ALD 757 (DB) wherein the Division Bench of this Court referring to the compliance of the provisions under Order 41 Rule 31 held that though specific points for decision are not framed by the appellate Court, if it deals with all the grounds raised in the memorandum of appeal, it is a sufficient compliance of Order 41, Rule 31.

16. Referring to the said decision, the learned Counsel submits that the First Appellate Court did not formulate the specific points for decision and therefore its judgment is liable to be set aside. It is true that the learned First Appellate Court did not formulate specific points for decision in the appeal but perusal of its judgment indicates that it has dealt with all the grounds on which the decree and judgment of the trial Court were challenged, reappraised the entire evidence and arrived at an independent decision. Therefore, on the technical ground that the points for decision are not framed by the First Appellate Court, a well reasoned judgment passed by it, cannot be set aside in this appeal.

17. He further relied on the decision reported in *Nallabothu Purnaiah Vs. Garre Mallikarjuna Rao* (died) by LRs. and Others, wherein the learned single judge of this Court stated certain principles to be followed in appreciating the report of the expert evidence. Referring to the above decision, the learned Counsel for the defendants submits that the First Appellate Court failed to deal with the evidence of expert in the light of the above principles and therefore the judgment rendered by the First Appellate Court is liable to be set aside.

18. Before arriving at a decision in the Second Appeal, it is relevant to refer to the following judgment rendered by the learned single judge in *Kaveti Sarada v. Vemineni Hymavathi* 2006 (4) ALT 56 wherein it was held as follows:

In a suit based on promissory note the defendant took the plea that the promissory note is forged document. In the course of the trial the plaintiff, attester and scribe were examined. At that stage the defendant filed an application to send the pro-note to the handwriting expert, the trial Court dismissed the said application. In the revision against the said order, the learned single judge held that keeping in view that necessary evidence already adduced by both parties, the Court below, rightly exercised its discretion in declining to send the disputed pro-note to the expert and the impugned order cannot be faulted.

19. Further, the proposition that the expert's evidence is only an opinion

evidence is well established when there is enough evidence let in by a party in proof of a certain document and the Court is satisfied with the said evidence, absolutely there is no necessity for the Court to consider the opinion of an expert. The learned First Appellate Court after referring to some rulings of this Court as well as the Apex Court held that the defendants have examined Ashok Kashyap, the hand writing expert only to answer the finding of the trial Court made in paragraph 12 that it is not an expert to give a finding that the signature found in Ex.A-1 is not that of the plaintiff and after reassessing the evidence agreed with the finding of the trial Court that the plaintiff proved Ex.A-1 by examining P.Ws-1 to 4. Further, in view of the well recognised principle that the evidence of an expert is only an opinion evidence and the Court need not act on the opinion given by the expert when other reliable evidence in proof of a document is available, I do not think that any substantial question of law relating to the said aspect in fact would arise for consideration in this appeal. An established principle of law cannot give rise to a substantial question of law, which requires to be considered in the Second Appeal. Both the Courts below gave concurrent findings of fact and law basing on the evidence adduced by both parties and the expert opinion is only a piece of evidence before the First Appellate Court and therefore the judgment rendered by the First appellate Court does not require any interference in this appeal.

20. Consequently, the judgment and decree passed by the First Appellate Court in A.S. No. 1 of 2002 is confirmed and the appeal is dismissed with costs.