

(2003) 03 AP CK 0054
In the Andhra Pradesh High Court
Case No : S.A No. 670 of 1994

Sutari Venkata Rama Brahmachari and Others	APPELLANT
Vs	
Jaggavarapu Ramakrishnamma	RESPONDENT

Date of Decision : 12-03-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (2003) 4 ALT 418

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : V. Parabrahma Sastri, for the Appellant; S. Lakshma Reddy, for the Respondent

Final Decision : Dismissed

Judgement

P.S. Narayana, J.—Sri V. Parabrahma Sastri, the learned counsel representing the appellants had raised the following substantial question of law in the present second appeal: "Whether the appellate Court had not erred in not considering the expert's evidence and opinion while deciding the validity of Ex.A1, the agreement of sale dated 12-03-1960?". The learned counsel in all fairness had submitted that except this substantial question of law, none else falls for consideration in the present second appeal. The learned counsel had also submitted that on appreciation of oral and documentary evidence both the Courts had recorded concurrent findings, which cannot be seriously assailed in the second appeal. The learned counsel also had placed strong reliance on a decision of the Apex Court reported in MURALI LAL v. STATE OF M.P. AIR 1980 S.C.531 As usual in a second appeal the counsel for the respondent had justified the findings recorded by both the Courts below and in view of the fact that these are concurrent findings. It was submitted that such findings need not be disturbed in a second appeal, in view of the limitations imposed u/s 100 of the Code of Civil Procedure.

2. Heard both the counsel.

3. The substantial question of law raised in the present second appeal is referred to supra. The facts in brief are as here under:

The respondent in the second appeal as plaintiff in the suit had instituted O.S.144 of 1981 on the file of District Munsif, Chintalapudi, against the defendants for the relief of specific performance of the agreement of sale. It was pleaded in the plaint that the 1st defendant in the suit is the owner of the plaint schedule property and he entered into an agreement of sale with the plaintiff for Rs.300/- and the plaintiff paid Rs.50/- towards advance and after paying the balance of Rs.250/- she entered into possession of the plaint schedule property in pursuance of the said agreement of sale and the 1st defendant reduced the same into writing on a stamp paper on 12-03-1960. It was further pleaded that the plaintiff has been in possession and enjoyment of the plaint schedule property. The plaintiff also had pleaded about some mediation and also had stated that the alleged sale of the plaint schedule land by the first defendant to the second defendant on 26-06-1981 is not valid. The 1st defendant filed his written statement denying all the allegations. He had taken a specific stand that he never executed any agreement of sale and equally he had never received any consideration from the plaintiff and the alleged agreement of sale is rank forgery. The 2nd defendant also had taken the same stand and also pleaded that he purchased the full extent of Ac.0.80 Cents consisting of Ac.0.41 Cents (full extent) covered by R.S. No. 196/6 and Ac.0.39 Cents out of Ac.0.78 Cents covered by R.S. No. 196/7 for valuable consideration of Rs.2,000/- under a registered sale deed dated 26-06-1981 and obtained possession of the same and hence he is in possession and enjoyment of the said property, plaintiff is not entitled to any relief against him. On the strength of the respective pleading, the issues were settled and on behalf of the plaintiff P.W.1 to 9 were examined and Exs.A1 to A3 were marked. Ex.A1 is the agreement of sale executed by 1st defendant in favour of the plaintiff dated 12-03-1960. Ex.A2 is the registered sale deed dated 17-10-1955. Ex.A3 is the muchelaka executed by P.W.2 and D.W.2 in favour of arbitrator dated 05-08-1981. On behalf of the defendants D.W.1 to D.W.10 were examined. Exs.B1 to B14 were marked and also Exs.C1 and C2 were marked. The Court of first instance on appreciation of oral and documentary evidence came to the conclusion that Ex.A1 is true, valid and binding and ultimately had decreed the suit as prayed for, without costs. Aggrieved by the same both the defendants had preferred appeals A.S. No. 103 of 1984 and 106 of 1984 on the file of Additional District Judge, West Godavari at Eluru, and the appellate Court had dismissed both the appeals with costs by a common judgment and aggrieved by the same the present second appeal is filed.

4. The 1st defendant in the suit- 1st appellant herein died pending the second appeal and appellants 3 and 4 are brought on record as legal representatives of deceased-1st appellant by order dated 29-11-1996 in C.M.P. No. 18028 of 1996 and thus the present appellants are prosecuting the second appeal. I had given my anxious consideration to the findings recorded by both the Courts below. P.W.1 is the plaintiff in the suit and she was not present at the time of Ex.A1.

P.W.2 is the husband of the plaintiff and he had deposed in detail about the Ex.A1 transaction. P.W.3 is an attest or of Ex.A1. P.W.3 also had supported the case of the plaintiff in toto. P.W.4 is the son of Bhaskara Sastri, an attest or of Ex.A1, who had deposed that Bhaskara Sastri is his father and he died about 20 years ago and he can identify the signature of his father in Ex.A1 and he also deposed that the registered sale deed-Ex.A2 was executed by his father in favour of Sithamma. Apart from this evidence, there is evidence of P.W.5 to P.W.9 also. D.W.1 is C.T. Bhanagay, handwriting and finger print expert. D.W.2 is the 1st defendant and apart from this evidence, D.W.3 to D.W.10 also were examined. Ex.B1 is the enlarged photos. Ex.B2 is the photos and negatives. Ex.B3 is the opinion of expert, dated 01-04-1983. Ex.B4 is a pronote executed by P.W.3 in favour of D.1. Ex.B5 to B7 are the registered sale deeds. Ex.B8 is a promissory note dated 24-08-1976, executed in favour of 1st defendant. Ex.B9 and B10 are payment endorsements. Ex.B11 is the Khararnama executed in favour of D.W.2. B12 is the Ryot pass book. Ex.B13 is the land revenue receipt issued in favour of D1, likewise, Ex.B14 is the registered sale deed executed by D1 in favour of D2 dated 26-06-1981. Apart from it registered sale deeds-Exs.C1 and C2 also were marked. The trial Court, in fact, had discussed the whole oral and documentary evidence available on record in detail and had recorded the findings. The appellate Court at para 8 had framed the points for consideration and had discussed the oral and documentary evidence at paras 9 to 23 and had ultimately dismissed the appeal in the light of the evidence of D.W.1-the finger print expert and also the documents Exs.B1 to B3. Though the evidence of P.W.3, one of attestors of Ex.A1 and P.W.4, the son of one of the deceased attestors is available on record, the appellate Court as well could have gone into the expert evidence also and could have recorded the proper findings in this regard. The appellate Court except referring to the burden of proof and opinion of the expert at para 10, excluding the same on the ground that direct evidence is available on record, had not adverted to the opinion of the expert in detail, nor it recorded the findings in this regard. This is the crucial aspect, which had been raised by the learned counsel representing the appellants in the present second appeal.

5. In MURARILAL's case (1) cited supra, the Apex Court while dealing with the evidence of an expert in a criminal appeal, had observed " There is no rule of law, nor any rule of prudence which has crystallized into a rule of law, that opinion evidence of a handwriting expert must never be acted upon, unless substantially corroborated. But, having due regard to the imperfect nature of the science of identification of handwriting, the approach should be one of caution. Reasons for the opinion must be carefully probed and examined. All other relevant evidence must be considered. In appropriate cases, corroboration may be sought. In cases where the reasons for the opinion are convincing and there is no reliable evidence throwing a doubt, the uncorroborated testimony of a handwriting expert may be accepted. There cannot be any inflexible rule on a matter which, in the ultimate analysis, is no more than a question of testimonial weight." It is no doubt true that when direct evidence relating to the proof of a

document is available the opinion of an expert may fall into insignificance, but that does not mean that the Court should not consider the expert evidence, especially, in a case of this nature, where the specific stand taken by the 1st defendant is one of total denial of the very execution of Ex.A1.

6. In GOVARDHAN DAS v. AHMADI BEGAM AIR 1953 HYD. 181, the Division Bench of this Court held that "Where the evidence does not, in any special manner, refer to the expert knowledge with regard to the hand-writing, the sworn testimony of the other witnesses should be given preference to the opinion of the expert when those witnesses swear on oath that the signatures were written in their presence by the signatories". It is no doubt true that the non-consideration of a material, piece of evidence itself will be a substantial question of law in a second appeal. But, however, in the present case the evidence of P.W.3 and P.W.4 is available on record. Apart from the evidence of P.W.2, the evidence of plaintiff's husband and evidence of P.W.1, the evidence of plaintiff herself and in the light of the direct evidence available relating to the proof of Ex.A1, I am of the considered opinion that the mere non-consideration of the expert opinion in detail by the appellate Court had not vitiated the judgment in any way, so as to order remand on such a ground. It is reiterated that no doubt certain findings of the appellate Court had not been happily worded, but however in as much as in substance, on appreciation of the evidence, concurrent findings had been recorded. I am not inclined to interfere with such concurrent findings in this second appeal, in view of the limitations imposed by Section 100 of the Code of Civil Procedure.

7. Accordingly, the second appeal is bound to fail and the same is dismissed. But, in view of the facts and circumstances, without costs.