

(2007) 06 AP CK 0001
In the Andhra Pradesh High Court
Case No : SA No. 378 of 1998

Yeradevireddi Venkataramanappa and Another	APPELLANT
Vs	
Nallapareddi Subbamma and Others	RESPONDENT

Date of Decision : 20-06-2007

Acts Referred:

Evidence Act, 1872 — Section 45, 47, 73

Citation : (2007) 6 ALD 32

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

Bench : Single Bench

Advocate : M. Dilip Rao, for the Appellant; S. Srinivasa Bhatt, for the Respondent

Final Decision : Dismissed

Judgement

P.S. Narayana, J.—This Court on 11.11.2005 made the following order:

In view of the substantial question of law "as to whether on the facts and circumstances the Court below was right in exercising comparison of the signatures itself, admit the second appeal.

2. Heard Sri Dilip Rao, learned Counsel representing the appellants and Sri Srinivas Bhatt, learned Counsel representing respondents 1 to 5.

3. The parties hereinafter, for the purpose of convenience, would be referred to as plaintiffs and defendants as shown in OS No. 75 of 1984 on the file of District Munsif, Thamballapalle.

4. The suit was filed for the relief of specific performance of Re-conveyance Agreement dated 11.4.1979 before the Court of first instance. On the strength of the respective pleadings of the parties, having settled the issues, the learned Judge recorded the evidence of PWs.1 and 2, DWs.1 and 2, marked Ex. A1 and Exs. B1 to B3, recorded findings and ultimately came to the conclusion that the plaintiffs are entitled to the relief prayed for and directed the plaintiffs to deposit the sale consideration amount into Court within one month and on such deposit,

the defendant to execute the registered sale deed in favour of the plaintiff. The matter was carried by way of appeal AS No. 67 of 1991 on the file of Additional District Judge, Madanpalle and the appellate Court after framing the point for consideration at Paragraph 7, proceeded to discuss all the factual details commencing from Paragraphs 9 to 11 and ultimately dismissed the appeal. Aggrieved by the same, the present second appeal is preferred. The learned Counsel for the appellant submitted that the amount had been deposited as directed by the Court of first instance.

5. The averments made in the plaint are as hereunder:

The first plaintiff was the wife and other plaintiffs were children of late Nallappa Reddy Maddi Reddy, who died about two years ago (prior to the filing of the suit on 16-8-1984). Maddi @ Maddi Reddy during his life time sold away the plaint schedule item No.1 to the first defendant for Rs. 800/-on 11-4-1979 and item No. 2 to the 2nd defendant on the same day for Rs. 1,200/-and both the defendants executed a reconveyance agreement of sale by which the first defendant agreed to receive Rs. 872/- and 2nd defendant agreed to receive Rs. 1,381/- within six years, undertaking to reconvey the plaint schedule properties to the said Maddi Reddy. The reconveyance was signed by the 2nd defendant and first defendant affixed his thumb impression after the contents of the documents were read over to them. After the death of Maddi Reddy, the right to enforce the agreement was devolved upon the plaintiffs and they are always ready and willing to perform their part of the contract. Maddi Reddy during the life time also was ready and willing to perform his part of the contract. The plaintiffs amended the defendants to perform the terms of the suit agreement, but the later evaded. So, the plaintiffs gave lawyer notice to the defendant on 5-7-1984 requesting to perform the terms of the deed. But the defendant gave a reply with false allegations on 14-7-1984. The suit agreement is a genuine one. Under the circumstances the plaintiffs prayed the Court to pass a decree in their favour directing the defendants to execute a sale deed in respect of the schedule properties by taking the consideration amounts as stated in the deed, failing which the Court may take steps to execute the sale deed and also to deliver the plaint schedule properties to the plaintiffs and award costs in the suit.

6. The 1st defendant filed written statement, which was adopted by the 2nd defendant, wherein the following averments were made:

The allegations made in the plaint are denied except that are specifically admitted. The defendants purchased the plaint schedule properties from late Nallappa Reddy Maddi Reddy. There was no agreement of reconveyance between the defendants and late Maddi Reddy. When the plaintiffs gave a legal notice with false allegations, the defendants issued reply notice with true facts. The suit agreement is not a genuine one and it is not binding upon the defendants. The suit agreement is created to cause wrongful gain to the plaintiffs and wrongful loss to the defendants. Under the circumstances the suit is liable to be dismissed with costs.

7. An additional written statement was filed, wherein a plea was taken that the plaintiffs had not made out valid offer to repurchase the suit property within the stipulated time and notice issued by the plaintiffs also does not contain the specific date or time on which date the plaintiffs would be paying the money. Thus, the suit is barred by limitation.

8. On the strength of the above pleadings, the following issues and additional issue were settled:

1. Whether the suit agreement dated 11-4-1979 is forged and fabricated one?
2. Whether the plaintiff is entitled for specific performance of the suit agreement?
3. To what relief?

Additional Issue:

Whether the suit is barred by limitation or not? On behalf of the plaintiffs two witnesses were examined including the first plaintiff and Ex. A1, the agreement dated 11-4-1979 was marked. On behalf of the defendants, two witnesses were examined and Ex. B1 sale deed executed by the first plaintiff-Smt. Nallapareddi Subbamma in favour of 1st defendant on 11-4-1979; Ex. B2 the office copy of notice and Ex. B3 the registered notice in favour of 2nd defendant dated 11-4-1979 were marked.

9. Elaborate submissions were made by Sri Dilip Rao that when the signatures had been denied and when specific stand had been taken that these documents are forged or fabricated, none of the parties had taken steps to send these documents to the Handwriting Expert for the purpose of comparison of signatures. The learned Counsel relied upon the judgment of this Court in Khamarunnissa @ Khammar Bai and Another Vs. Fazal Hussain @ Afsar Hussain and Others, , wherein the learned Judge at Paragraph 15 observed as follows:

Then comes the testimony of D.W. 3, one Pandit Elmer which is accepted as the corroborating evidence regarding the oral gift. In brief, his evidence is that he was being treated by Badar Bai as a brother by courtesy; that he was informed Badar Bai that she purchased the suit house of the benefit and the use of Naiyar Bai and that according to him, she gifted the house to Naiyar Bai orally. He was not present at the time of gifting the house Naiyar Bai but Badar Bai consulted him before doing that and she informed him that she was going to gift it to Naiyar Bai. It appears that after the gift was over by holding a function, as he could not attend such a function, Badar Bai wrote a letter to him as per Ex. X1 questioning as to why he did not attend the function wherein she had gifted the suit house to Naiyar Bai and he was also requested to meet her thereafter. It is also in his testimony that eight days later, she came to him and told him that she wrote a letter to him stating that she gifted the house to Naiyar Bai in the presence of her community people and that he should have attended the function. The said letter is marked as Ex. X1. But, it is coming at a very late stage, that too through DW.3. DW.3. is also not conversant with Urdu Language

in which Ex. X1 is written but still he identified the signature of Badar Bai on the document. The learned Trial Judge has gone to the extent of comparing the signature of Badar Bai in Ex. X1 with Ex. C1 without even mentioning that either he is conversant with Urdu Language or that he has expertise in comparing such signatures either due to qualification, experience or due to any other reason. The learned advocate is justified in attacking this part of the finding and inference on the part of the learned Trial Judge by adopting an unusual method in coming to such a conclusion. In the first place., the testimony of DW.2 (sic DW.3) regarding the letter is not satisfactory. Secondly, the method adopted to compare the signature is not only illegal but also judicially inappropriate. The mode of proving the writing or signature of a person is provided u/s 47 of the Evidence Act. When the Court has to form an opinion as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed that it was or was not written or signed by that person, is a relevant fact. The explanation to the said provision elaborates the meaning of a person acquainted "a person is said to be acquainted with the handwriting of another person when he has seen that person write, or when he has received documents purporting to be written by that person in answer to documents written by himself or under his authority and addressed to that person, or when, in the ordinary course of business, documents purporting to be written by himself or under his authority and addressed to that person, or when, in the ordinary course of business, documents purporting to be written by that person have been habitually submitted to him." That is not the testimony of DW.3. The handwriting or the signature may also be proved by taking recourse to the expert evidence by virtue to Section 45 of the Evidence Act. The law is settled that the opinion of an expert under the provision tantamounts to the knowledge of a person acquainted with the handwriting of an individual. It is as good as the evidence of an acquaintance for the reasons mentioned in Section 47 of the Evidence Act. In other words, Sections 45 and 47 are to be read together to make use of the expertise in the opinion about the proof of the signature or the handwriting. The learned trial Judge has acted in derogation of the true legal implication of the provision supra. As an ultimate mode of proof regarding the writing and signature of a person is also available to the Court u/s 73 of the Evidence Act by comparing the admitted signature in (sic. and) writing with the disputed ones and that has been done by the learned trial Judge. Patently, no recourse to the provision is mentioned in the judgment although the recourse is patent. The law is settled that the recourse to Section 73 should be in extreme cases where the parties will be unable to prove the handwriting and signature through the above procedure and the ends of justice will fail if recourse is not taken to Section 73 of the Evidence Act. Such a provision should be taken recourse by the Courts in the rarest of the rare cases only to meet the ends of justice and not in a routine manner and unless in the absence of any other evidence produced by the parties. The Courts cannot supplement what the parties fail. It can only judicially supplement it by adopting a method permissible in law. It must be noted with concern and caution that any

such course adopted by the Courts would instead of serving the ends of justice may defeat the same. It should also be pointed out that a Judge taking recourse to Section 73 of the Act should convince himself and others that he is conversant with the language in which a particular writing or signature is made and secondly make a record of his expertise in the matter however qualified or otherwise by experience or atleast give reasons as to how he is able to draw the similarity between the disputed signature and the admitted signature and the writings. No such exercise is made by the learned trial Judge. To that extent Mr. Narasimha Rao is totally fortified with the legal bearing. But, that itself will not defeat the testimony of DW.3. As rightly pointed out by the learned trial Judge and as per the admissions of Khamarunnisa in her own complaint, F.I.R., DW.3 was a close associate of Badar Bai and a family friend and he (DW.3) went to the extent of even saying that Badar Bai had left all her movables and valuables in the hands of DW.3. DW.3 was thus a man of confidence for Badar Bai and if she had taken him into confidence, there was nothing improper or unnatural. It is true that by the time he deposed in the Court, Khamarunnisa had already filed the criminal complaint against him and possibly that must have influenced him to some extent to speak against her. But the question is whether such a testimony can be totally thrown over just because he was offended due to a complaint whether false or true, atleast to the extent that his testimony can corroborate the testimony of DWs.1 and 2. The trial Judge was totally justified in making use of the evidence, if any, as an independent evidence. With all this, the evidence of plaintiff is nil by rebuttal as to why the above circumstances are in favour of Naiyar Bai and whether Naiyar Bai would go to the extent of revolting against her own senior aunt in order to gain herself with the property of Badar Bai. It is apparent even a slight indication that even Khamarunnisa was against Badar Bai or Naiyar Bai, If either DW.2 or DW.3 or any other party were interested in Badar Bai or Naiyar Bai to the detriment of interest of Khamarunnisa, she would not have kept silent without showing any interest in the matter either to create some circumstance in her favour or to create some material so as to dislodge the circumstances in favour of Naiyar Bai. Therefore, the learned Trial Judge was perfectly justified in appreciating the evidence in the above fashion to draw inference in favour of the oral gift by Badar Bai in favour of Naiyar Bai.

10. Coming to the case on hand, it is, however, pointed out that the appellants themselves made an endorsement that they being poor, they cannot afford to meet the expenditure and that they would abide if the Court records a finding on comparison of signatures. The appellate Court in AS No. 67 of 1991 observed as hereunder:

I have also gone through the judgment of the lower Court. The lower Court observed that the first defendant's thumb impression and signature in Ex. A1 and so he concluded that Ex. A1 is not forged and fabricated document. The lower Court also stated that in the application filed to send Ex. A1 to an expert for examination and report, the learned Counsel for the defendants submitted that sending of the documents to an Expert will be more expensive and so the

Court may compare the admitted signatures with the disputed signatures and may come to the conclusion about the genuineness of the document. The Court also observed that the party need not prove that he was willing and ready to perform his part of the contract.

Apart from the above finding, several other factual findings had been recorded both by the Court of first instance and also the appellate Court on appreciation of the evidence of PWs. 1 and 2, DWs.1 and 2 and also Ex. A1 and Exs. B1 to B3. It is needless to say that the findings are concurrent findings recorded by the Court of first instance and also the appellate Court.

11. It may be that the Court could have sent the document to the Expert for comparison of the disputed thumb impression and the signature to be compared with the admitted thumb impression and the signature. However, in the light of the peculiar facts of the case and the endorsement made by the Counsel representing the defendants to the effect that not to send the document to expert since the parties have no capacity to bear the expenses, the Court may tally the signatures of the party and the parties would abide by the order of the Court, this Court is thoroughly satisfied that it would be a futile exercise even to make an order of remand on that ground. Hence, viewed from any angle, in the light of the concurrent findings recorded by both the Courts below, the second appeal being devoid of merit, the same is bound to fail.

12. In the result, the second appeal is dismissed. But in the peculiar facts of the case, the parties to the litigation to bear their own costs.