

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

Civil Appeal No(s). 4127/2008

KALI DASS

Appellant(s)

VERSUS

CHAITRU & ANR.

Respondent(s)

Date : 02/05/2017 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ARUN MISHRA

HON'BLE MR. JUSTICE AMITAVA ROY

For Appellant(s) Ms. Neha Sangwan, Adv.

Mr. Ali Reja Osmani, Adv.

Mr. Chirag M. Shroff,Adv.

For Respondent(s) Mr. S.S. Shamsbery, Adv.

Ms. Babita Yadav, Adv.

Mr. Amit Sharma, Adv.

Mr. Ankit Raj, Adv.

Mr. R. C. Kohli,Adv.

UPON hearing the counsel the Court made the following

O R D E R

The appeal is allowed in terms of the signed order.

(NEELAM GULATI)

COURT MASTER

(TAPAN KR. CHAKRABORTY)

COURT MASTER

(Signed order is placed on the file)

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO(S).4127 OF 2008
KALI DASS

...APPELLANT(S)

VERSUS

CHAITRU & ANR.

...RESPONDENT(S)

O R D E R

The appeal has been preferred by the appellant. The plaintiffs filed a suit for declaration that they had inherited the estate of Labhu to the extent of 2/3 rd

share alongwith respondent/ defendant - Kalidas. Plaintiffs are daughters of two nephews of Labhu. Labhu said to have executed a Will in favour of defendant Kalidas. Kalidas was also son of one of the nephew of Labhu namely Tulku, was also an agnate as per plaintiffs and had inherited only 1/3 rd share. The defendants

contested a suit and set up a Will executed by deceased Labhu in his favour purported on 6.12.1984. i.e. four days' before his death. The trial court

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after recording the evidence came to the conclusion that Labhu had executed a Will in favour of defendant Kalidas. The suit was dismissed. First appeal was preferred unsuccessfully by the plaintiffs. High Court had set aside the judgment and decree passed by the appellate court as well as by the trial court. The High Court had given the reasons that though the experts had on the following reasons:

(i) Since the expert had been examined on behalf of the defendant, his evidence is supposed to be biased.

(ii) The scribe had testified that the Will

was signed by Labhu with same pen but ink indicated that pen was different.

(iii) There was inconsistency in testimony of the scribe and the attesting witness.

(iv) The opinion of Handwriting Expert PW-7 Shri S.K. Saxena, Government Examiner was on record which created serious doubt about the genuineness of the Will.

(v) The scribe was resident of a village two kilometers away from the village of the testator. Whereas there were literate person available in the same village.

(vi) There was contradiction where the Will was actually scribed at the ground floor or the first floor.

(vii) However, Court acted as expert and

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had opined that the signature appears to be imitation of the admitted signatures.

We have heard learned counsel for the parties and considered the judgment passed by the first appellate court/trial court as well as that of the High Court. In our opinion, it was not open to the High Court to disturb the concurrent finding and in the method and manner it has been done. The High Court ought to have considered the evidentiary value of the expert reports submitted by experts examined by both the parties which has not been done. The report of the expert examined by defendants had been brushed aside only on the ground that expert examined by a party could not be treated as independent expert. The correctness of report of Government Examiner (PW7) has also not been adjudged. The Court had acted as expert itself which is hazardous exercise for the court not being an expert to compare the signature and court has entered into that arena without examining the correctness of reports of Hand Writing Experts. On this ground alone the judgment of the High Court

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cannot be said to be sustainable.

Apart from that what were contradictions in the statement of scribe and attesting witness had not been referred to. The reason adopted to rely on witnesses by the first appellate court was that they were respectable person of the village being Lambardar and Uppradhan. There was no reason for them to speak a lie. Will had been signed by which pen is not very material contradiction as the witness had deposed after lapse of time in the court as such there could be such minor discrepancy. It could also not be a substantial ground that a person had been summoned to scribe document who was residing at a village two kms. away and whereas literate persons were available in the village itself when Will had been executed, without examining evidentiary value of deposition it was not proper to discard the same only on the aforesaid ground. Minor discrepancies have been given undue importance. The various reasons given by the trial court and the first appellate court had not been adverted to by the High Court. The

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High Court had reversed the judgment and decree of the two courts without finding perversity in

appreciation of evidence. Hence, we set aside the judgment and decree passed by the High Court and remit the case back to the High Court to examine the appeal afresh in accordance with law. In case the High Court decide again to reverse the judgment and decree, it would be its bounden duty to access evidence and give the reasons for disbelieving witnesses considering reasoning given by the two courts below and also to consider the scope of interference within the parameters of Section 100 of the Code of Civil Procedure, 1908. Appeal is accordingly allowed. We remit the matter to the High Court for decision afresh in accordance with law after hearing the parties. We make it clear that we have not expressed any opinion on the merits of the case. No costs.

.....J.

(ARUN MISHRA)

.....J.

(AMITAVA ROY)

NEW DELHI;
MAY 02, 2017.