

P
ITEM NO.1B
(For Jt.)

COURT NO.7

SECTION XIIA

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). 647 OF 2005

GARRE MALLIKHARJUNA RAO (D)BY LRS.& ORS. Appellant (s)

VERSUS

NALABOTHU PUNNIAH Respondent(s)

Date: 12/03/2013 This Appeal was called on for judgment today.

For Appellant(s)

Mr. Venkateswara Rao Anumolu,Adv.

For Respondent(s)

Mr. D. Mahesh Babu,Adv.

Hon'ble Dr. Justice B.S.Chauhan pronounced the judgment of the Bench comprising of His Lordship and Hon'ble Mr. Justice Fakkir Mohamed Ibrahim Kalifulla.

The appeal succeeds and is allowed. The impugned judgment is hereby set aside. The judgment and decree of the Trial Court is restored i.e. the suit filed by the respondent/plaintiff is dismissed. No costs.

[SUMAN WADHWA]
COURT MASTER

[S.S.R. KRISHNA]
COURT MASTER

Signed Non-Reportable judgment is placed on the file.

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 647 OF 2005

Garre Mallikharjuna Rao (D) by Lrs. & Ors.
...Appellants

Versus

Nalabothu Punniah
...Respondent

J U D G M E N T

Dr. B. S. CHAUHAN, J.

1. This appeal has been preferred against the impugned judgment and order dated 19.7.2002 passed by the High Court of Judicature of Andhra Pradesh at Hyderabad in Appeal No. 676 of 1993, which had set aside the judgment of the trial court, wherein the suit filed by the respondent for specific performance has been dismissed vide judgment and decree dated 9.11.1992 in O.S. No. 117 of 1983.

2. The facts and circumstances giving rise to this appeal are:

A. That the respondent/plaintiff filed two suits O.S. No. 117 of 1983 and O.S. No. 257 of 1984, seeking specific performance on the basis of agreement to sell entered into with the appellant. As per the averments made by the respondent/plaintiff, late Garre Venkata Ramakotaiah, father of the defendant Garre Mallikharjuna, had leased out the plaint scheduled properties on 29.4.1980, by way of lease deed dated 20.4.1980. The respondent/plaintiff on the basis of the lease deed, had claimed to be in continuous possession and enjoyment of the said properties. The defendant having filed the written statement, died pendentelite, thus his wife, son and daughter had been substituted as his legal representatives. They defended the suit contending that the plaint was based on false and fabricated document. Further, they claimed that the agreement to sell, alleged to have been executed by the father of the defendant, was a fabricated document and that the signature of defendant shown therein as an attesting witness, had also been forged. Thus, the suit may be dismissed.

B. After conclusion of the trial, the trial court had dismissed the Original Suit No. 117 of 1983 by a judgment and decree dated 9.11.1992.

C. So far as the other suit was concerned, wherein the agreement to sell had been executed by the defendant himself, it was decreed and in pursuance thereof, the sale deed was executed. The appellant/defendant had shown no objection in respect of the same.

D. Aggrieved, the respondent/plaintiff preferred Appeal No. 676 of 1993 before the High Court against the order of dismissal of Original Suit No. 117 of 1983, and vide impugned judgment and order, the suit was decreed and the appellant/defendant was directed to execute a sale deed in respect of land admeasuring 4.38 acres for a consideration of Rs.30,000/-, out of which the respondent/plaintiff had already paid Rs.28,000/- to the father of the defendant.

Hence, this appeal.

3. Shri Sanjeev Kumar, learned counsel appearing on behalf of the appellant, has submitted that the High Court has erred in relying upon the evidence of the hand-writing expert Shri Y. Sidda Reddy (PW-4). Though, the trial court has disbelieved his version, it is pertinent to note that he had categorically stated that the signatures on the agreement to sell did not tally with the specimen signatures of the defendant i.e. as an attesting witness. More so, Shri Syed Syda Saheb (PW-3), Scribe, has clearly deposed before the trial court that he did not meet the vendor or his son. Attesting witness PW-2 has admitted only his signatures on the said document, however, he denied any knowledge as to its contents. Also he has deposed that he had agreed to be a witness to the said deed, out of compulsion as the respondent/plaintiff was a hardened criminal, involved in various murders cases. More so, the respondent/plaintiff himself has raised mutually inconsistent pleas inasmuch as he has submitted that in the agreement to sell, time period of 4 months had been fixed to execute the sale deed, while in his deposition, he had deposed that the sale deed was to be executed only after the expiry of the term period of the lease. In view of above, the High Court ought not to have reversed the well reasoned judgment and decree of the trial court which had the opportunity to see the demeanor of the witnesses itself. Thus, the appeal deserves to be allowed.

4. Per contra, Shri R. Anand Padvanan, learned counsel appearing on behalf of the respondent/plaintiff, has submitted that both the families had known each other since long. The respondent/plaintiff had purchased the land from the defendant's father in the year 1961, 1969 and 1974 and, in furtherance thereof, the defendant's father had executed two agreements for sale. Also, in respect of one of the agreements after the trial court had decreed the suit of specific performance in his favour, the appellant/defendant did not even challenge the order. The High Court has rightly reversed the judgment of the trial court placing reliance on the evidence of the hand-

writing expert PW-4. Thus, the appeal is liable to be dismissed.

5. We have considered the rival submissions made by the learned counsel for the parties and perused the records.

6. Whatever may be the legal position involved in this case, the facts as pleaded and proved before the courts below, are far from being satisfactory. The respondent/plaintiff who has examined himself as PW-1 has raised mutually inconsistent pleas, as is evident from the pleadings in the plaint wherein he had stated that it has been agreed that the sale deed would be executed within a period of 4 months, however, in his deposition, he has stated that the sale deeds were agreed to be executed only after the expiry of the term of the lease. The agreement to sell has been transcribed on the non-judicial stamp paper, though not registered. Admittedly, the said stamp paper had been purchased 11 months prior to the date mentioned in the agreement for sale. More so, it had been purchased from a different place. Further, there is nothing on record to show as in whose name, the non-judicial stamp paper had been purchased and who had purchased it.

7. PW-2 has deposed that he had put his signatures on the agreement to sell, however, he had stated that he did not know the contents of the said agreement, and he had put his signatures only under compulsion as the respondent/plaintiff was a hardened criminal and had been involved in various murders cases.

8. PW-3, who was the scribe, has clearly deposed that he had neither known who the vendor was, nor his son, nor who were the attesting witness. He was an unlicensed deed writer and the relevant part of his deposition as referred by the trial court is as under:

"PW3 did not say in his evidence that Ramakotaiah and other attester signed in his presence and he does not know Ramakotaiah previously."

In view of the above, there can be no doubt that the said PW-3 could neither be an attester, nor an eye-witness to the transaction.

9. Shri Y. Sidda Reddy (PW-4) in his deposition has clearly stated that he did not see the original documents since he was given only the photos of the admitted documents and the specimen signatures. He has explained that there was difference in formation of the same as under:

"There is some difference in formation of letter vralu between S-1 and Q-1. There is angle formation. In the letter Ta on the left side bottom in Q-1 whereas it is a curve in S.1. There is long curve at the end of the letter ma in S-1 than Q-1. There is some natural variation in the formation of Kravadi given to the letter Re between Q-1 and S1. The letter Va in Q-1 shows some slight right plant than S-1 whereas it is vertical in S-1. There is slight spacing difference between letters in S-1 and Q-1. Letters to letter there are some variation but in natural variation."

Further, he had opined that both the signatures are not of the same persons as "intention to disguise the natural characteristics of signatures" existed. Further he had stated that he had not mentioned that Q-2 and S-2 i.e. the admitted and specimen signatures were written by the same person, both the signatures were different in formation.

10. The evidence of PW-5, who is a mortgagee of the respondent/plaintiff and claimed to have advanced certain amount, is not relevant for proving any of the documents, neither is PW-6, who was the photographer, who had taken the photographs of the admitted and specimen signatures.

11. In Ajay Kumar Parmar v. State of Rajasthan, AIR 2013 SC 633, while dealing with the provisions of Section 73 of the Indian Evidence Act, 1872, this Court observed that courts, should be slow to base its findings solely on comparison made by it. The Court further held:

"The opinion or a handwriting expert is fallible/liable to error like that of any other witness, and yet, it cannot be brushed aside as useless. There is no legal bar to prevent the Court from comparing signatures or handwriting, by using its own eyes to compare the disputed writing with the admitted writing and then from applying its own observation to prove the said handwritings to be the same or different, as the case may be, but in doing so, the Court cannot itself become an expert in this regard and must refrain from playing the role of an expert, for the simple reason that the opinion of the Court may also not be conclusive. Therefore, when the Court takes such a task upon itself, and findings are recorded solely on the basis of comparison of signatures or handwritings, the Court must keep in mind the risk involved, as the opinion formed by the Court may not be conclusive and is susceptible to error, especially when the exercise is conducted by one, not conversant with the subject. The Court, therefore, as a matter of prudence and caution should hesitate or be slow to base its findings solely upon the comparison made by it. However, where there is an opinion whether of an expert, or of any witness, the Court may then apply its own observation by comparing the signatures, or handwritings for providing a decisive weight or influence to its decision."

12. The judgment and order of the trial court is based on proper appreciation of the evidence. The High Court has erred in relying upon untrustworthy, shaky and vague evidence to grant the discretionary relief of specific performance in contravention of the mandate of Section 20 of the Specific Relief Act, 1963.

In view of the above, the appeal succeeds and is allowed. The impugned judgment is hereby set aside. The judgment and decree of the Trial Court is restored i.e. the suit filed by the respondent/plaintiff is dismissed. No costs.

.....J.
(Dr. B.S. Chauhan)

.....J.
(Fakkir Mohamed Ibrahim Kalifulla)

New
March 12, 2013

Delhi;