

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.6898/1999

Gangamma and Ors. Appellant (s)

vs.

Shivalingaiah Respondent (s)
(With Appl.(s) for directions and recording Abatement and with office report)

Date:21/7/2004 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.B.SINHA
HON'BLE MR. JUSTICE S.H.KAPADIA

For Appellant (s) Mr. S.N. Bhat,Adv.

For Respondent (s) Ms. Vandana Zalan,Adv.
Mr. P.R. Ramasesh,Adv.

UPON hearing counsel the Court made the following

O R D E R

Application for directions and recording abatement is allowed.
The appeal is allowed in terms of the signed order.

(Sarojbala)(Kanwal Singh)

PA to Addl.Registrar

Court Master

(The signed order is placed on the file)

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.6898 OF 1999

Gangamma and Ors. Appellant(s)

Vs. Shivalingaiah Respondent(s)

O R D E R

This appeal arises out of a judgment dated 14.8.1998 passed by the High Court of Karnataka, Bangalore in R.S.A. No. 205 of 1995, which was filed under Section 100 of the Code of Civil Procedure (CPC) against the judgment and decree dated 17.8.1994 passed in R.A. 38 of 1990 on the file of the Civil Judge, Tarikere dismissing the appeal and thus affirming the judgment and decree passed by the Munsiff, Tarikere in O.S. No. 23 of 1985 dated 3.3.1990.

The plaintiff-respondent filed a suit for declaration of his title over the lands in suit. A sale deed dated 12.4.1940 was executed by one Mahalingaiah, father of defendant no.3. The contention of the defendant-appellant in the said suit, inter alia, was that the purported sale deed executed by Mahalingaiah in favour of minor Shivalingaiah represented by his father and guardian Muralasiddaiah was a sham and nominal transaction. The learned Trial Court dismissed the suit. The First Appellate Court also dismissed the appeal preferred thereagainst by the first respondent herein. However, a second appeal was preferred by the first respondent against the aforementioned judgment and decree passed by the First Appellate Court before the High Court of Karnataka. The said appeal had been allowed by the impugned judgment whereby and where under the concurrent findings of fact recorded by the courts below have been set aside. The High Court in its impugned judgment upon noticing the pleadings of the parties as also their respective contentions formulated the following substantial question of law for its determination :

"When the registered sale deed of the property in question in favour of the plaintiff being an ancient document of more than 30 years old when there is a legal presumption regarding the authenticity of the recitals therein, can a plea contrary to the recitals therein viz; that is a nominal one and not for consideration can be taken and whether the evidence led in is sufficient to disprove the recitals therein."

By reason of the impugned judgment, the High court while reversing the judgment and decree passed by the Trial Court and the First Appellate Court, inter alia, held that having regard to the provisions contained in Sections 90 and 91 of the Indian Evidence Act, 1872, the suit of the plaintiff-respondent should have been decreed.

The High Court did not enter into the question as to whether the evidence led by the appellant herein was sufficient to disprove the recitals therein.

Mr. S.N. Bhat, learned counsel appearing for the appellants, submitted that the High Court has committed a serious error of law in passing the impugned judgment. It was urged that the plea to the effect that the sale deed obtained by the Karta of the family in the name of the plaintiff who was a minor was a sham transaction was available to the defendant.

We agree with the learned counsel. The purported substantial question of law was formulated by the High Court on a wrong premise. Section 90 of the Indian Evidence Act has been misconstrued and misinterpreted by the High Court. Section 90 of the Indian Evidence Act reads as under :

"90. Presumption as to documents thirty years old - Where any document, purporting or proved to be thirty years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the signature and every other part of such document, which purports to be in the handwriting of any particular person, is in that person's handwriting, and, in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested."

A bare perusal of the aforementioned provision would clearly go to show that in terms thereof merely a presumption is raised to the effect that signature and every other part of such document, which purports to be in the handwriting of any particular person, is in that person's handwriting and in the case of a document is attested, the same was executed and attested by the person by whom it purports to be executed and attested.

Section 90 of the Indian Evidence Act nowhere provides that in terms thereof the authenticity of the recitals contained in any document is presumed to be correct. The High Court, therefore, committed a manifest error of law in interpreting the provision of Section 90 of the Indian Evidence Act and, thus, fell into an error in formulating the substantial question of law.

As the purported substantial question of law was formulated on a wrong reading of Section 90 of the Indian Evidence Act, the impugned judgment cannot be sustained. We may furthermore notice that even if a formal execution of a document is proved, the same by itself cannot lead to a presumption that the recitals contained therein are also correct. The mere execution of a document, in other words, does not lead to the conclusion that the recitals made therein are correct and subject to the statutory provisions contained in Sections 91 and 92 of the Code of Civil Procedure, it is open to the parties to raise a plea contra.

This appeal is therefore, allowed and the judgment and order passed by the High Court is set aside and the matter is

remitted to the High Court for proceeding with the case upon formulation of substantial question(s) of law, if any. In the facts and circumstances of the case, there shall be no order as to costs.

Application for directions and recording abatement is allowed.

.....J.
(S.B.SINHA)

.....J.
(S.H KAPADIA)

NEW DELHI
JULY 21, 2004.