

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1760 OF 2009

V. ANANTHA RAMASUBRAMANIAM @ V.A.
SUBRAMANIAM AND ANOTHER

APPELLANT(S)

VERSUS

M.N. RAMALINGAM

RESPONDENT(S)

O R D E R

The plaintiffs in the suit, out of which proceedings arise, are two brothers V. Anantha Ramasubramaniam and V. Krishnan. The land which is subject matter of dispute was owned by the second plaintiff V. Krishnan. He sold the land to the defendant M.N. Ramalingam vide registered sale deed dated 09.12.1985.

Thereafter, it appears that these two brothers wanted to purchase the property back from the defendant. Pursuant to such plan a power of attorney (Ext.A-1) was executed by plaintiff no.2 in favour of plaintiff no.1 on 15.05.1989 authorising him to deal with the land in question. On 09.06.1989, the defendant entered into an agreement (Ex.A-2) agreeing to sell the land jointly in

favour of the plaintiffs for a sum of Rs.75,000/- out of which Rs.5,000/- was paid. Time for execution of sale deed was fixed as 24.06.1989. According to the plaintiffs, they sent a notice dated 29.07.1989 to the defendant to execute the sale deed but no reply was given by the defendant. Again on 18.11.1989, the plaintiffs sent a notice which was reported to be unclaimed. Thereafter, on 03.12.1990 a suit was filed for specific performance of the contract. According to the plaintiffs, they had always been ready and willing to perform their part of the contract.

Written statement was filed by the defendant on 12.06.1991. The specific stand taken by the defendant is that defendant had come to know that the plaintiffs were not wanting the land for themselves but were, in fact, wanting to purchase the land with a view to sell it to some other person at a higher price and, therefore, he contacted the plaintiff no.2 who executed an agreement (Ext.B-1) on 30.08.1989 relinquishing his rights to which he was entitled under the agreement (Ext.A-2) in favour of the defendant.

In the suit the parties led evidence. The statement of plaintiff no.1 was recorded on 21.08.1996 and he was cross-examined on 22.01.1997 i.e. more than six years after filing of the suit. DW-1 was examined on 19.02.1997

and it was only a few days before that on 13.02.1997 the document Ext.B-1 and another document Ext.B-2, to which we shall refer later on, were filed. DW-1 was cross-examined with regard to Ext.B-1 and specific suggestion was put to him, which he obviously denied, that no such agreement was executed by V. Krishnan and the said agreement did not bear the signatures of V. Krishnan.

The Trial Court did not place any reliance on the said agreement for various reasons; one of the reasons being that the agreement had been filed at a highly belated stage; the second reason being that the plaintiffs had not been confronted with the agreement and thirdly the Trial Court also compared the signatures in terms of Section 73 of the Indian Evidence Act and came to the conclusion that the signatures of plaintiff no.2 on the said agreement did not match with the signatures on the power of attorney (Ext.A-1). The appeal filed by the defendant was dismissed. Thereafter, the defendant approached the High Court. The High Court set aside the concurrent findings of fact of both the Courts below only on the ground that the Trial Court erred in comparing the signatures and according to the High Court the Trial Court erred in relying upon its ocular examination of signatures to come to the conclusion that the signatures are not of V. Krishnan. According to the High Court and rightly so, the Trial Court is not an expert in

handwriting.

In our view, the High Court made an error in discarding the other documents and evidence which were taken into consideration by both the Trial Court and the First Appellate Court. The Code of Civil Procedure requires that all documents should be filed along with the pleadings. At the most and with permission of the Court, they can be filed before framing of issues. The purpose is that parties should be aware of the documents relied on by the other side.

In this case, when the plaintiffs appeared in the witness box, the document (Ext.B-1) was not shown to him. The important question that arises is - why was the document, which was admittedly in possession of the defendant, withheld from the Court at that stage? Both the Trial Court and the First Appellate Court rightly held that this was done with the purpose of avoiding to confront PW-1 with the document. We may also note that Ext.B-2 is a letter dated 04.08.1996, allegedly written by plaintiff no.2-V. Krishnan, confirming that he had executed the agreement Ext.B-1. This letter indicates that V. Krishnan had relinquished his rights. There is no answer to our query why notice for admission and denial of documents, Ext.B-1 and B-2, was not sent to V. Krishnan, who was plaintiff no.2 in that suit and why no

effort was made to summon him in the witness box.

It is true that normally the opposite party is not summoned as a witness but in the present case, according to the defendant, the plaintiff no.2 had entered into an agreement relinquishing his right in favour of the defendant and furthermore had confirmed this by a letter. Therefore, plaintiff no.2, in the eyes of the defendant, was not an opposite party but a witness supporting him. The statement of V. Krishnan would have been the best evidence. This was the best piece of evidence. That evidence having not been examined, an adverse inference would have to be drawn against the defendant.

The High Court, in fact, erred in drawing an adverse inference against the plaintiff no.1 and put the burden on him to examine V. Krishnan. The document (Ext.B-1), set up by the defendant, was produced by him after the plaintiffs' evidence was over and the adverse inference has been drawn against the plaintiffs.

We are of the considered view that the High Court overstepped the jurisdiction vested in it under Section 100 of the Code of Civil Procedure by interfering in concurrent findings of fact recorded by two Courts. These findings could not by any stretch of imagination be said to be perverse. In fact, according to us these findings

were absolutely correct. We, accordingly, allow the appeal, set aside the judgment of the High Court and restore the judgment of the Trial Court and that of the First Appellate Court.

.....J.
(DEEPAK GUPTA)

.....J.
(ANIRUDDHA BOSE)

New Delhi
August 28, 2019

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).1760/2009

V.ANANTHA RAMASUBRAMANIAM @ V.A.SUBRAMANIAM & ANR. Appellant(s)

VERSUS

M.N.RAMALINGAM

Respondent(s)

Date : 28-08-2019 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DEEPAK GUPTA
HON'BLE MR. JUSTICE ANIRUDDHA BOSE

For Appellant(s)

Mr. S. N. Bhat, AOR

For Respondent(s)

Mr. Sriram Parakkaj, Adv.
Mr. B. Ragunath, Adv.
Mr. P. Arun Kumar, Adv.
Mr. M.S. Vishu S., Adv.
Mr. Vijay Kumar, AOR

UPON hearing the counsel the Court made the following
O R D E R

The appeal is allowed in terms of the signed order.

Pending application(s), if any, stands disposed of.

(ARJUN BISHT)
COURT MASTER (SH)

(R.S. NARAYANAN)
COURT MASTER (NSH)

(signed order is placed on the file)