REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.7818-7819 OF 2009

Chennadi Jalapathi Reddy .....Appellant

Versus

Baddam Pratapa Reddy (Dead)
Thr Lrs. & Anr. .....Respondents

J U D G M E N T

MOHAN M. SHANTANAGOUDAR, J.

These appeals are directed against the impugned judgment dated 12.06.2008 passed by the High Court of Andhra Pradesh at Hyderabad in Appeal Suit No. 1404 of 2004 and Cross-Objection (SR) No. 50168 of 2004.

2. By the impugned judgment, the High Court has reversed the judgment of the Trial Court dated 05.12.2003 passed by the IIIrd Additional District Judge at Karimnagar in O.S. No. 91 of 1996, in which the Trial Court had decreed the suit.

3. A suit for specific performance was filed by the plaintiff, Chennadi Jalapathi Reddy (the appellant herein) in respect of the

agreement of sale dated 20.04.1993 pertaining to House No. 1-5-266 (new) situated at Kaman Road, Karimnagar. It is his case that the first defendant in the suit, Baddam Pratapa Reddy (the first respondent herein, now deceased) agreed to sell the suit schedule house in his favour; that he was always ready and willing to perform his part of the contract; and though he had sufficient money to get the sale deed registered and had brought the availability of money to the notice of the first defendant, the latter did not execute the sale deed in his favour. The first defendant and his brother, Baddam Ram Reddy, sold their respective shares in the suit house in favour of the second defendant, Neethi Satyanarayana (the second respondent herein) after execution of the agreement of sale in favour of the plaintiff. The suit was initially filed against the first defendant. The second defendant was impleaded subsequently. It is relevant to note here that the plaintiff purchased half of the suit property from the second defendant after the impugned judgment was passed by the High Court.

The defendants in their written statement denied the case of the plaintiff, specifically alleging that the agreement of sale is forged.

On evaluation of the material on record, the Trial Court decreed the suit. Vide the impugned judgment, the High Court dismissed the suit and disposed of the appeal and cross-objections arising out of the judgment of the Trial Court. Hence, the instant appeals have been preferred before this Court.

4. During the trial, the agreement of sale Ext. A-1 was sent for obtaining expert opinion on the genuineness of the signature of the first defendant thereon. DW-2 is the expert who examined it and his report is at Ext. B-2. He opined that the admitted signatures of the first defendant and the disputed signature do not tally, thereby meaning that it is forged. The Trial Court considered this expert opinion, but preferred not to rely on it, inasmuch as it ruled that the expert opinion was not corroborated by any reliable evidence. It also held that the evidence of the attesting witnesses (PWs 2 and 3) is cogent and reliable, and there is no reason why their evidence should be disbelieved to give way to the expert opinion.

Per contra, the High Court solely relied upon the expert opinion and dismissed the suit by concluding that the signature of the first defendant on the agreement of sale Ext. A-1 is forged.

5. From the discussion of the High Court in arriving at this conclusion, we find that it has not assigned any valid reason for disbelieving the attesting witnesses PWs 2 and 3. In fact, with respect to their evidence, the High Court made certain observations which are against the evidence on record. Similarly, with respect to PW-1, the High Court observed that he had not deposed as to the presence of the third attestor, Krishna Murthy, at the time of execution of the agreement of sale. However, it is clear from the evidence of PW-1 that he has specifically deposed about the presence of Krishna Murthy at that time. It was also wrongly observed by the High Court that PWs 1 and 2 are silent as to the time and place of the execution of the agreement. However, in his examination-in-chief, PW-2 has clarified that the first defendant executed this agreement at the suit schedule house, at a time when he was residing there and the plaintiff was residing in the western side of the house, etc. From the aforementioned facts, it is clear that the High Court disbelieved

the evidence of the plaintiff (PW1) and the attestors (PWs 2 and 3) on mere assumptions and wrong reasons.

6. In any case, to satisfy our conscience, we have gone through the evidence of PWs 1, 2, and 3. As rightly observed by the Trial Court, there is no reason to disbelieve these witnesses, whose evidence is consistent, cogent, and reliable. Though they were subjected to lengthy cross-examination, nothing noteworthy has been brought out from their deposition to discard their evidence. Thus, the evidence of PWs 1, 2, and 3 fully supports the case of the plaintiff and in our considered opinion, the High Court was not justified in rejecting their evidence.

7. As mentioned supra, the High Court mainly relied upon the opinion evidence of DW-2, the handwriting expert, who opined that the signature of the first defendant on the agreement of sale Ext. A-1 did not tally with his admitted signatures.

8. By now, it is well-settled that the Court must be cautious while evaluating expert evidence, which is a weak type of evidence and not substantive in nature. It is also settled that it may not be safe to solely rely upon such evidence, and the Court may seek independent and reliable corroboration in the facts of a

given case. Generally, mere expert evidence as to a fact is not regarded as conclusive proof of it. In this respect, reference may be made to a long line of precedents that includes ***Ram Chandra and Ram Bharosey* v. *State of Uttar Pradesh***, AIR 1957 SC 381, ***Shashi Kumar Banerjee* v. *Subodh Kumar Banerjee***, AIR 1964 SC 529, ***Magan Bihari Lal* v. *State of Punjab***, (1977) 2 SCC 210, and ***S. Gopal Reddy* v. *State of Andhra Pradesh***, (1996) 4 SCC 596.

We may particularly refer to the decision of the Constitution Bench of this Court in ***Shashi Kumar Banerjee*** (supra), where it was observed that the evidence of a handwriting expert can rarely be given precedence over substantive evidence. In the said case, the Court chose to disregard the testimony of the handwriting expert as to the disputed signature of the testator of a Will, finding such evidence to be inconclusive. The Court instead relied on the clear testimony of the two attesting witnesses as well as the circumstances surrounding the execution of the Will.

9. On the other hand, in ***Murari Lal* v. *State of Madhya Pradesh***, (1980) 1 SCC 704, this Court emphasised that reliance

on expert testimony cannot be precluded merely because it is not corroborated by independent evidence, though the Court must still approach such evidence with caution and determine its creditworthiness after considering all other relevant evidence. After examining the decisions referred to supra, the Court was of the opinion that these decisions merely laid down a rule of caution, and there is no legal rule that mandates corroboration of the opinion evidence of a handwriting expert. At the same time, the Court noted that Section 46 of the Indian Evidence Act, 1872 (*hereinafter* "the Evidence Act") expressly makes opinion evidence open to challenge on facts.

In ***Alamgir* v. *State (NCT, Delhi)***, (2003) 1 SCC 21, without referring to Section 46 of the Evidence Act, this Court reiterated the observations in ***Murari Lal*** (supra) and stressed that the Court must exercise due care and caution while determining the creditworthiness of expert evidence.

10. In our considered opinion, the decisions in ***Murari Lal*** (supra) and ***Alamgir*** (supra) strengthen the proposition that it is the duty of the Court to approach opinion evidence cautiously while determining its reliability and that the Court may seek

independent corroboration of such evidence as a general rule of prudence. Clearly, these observations in ***Murari Lal*** (supra) and ***Alamgir*** (supra) do not go against the proposition stated in ***Shashi Kumar Banerjee*** (supra) that the evidence of a handwriting expert should rarely be given precedence over substantive evidence.

11. In light of these principles, it is necessary to evaluate the correctness of the findings of the High Court as to the genuineness of the signature of the first defendant on Ext. A-1.

12. As mentioned earlier, Ext. A-1 is the agreement of sale entered into by the plaintiff and the first defendant. Ext. A-2 is the receipt evidencing the payment of earnest money of Rs. 61,200/- in pursuance of this agreement of sale. The receipt bears the signature of the first defendant on the revenue stamps affixed thereon. Curiously, Ext. A-2 was not sent for obtaining expert opinion. At the same time, no reliable material was brought on record that the first defendant has not received the amount under Ext. A-2. In the absence of any challenge to the first defendant's signature on Ext. A-2, and in the absence of any reliable material produced by the first defendant to deny the

receipt of such earnest money, the High Court, in our considered opinion, should have relied upon this receipt. In fact, we find that the High Court has not considered Ext. A-2 in its entire judgment. As a matter of fact, Ext. A-1 and Ext. A-2 go hand in hand, and Ext. A-2 should not have been ignored by the High Court.

Moreover, merely because the plaintiff's signature was not present on the agreement of sale, this would not ipso facto nullify the agreement altogether. This is because the agreement was signed by the first defendant and clearly reveals that he had agreed to sell the property to the plaintiff for a due consideration of Rs. 1,20,000/-. This agreement was followed by Ext. A-2, which shows the payment and receipt of the earnest money. In addition to the signature of the first defendant, this receipt bears the signature of the plaintiff on revenue stamps. As mentioned earlier, Ext. A-1 and Ext. A-2 are part of the same transaction. Thus, the contention that absence of the plaintiff's signature on Ext. A-1 nullifies the agreement altogether, cannot be accepted.

In addition to this, the evidence of DW-3 (the brother of the first defendant) belies the allegation of the first defendant that

the signature found on Ext. A-1 is forged. DW-3 specifically admitted during his cross-examination that he could identify the signature of the first defendant, who is his elder brother. He has further admitted that Ext. A-1 and Ext. B-1 bears the signature of the first defendant. It may be noted here that a partition had taken place between the first defendant and DW-3 in the year 1980, and such partition was effected through Ext. B-1, an unregistered partition deed. Crucially, the first defendant has also admitted his signature on Ext. B-1 in his cross-examination. Thus, it is clear that such admitted signature and the disputed signature of the first defendant have been identified by his brother as those of the first defendant himself.

13. Undoubtedly, the opinion of a handwriting expert is a relevant fact under Section 45 of the Evidence Act. Under Section 47 of the Evidence Act, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed is also a relevant fact.

Per the explanation to Section 47 of the Evidence Act, 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 purported 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 that person have been habitually submitted to him.

14. A reading of Section 47 of the Evidence Act makes it clear that this provision is concerned with the *relevance* of the opinion of a person who is acquainted with the handwriting of another person. The Explanation to this Section goes on to enumerate the circumstances in which a person may be said to have such acquaintance.

In the matter at hand, DW-3, in his cross-examination, has identified the disputed signature of the first defendant (his elder brother) on Ext. A-1. He also stated that the suit schedule house was constructed when he was 25 years old; a partition was effected in 1980, after which he and the first defendant occupied their respective shares in the house; and that he finally sold his share in 1996 (when he was aged about 58 years). This goes on to show that DW-3 lived and resided with the first defendant in the same house for over three decades. Moreover, as mentioned

earlier, DW-3 identified the first defendant's signature on Ext. B-1 (the partition deed), which has been admitted by the first defendant himself. In light of this, and given that DW-3 came in to support the case of his brother, the first defendant before the Court, it can be inferred that their relations were cordial even after partition and that DW-3 would have seen the latter write on multiple occasions in normal course of family affair. Thus, it is clear that, he was acquainted with the handwriting of the first defendant in terms of the Explanation to Section 47 of the Evidence Act. This makes his opinion as to the disputed handwriting a relevant fact under Section 47.

At this juncture, it would be apposite to observe that the *weight* to be accorded to such an opinion depends on the extent of familiarity shown by the witness with the disputed handwriting. This, in turn, depends on the frequency with which the witness has had occasion to notice and observe the handwriting, his own power of observation, and how recent such observations were. In light of the facts discussed above, which go on to show the familiarity of DW-3 with the handwriting of the first defendant, we conclude that the testimony of DW-3 may

safely be relied upon, and must be accorded similar, if not greater, weight than the expert evidence adduced by the defendants to advance their case. This conclusion is further strengthened by the fact that the first defendant neither challenged DW-3's admission nor his acquaintance with the disputed handwriting, although it was open for him to do so by way of re-examination.

15. The admission by DW-3 is further supported by the cogent and consistent testimony of the plaintiff (PW-1) and attesting witnesses (PWs 2 and 3), and the fact that the first defendant has not denied his signature on Ext. A-2 (the receipt of payment of earnest money). Having regard to the totality of the facts and circumstances, we conclude that the disputed signature of the first defendant on Ext. A-1 is genuine. Moreover, keeping in mind the principle that expert evidence should not be given precedence over substantive evidence, in our considered opinion, the High Court was not justified in giving precedence to the opinion of the expert (DW-2) and solely relying upon his testimony to set aside the judgment and decree of the Trial Court.

In any case, to satisfy our conscience, we have examined the admitted and disputed signatures ourselves, and find that the signatures are virtually the same. However, in this case, it is unnecessary for us to rely on our own comparison in light of the material on record, as discussed above. We hasten to emphasize that we have not been prejudiced by our own comparison in appreciating the evidence and reaching our conclusion.

16. There is another reason why we are not inclined to place reliance on the opinion of the expert DW-2. From a perusal of his report Ext. B-2, it is evident that barring the signature on a written statement in a prior suit, all other admitted signatures of the first defendant are of a period subsequent to the filing of the plaint (i.e. on the vakalatnama and the written statement filed in this suit itself). These admitted signatures taken subsequent to the filing of the suit could not have been used as a valid basis of comparison, and their use for this purpose casts serious doubt on the reliability of the entire report Ext. B-2. Thus, the report was liable to be discarded on this ground alone, and was wrongly relied upon by the High Court.

17. Moreover, the High Court has wrongly observed that the plaintiff has not produced any evidence to prove that he demanded the performance of sale after the execution of the agreement of sale. The filing of a suit for specific performance of an agreement of sale is governed by Section 16(c) of the Specific Relief Act, 1963, read with Article 54 of the Schedule of the Limitation Act, 1963. In addition to this, Forms 47 and 48 of Appendix A of the Code of Civil Procedure, 1908 prescribe the format of the plaint for such a suit. Thus, a plaint which seeks the relief of specific performance of an agreement/contract must comply with all these requirements. In the matter at hand, the plaintiff has specifically averred in his plaint that he was ready and willing to perform his part of the contract under the agreement of sale dated 20.04.1993. It was also specifically stated that the plaintiff had been demanding that the first defendant receive the balance consideration of Rs. 58,800/- and execute a regular registered sale deed at his cost, but the first defendant had been avoiding the specific performance of the agreement of sale. In light of this, in our considered opinion, all the formalities which are to be pleaded and proved by the plaintiff for getting a decree of specific performance have been fulfilled.

Moreover, there cannot be any proof of oral demand. Be that as it may, we are satisfied from the evidence that the plaintiff had sufficient money to pay the balance consideration to the first defendant and was ready and willing to perform his part of the contract.

18. In view of the aforementioned reasons, the impugned judgment of the High Court is liable to be set aside. Accordingly, the judgment and decree passed by the Trial Court stands restored. The appeals are allowed accordingly.

.....J.
(N.V. Ramana)

.....J.
(Mohan M. Shantanagoudar)

.....J.
(Ajay Rastogi)

New Delhi;
August 27, 2019.