

(2014) 01 AP CK 0111

Andhra Pradesh High Court

Case No: Second Appeal No. 1402 of 2008

Medikonda
Venkayamma and
Another

APPELLANT

Vs

Kolakaluri Peda
Narasaiah (Died) and 4
Others

RESPONDENT

Date of Decision: Jan. 20, 2014

Citation: AIR 2014 AP 71 : (2014) 5 ALD 365 : (2014) 4 ALT 772

Hon'ble Judges: M. Seetharama Murti, J

Bench: Single Bench

Advocate: B.V. Subbaiah, for the Appellant; P.V. Mahesh Counsel for Respondent Nos. 2 and 3, for the Respondent

Final Decision: Allowed

Judgement

M. Seetharama Murti, J.

This is a second appeal by the unsuccessful plaintiffs 2 and 3 assailing the judgments respectively dated 08.09.2008 and 28.08.2003 of the learned VIII Additional District Judge, Guntur and of the learned Additional Senior Civil Judge, Narasaraopet, dismissing respectively the A.S. 195 of 2003 and O.S. 76 of 1992 filed by the sole plaintiff (since died) for Specific Performance of an agreement to sell dated 30.04.1987 and for perpetual injunction to restrain the defendant (since died) and his men from ever interfering with the possession and enjoyment of the dry land more fully described in the schedule annexed to the plaint.

1(a) At the outset, it is to be noted that at the time of admission of the second appeal, this Court framed the following substantial questions of law. (1) Whether the Courts below acted in accordance with law in requiring further proof even after admission of the documents and their contents? And (2) whether admitted facts stated in documents require any proof and, if so, what kind of proof?

1. (b) At the time of hearing, this Court had also framed the following additional substantial questions of law viz., (i) Despite the fact that Science of identifying thumb impression is an exact science and does not admit of any mistake or doubt, still, whether the Courts below are not correct in not accepting the opinion of the finger print expert, which is of vital importance and erred in rejecting exhibit-B10? And, (ii) whether the appreciation of evidence and the application of evidence to the facts marshalled as was done by the Courts below is perverse?

2. I have heard the submissions of the learned senior counsel for both the sides. I have perused the material record. The appellants are the legal representatives of the deceased sole plaintiff. The respondents are the legal representatives of the deceased sole defendant.

3. To adjudicate the lis and to answer the substantial questions of law, it is necessary to refer to, *infra*, the facts and chronology of events. The case of the plaintiff is this: "The deceased sole plaintiff had purchased under two distinct agreements to sell a total extent of Ac. 8.00 of dry land from his own brother Medikonda Guravaiah and one K. Peda Narasaiah. Medikonda Guravaiah having received the sale consideration amount for Rs. 22,000/- from the sole plaintiff had executed the agreement to sell dated 26.01.1979 and had also delivered possession of the said property under the said agreement to sell since the entire consideration was paid. Similarly, on the same day, the said K. Peda Narasaiah, the deceased/sole defendant, in the instant suit having agreed to sell the plaint schedule property for a total consideration of Rs. 22,000/- had received Rs. 10,000/- towards part of sale consideration but no written agreement was executed on the said day as only a part of sale consideration was paid to him. However, he had delivered possession of his property viz., the plaint schedule property to the sole plaintiff. Later, the balance sale consideration was paid by the sole plaintiff to the sole defendant (K. Peda Narasaiah) in two instalments and he had executed an agreement to sell dated 30.04.1987 clearly mentioning that possession was already delivered on 26.01.1979 as on that day both the vendors under the two transactions referred to above had undivided half share in the entire extent of land of Ac. 8.00. The parties being related have kept quiet for some years without execution of the registered sale deeds though entire consideration amounts were paid. Ultimately, since regular registered sale deeds were not executed pursuant to the two agreements to sell, the sole plaintiff filed the present suit against K. Peda Narasaiah and also another suit O.S. 74 of 1992 against Guravaiah, his brother. Medikonda Guravaiah had also filed a suit O.S. 318 of 1991 for declaration of title and consequential injunction in respect of his property of an extent of Ac. 4.00 against his own brother. All the three suits were tried jointly and by a common judgment dated 28.08.2003 the learned Additional Senior Civil Judge, Narasaraopeta, had dismissed the two suits viz., the present suit O.S. 76 of 1992 and O.S. 74 of 1992 which were filed by the sole plaintiff for specific performance and had partly decreed the suit OS. 318 of 1991 granting a declaration of title but, dismissing the said suit insofar as the relief of consequential injunction as obviously the said plaintiff, Guravaiah was found to

be not in possession of the property. Admittedly, the matter between Guravaiah and his brother, who is the sole plaintiff herein, was compromised and pursuant to the agreement to sell, the said Guravaiah had executed a regular registered sale deed in favour of the sole plaintiff. In the circumstances, the legal representatives of the sole plaintiff who are aggrieved of the decree of dismissal of the suit O.S. 76 of 1992 filed for specific performance against K. Peda Narasaiah had preferred A.S. 195 of 2003. However, the said appeal suit was also dismissed. Therefore, the present second appeal is filed by them." Therefore, the vitally important question is- "whether the said agreement to sell originally entered into between the deceased plaintiff and the deceased defendant on 26.01.1979 and was later reduced into writing on 30.04.1987 is true and valid and can be specifically enforced and a decree for specific performance of the said agreement to sell can be granted?" In the background of the above narrated facts and events, the said question and the substantial questions inter alia need determination and adjudication.

4. The substantial questions are now taken up.

5. (a) The introductory facts and the case, in brief, of the sole plaintiff are already stated supra.

5. (b) The sole defendant during his life time filed a written statement denying the correctness of the schedule of the property as given in the plaint and also the agreement to sell, the payment of advance consideration and the balance consideration and the execution of written agreement to sell and delivery of possession. It is further pleaded in the defence as follows: "That the defendant and Guravaiah, having purchased the properties under various sale transactions, had divided their properties after such purchases and that the defendant is in possession of the schedule property, which fell to his share, as full owner thereof. The defendant had lent money on pronote to the plaintiff and the plaintiff had failed to pay balance of the amount lent and hence the defendant had transferred the promissory note in favour of Muppalla Tripuraiah and a suit was filed for recovery of money on the file of Munsif Magistrate, Markapuram. The plaintiff has no morals. He had forged the suit agreement of sale and filed the suit with the help of his close associates. The defendant never offered to sell and never sold and never received any money from the plaintiff towards sale transaction and never executed the agreement to sell either on 30.04.1987 or any other date. The plaintiff is not entitled to the equitable relief of specific performance as he has come to court with unclean hands."

5. (c) On the strength of the above pleadings, the following issues were framed by the trial Court viz., (1) Whether the agreement of sale dated 26.01.1979 is true, valid and binding on the defendant? (2) Whether the plaintiff is entitled for specific agreement of sale dated 26.01.1979? (3) Whether the plaintiff is entitled for permanent injunction as prayed for? And, (4) To what relief?

5. (d) As already noted, a joint trial was held in all the three suits i.e. the instant suit and the other suit filed by the plaintiff against his brother for specific performance of the two

agreements to sell and also the other suit O.S. 318 of 1991 filed by the brother of the plaintiff for declaration of title and consequential injunction. As further noted, the trial Court had dismissed the two suits of the plaintiff for specific performance and partly decreed the suit of the brother of the plaintiff and granted the relief of declaration of title but refused to grant the relief of consequential injunction as obviously, the Court found that the brother of the plaintiff herein was not in possession of the schedule land. It is necessary to reiterate that the plaintiff and his brother settled the matter outside the Court and pursuant to the agreement to sell, which gave rise to the connected suit O.S. 74 of 1992, a regular registered sale deed was executed in favour of the plaintiff. Therefore, the only lis that remains to be adjudicated is the subject matter of O.S. 76 of 1992. What is to be noted is that the Court of first appeal had confirmed the judgment of the Court below insofar as O.S. 76 of 1992. Hence, the appellants (legal representatives of the deceased plaintiff) and the respondents 2 to 5 (who are the legal representatives of the deceased defendant) are before this Court.

5. (e) During the course of common trial, PWs. 1 to 6 and DWs. 1 to 13 were examined and exhibits A1 to A21 and B1 to B14 and C1 to C12 were exhibited. Since the said evidence adduced relates to the three suits tried together, it is necessary to refer to only the relevant oral and documentary evidence which is necessary to adjudicate the present second appeal. PW. 4 is the defendant in the present suit. DW. 1 is the son of the plaintiff in this suit. DW. 2 is the attesor of the exhibit B10 suit agreement. DW. 10, who is the VAO of Chinnamakkena group of villages, is the scribe of the suit agreement to sell i.e., exhibit B.10. Exhibit B.1 is the other agreement to sell between the plaintiff herein and his brother which deals with a contemporaneous transaction in respect of the other undivided half of the property. DWs. 12 and 13 are the two finger print experts who gave respective opinions in respect of exhibit B.1 agreement to sell and exhibit B.10 agreement to sell i.e. the suit agreement to sell. DW. 11 is the Secretary of Lingamguntala PACS. Exhibit B.11 is the present defendant's deposition given in O.S. 65 of 1991 which is filed for recovery of money against the plaintiff in the instant suit. Exhibit B12 is the relevant portion of the testimony in exhibit B.11. Exhibit B.13 is the copy of present defendant's deposition given in O.S. 120 of 1992 and exhibit B.14 is the relevant portion of the testimony in exhibit B.13.

5. (f) The initial onus of proof and the legal burden are on the plaintiff to establish the truth, validity and binding nature of the suit agreement to sell. Since the plaintiff was not alive as on the date of the suit, the son of plaintiff gave evidence as DW. 1 in support of the case of the plaintiff in the instant suit. As on the date of deposition in March, 2002, he is aged 35 years. The suit agreement transaction is of the year 1979. He had admitted in his cross examination that he was aged about 12 years by 26.01.1979 and that he was not present at the time of the suit agreement to sell. Therefore, his evidence in the absence of any personal knowledge of the suit transaction is not of much help and assistance. DW. 2 who is an attesor of exhibit B.10 suit agreement supported the case of the plaintiff. He had stated in his cross examination that no amount was paid to the

defendant on the date of exhibit B.10 agreement and that the suit land is in possession of the 1st defendant (plaintiff herein) since 1979. No important points are gained in the cross examination of this witness. He had thus supported the case of the plaintiff. DW. 10, who is the scribe of the exhibit B.10 suit agreement, had also supported the case of the plaintiff and he had categorically stated that he had scribed exhibit B.10 in the presence of the defendant and the attestors and that after the agreement was scribed and that after the contents were read over to the defendant, Peda Narasaiah, he took his thumb mark on exhibit B.10 in token of its execution and that, thereafter, attestors have signed the said agreement. In his cross examination he had asserted that all the persons gave instructions to scribe exhibit B10 by him and that he does not remember with which material the thumb impression was obtained on exhibit B.10. No important points are gained in the cross examination of this witness, to discard the version of this witness which supports the case of the plaintiff.

5. (g) The significantly important fact that is to be taken note of is that at the instance of the plaintiff the exhibit B.10, the agreement to sell, was forwarded to a finger print expert in the office of the Director, Finger Print Bureau, Hyderabad, for examination of the disputed thumb impression on exhibit B.10 and the admitted thumb impressions of the defendant obtained in the open Court on 21.04.1997. The said expert, having examined the finger impressions on the disputed exhibit B.10 agreement to sell and the admitted thumb impressions obtained in open court, had furnished a report under exhibit C.8 stating that the disputed thumb impression and the specimen left thumb impressions are identical with each other and that they are made with the same finger of the same person. He had furnished along with exhibit C.8, the C.9 photo comparison chart with reasons in support of his opinion and exhibit C.10 sheet containing specimen left thumb impressions obtained in open Court and exhibits C.11 and C.12 which are negatives of the positive photographs of the disputed and specimen finger impressions. The said expert was examined as DW. 13. He gave evidence in line with his conclusions in his report and substantiated the view/opinion furnished in his report. He was cross examined at length. He had denied the following suggestions as "not true":- "That the deltas in the impressions marked "D" and "S" are in different places; the delta shown in the "D" in exhibit B.10 and delta shown in the specimen impressions marked "S" in exhibit C9 are not at same distances; that there are scars in the impressions marked "D" in exhibit B.10 whereas there are no scars in the specimen impressions; that the disputed print is a plain print and the pattern type of the impression cannot be deciphered and that also the ridge characteristics cannot be examined; that the disputed impression in exhibit B.10 is smudged and not clear and not revealing sufficient ridge characteristics for comparison; that the ridge characteristics which have been taken and intervening ridges in between the characteristics are not examined properly." Further, the following points were elicited in his cross examination: "The disputed thumb impression marked D on the exhibit B.10 is a rolled print. The specimen marked "S" is a rolled print. He had marked the core and delta in the photo comparison chart i.e. exhibit C.9. Further, the deltas which he had marked in the impressions marked "D" and "S" clearly show they are in correct location.

There are white small spots available in the disputed impression marked "D" in exhibit B.10. For examination and comparison of two finger prints, the white spots will not be taken into consideration and identity of two finger prints will be based on ridge characteristics. The portions which are selected in the disputed and specimen finger prints are totally free from white spots. The disputed finger impression marked "D" is a loop pattern and it is also identified with the specimen print marked "S;" which is taken in the open Court and which is also a loop pattern. The pattern type, the ridges, the ridge characteristics everything are identical with each other in the impressions marked "D" and "S". He had examined the impressions under various magnifying glasses and Mayuk Comparator. He had not mentioned the appliances which he had used for comparison and examination and it is normal practice not to mention the appliances in the report. There will not be any human error while furnishing the opinion on the identity and non identity of the finger impressions by the Government Finger Print Experts. There are no instances that his opinions have been rejected by the Courts. Though they have not received any letter from the Court, it is deemed that the opinion furnished by the Expert is accepted. He does not know whether his report was rejected by the Vinukonda Court."

5. (h) With the above evidence on record, the initial onus of proof on the plaintiff stood discharged and the onus to introduce evidence shifted to the defendant. The defendant as DW. 4 asserted in his chief examination his line of defence. He had stated in his examination in chief that he never orally agreed to sell the suit land on 26.01.1979 and had not received Rs. 10,000/- on that day and that the property was not delivered to the plaintiff; that he never executed exhibit B.10 suit agreement to sell and that the same must have been concocted by the defendant with the help of his associates and that there is no necessity for him to sell the land and that the plaintiff had no capacity to pay the sale consideration. He had admitted in his cross examination that his son-in-law filed a suit in O.S. 65 of 1991 in the Court at Markapuram against the defendant and that in that suit on pronote, he gave evidence. However, he denied the suggestion that in the said suit he had deposed that he sold his land to the defendant in the said suit, who is the plaintiff herein. However, his deposition under exhibit B.11 in the said suit was confronted to him; and the relevant portion of his testimony in that exhibit B.11 is exhibited as exhibit B.12. Similarly, it was also elicited from him that he filed a suit in OS. 122 of 1992 against the plaintiff herein on the file of District Munsif's Court, Markapuram in regard to lands at Kollelacheruvu. However, he denied the suggestion that in the said suit also while deposing as PW. 1 he had stated that he had sold his share of land at Lingamguntla to the plaintiff herein. His deposition in the said suit was confronted to him and exhibited as exhibit B.13; and the relevant portion of his testimony is exhibited as exhibit B.14. According to the case of the plaintiff herein, the defendant herein had also attested exhibit B.1 agreement between plaintiff herein and his brother. When this aspect was suggested to him, he denied the said suggestion. He had admitted that there are no disputes between him and DW. 2 the attesor, and DW. 10, the scribe of exhibit B.10 agreement.

5. (i) I have carefully and critically analysed the evidence on record. The evidence on the side of the plaintiff is by any standards sufficient to prove the truth, validity and binding nature of the oral suit agreement to sell which was later reduced into writing under exhibit B.10, the suit agreement to sell. Further, the admissions of the defendant herein in the previous suits, which are exhibited as exhibits B.12 and B.14, would lay bare that the defendant herein had in unequivocal terms admitted that he sold the suit land to the plaintiff. The learned senior counsel for the respondents herein would contend that the expert witness was not present at the time of taking photographs of the disputed and specimen thumb impressions and the mixing up of the thumb impressions and the confusion in identifying the said thumb impressions distinctly by him lead him to give a wrong opinion. But, having gone through the entire deposition of the said witnesses, this Court is of the considered view that it is not possible to accept such contentions and the evidence of the expert coupled with the documents in exhibit "c" series does not admit any doubt as to the procedure followed by him. Further, the expert was not cross examined on the above lines. Further, the admissions of the deceased sole defendant as brought out in his evidence are the best form of proof in support of the plaintiffs' case. When once it is accepted that the written agreement under exhibit B10 is true and that its contents are proved, it follows that the consideration had passed and that the case of the plaintiff stands proved in all respects. Thus on an overall consideration of the facts and evidence in juxtaposition, an inevitable and safe conclusion can be reached that the plaintiffs discharged the legal burden as well and, therefore, it can safely be held that the suit sale agreement to sell is true valid and binding and is supported by consideration and that the plaintiff is entitled to the equitable relief of specific performance.

5. (j) However, the learned senior counsel for the respondents would contend that the Courts below recorded concurrent findings against the plaintiff and that there is no perversity either in appreciation of evidence or in the reasons assigned in support of the findings and that, therefore, this Court is precluded from interfering with the concurrent findings of the Courts below. On the other hand, the learned counsel for the appellants would contend that the judgments of the Courts below are perverse and are wholly unsustainable. Keeping in view the contentions and rival contentions, I have examined the judgments of both the Courts below. Both the Courts below are of the erroneous view that the evidence on record is insufficient. There is absolutely no basis to accept the said erroneous findings of the Courts below in the light of the legal evidence that is available on record. In what way the evidence is insufficient and what more evidence the plaintiff can be called upon to place on record remains unexplained, in the facts and circumstances of the case. The trial court had failed to note the distinction between the opinion of a handwriting expert [which is of empirical value and which is purely in the nature of an opinion] and the report of a finger print expert, which is based on exact science. The trial Court, therefore, erroneously held as under: "It is well settled proposition of law that the opinion of a handwriting expert is not conclusive proof of execution of document in question" and went on to state in its judgment that it must be seen as to whether the plaintiff had proved the execution of exhibit B10 agreement to sell

independent of the report of the finger print expert under exhibit C8. The trial Court did not at all evaluate the evidence on record in a judicious manner and did not take into account the admissions of DW 4, the defendant, which in the well considered view of this Court, are the best form of proof on which the plaintiff can rely in support of the other overwhelming evidence on record. The Court of first appeal similarly erroneously held that the opinion of the fingerprint expert cannot be construed as conclusive proof of execution of document, in as much as it is only an opinion but not a substantive piece of evidence. The Courts below thus proceeded on the wrong notion that the expert's report is furnished in regard to hand writing and signatures. The Court of first appeal having held that the burden of proof is on the appellant to show that exhibit B10 is genuine also held that it is not a case where none of the witnesses of the disputed document are alive and that, therefore, solely on the basis of expert opinion the genuineness of exhibit B10 cannot be accepted without seeking independent corroboration of the fact in issue. The very findings of the Courts below particularly the findings referred to supra of the Courts below sufficiently lay bare as to how erroneously both the Courts below had approached the vital issue and arrived at unsustainable conclusions/findings. On the face of the record, it is apparent that the findings of the Courts below both in regard to appreciation of expert's report and evidence and oral evidence and in regard to application of evidence to the core facts are perverse, unjust and manifestly unreasonable in the context of the matter and, therefore, the judgments of the Courts below brook interference. In the above stated circumstances and in the light of the oral and documentary evidence adverted to supra and the detailed discussion coupled with reasons, the contention of the respondents that there are no substantial questions of law involved in the matter and that the findings recorded by the Courts below are not perverse and the said findings are based on evidence cannot be countenanced. For the reasons assigned, the decisions on the aspect of the limited/narrow scope of the jurisdiction of the Court of second appeal, relied upon by the respondents in [Hamida and Others Vs. Md. Kahlil, Commissioner Hindu Religious and Charitable Endowment Vs. P. Shanmugama and Others](#), ; and [Phool Pata and Another Vs. Vishwanath Singh and Others](#), are not helpful to the respondents/defendants in view of the facts peculiar to the case and the reasoned findings recorded by this Court. On the other hand, the law is well settled that when the findings are manifestly unreasonable and unjust in the context of evidence on record, this Court is obliged under law to set aside such erroneous findings to remedy the injustice.

5. (k) In the first place, the oral evidence by itself, which is cogent and consistent, is sufficient not only on the application of the test of preponderance of probabilities but also by any legal standards to uphold the case of the plaintiffs/appellants. That apart, in the case on hand, the report of the fingerprint expert, which is clear and categorical and which is supported by adequate reasons, and which also finds support from the convincing and trust worthy oral and documentary evidence can straight away be accepted. Coming to the aspect of the evidentiary value of a report of a fingerprint expert, though the law is well settled, it is advantageous and necessary to reiterate the settled

legal position, which is laid down in the decision in [Jaspal Singh Vs. State of Punjab](#), In this decision, the Hon"ble Supreme Court held as under: "The science of identifying thumb impression is an exact science and does not admit any mistake or doubt". The fact that the DNA profiling, which is generally used for identifying paternity/maternity, is named as DNA finger printing to indicate the exactitude of the science of DNA profiling also is a sufficient pointer to the fact that indisputably the science of identifying thumb impressions is an exact science. In the well considered view of this Court, there is no scope in the facts and circumstances of this case to substitute the finger print expert"s view with any other opinion, more particularly in the light of the direct evidence on record.

5. (I) Viewed thus, this Court finds that the judgments of the Court below brook interference and that there is acceptable merit in this second appeal and that, therefore, the second appeal deserves to be allowed after setting aside the judgments of the Courts below. Therefore, the substantial questions are all answered in favour of the appellants and against the defendants.

IN THE RESULT, the second appeal is allowed with costs throughout and the judgments and decrees of the Courts below are hereby set aside and the suit O.S. No. 76 of 1992 is decreed directing the respondents 2 to 5 to execute a regular registered sale deed in favour of the appellants in respect of the plaint schedule property and granting a perpetual injunction restraining the respondents 2 to 5 and their men from ever interfering with appellants" peaceful possession and enjoyment of the schedule property. The respondents 2 to 5 are granted three (03) months time to execute the regular registered sale deed at the expenses of the appellants. Failing such compliance, the appellants are at liberty to obtain a regular registered sale deed pursuant to the present decree as per procedure established by law.

As a sequel, miscellaneous petitions pending, if any, in this second appeal shall stand closed.