

**Anantram Vs. Narayan Das**

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**Court :** Madhya Pradesh

**Decided On :** Sep-25-2012

**Appellant :** Anantram

**Respondent :** Narayan Das

**Judgement :**

1 SA No.118/1997 HIGH COURT OF MADHYA PRADESH PRINCIPAL SEAT AT JABALPUR. Second Appeal No.118/1997 APPELLANTS : Anantram s/o. Munnalal Mehdele - Versus - RESPONDENT : Narayan Das s/o. Govind Raikwar For the Appellant : Shri G.S. Baghel, Advocate alongwith Shri Abhay Raj Singh, Advocate None for the respondent. Present : Hon'ble Shri Justice Alok Aradhe.

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**JUDGMENT**

(25.09.2012) This appeal is by the plaintiff which was admitted on the following substantial question of law : Whether under the facts and circumstances of the case, the lower appellate Court was right in reversing the decree of the trial Court on the ground that it has not been proved that Ex. P/1, the contract for sale of the suit property has not been executed ?..

2. The facts, giving rise to filing of the appeal, briefly stated, are that the plaintiff filed the suit on the ground that the defendant entered into an agreement with plaintiff on 3.1.1986 for sale of suit house alongwith adjoining open land for a consideration of Rs. 3,000/-. The plaintiff paid entire sale consideration. However,

the sale-deed could not be executed as the defendant had to return to Jabalpur. It was further pleaded that the defendant had agreed to execute the sale-deed within a period of four months. It was also pleaded that the plaintiff was ready and willing to perform his part of contract. However, on 26.6.1986 the plaintiff learnt that the defendant is planning to sell suit property to somebody else. 2 SA No.118/1997 Accordingly, plaintiff filed the suit seeking relief of specific performance of contract.

3. The defendant file written statement in which execution of agreement and receipt of sale consideration were denied. It was pleaded that agreement is forged which does not bear signature of defendant. It was also pleaded that infact the defendant had permitted the plaintiff to occupy the suit property for performance of marriage of his sister which was to be held on 7.5.1984. However, subsequently the plaintiff refused to vacate the suit property. The defendant wanted to sell the suit property for Rs.25,000/- and the suit has been filed with a malafide intention to prevent the defendant from alienating the suit house.

4. The trial Court vide judgment and decree dated 22.4.1994, on the basis of statement of plaintiff (PW-1) and witnesses to the agreement namely Hukumchand (PW-2) and Rantalal (PW-3) and taking into account the statements of hand writing expert examined by the plaintiff and the defendant found the execution of agreement (Ex.P/1) to be proved. The trial Court further held that the defendant neither produced his service records not specimen signature taken at the time of opening of the account in the bank to prove that his signature are different from the signatures which appear on the document Ex.P/1. It was also held that the market value of the suit property at the relevant time was Rs.5,000/- and not Rs.25,000/- as alleged by the defendant, and that the plaintiff is ready and willing to perform his part of contract. Accordingly, the suit decreed.

5. Being aggrieved by the aforesaid decree, the defendant filed an appeal, the plaintiff filed cross objection with regard to finding recorded by the trial Court in respect of market value of the suit property. The Lower Appellate Court vide judgment and decree dated 11.12.1996 interalia held that statements of hand writing expert namely Ramnarayan Verma (PW-4) and Jaiprakash Verma (DW-1) are conflicting, and though the plaintiff had paid the entire sale consideration yet

no explanation was furnished on his behalf as to why the sale-deed was not executed except the fact that the 3 SA No.118/1997 defendant had to return to Jabalpur early. The Lower Appellate Court further held that if an agreement for sale could be executed, the sale-deed could also be executed. The Lower Appellate Court also held that both the witnesses to the agreement are friends of the plaintiff and did not know the defendant, and no reason has been assigned in the agreement for sale to sell the suit property. It was also held that market value of the suit property was Rs.15,000/- to 16,000/- but the sale consideration in the agreement is shown to be Rs.3,000/- only. The Lower Appellate Court came to the conclusion that execution of the agreement is shrouded in suspicion. The Lower Appellate Court held that the execution of the agreement has not been proved. Accordingly, the decree of the trial Court was set aside.

7. Learned counsel for the appellant submitted that in view of statement of the witnesses to the agreement, the Lower Appellate Court grossly erred in holding that execution of the agreement Ex. P/1 is not proved. It was further submitted that the Lower Appellate Court committed an error of law in reversing the well reasoned judgment and decree of the trial Court.

8. I have considered the submissions made by the learned counsel for the appellant and have perused the record. It is well settled in law that this Court in exercise of powers under Section 100 of the Code of Civil Procedure cannot re-appreciate the evidence. It is equally well settled that where on appreciation of evidence, even if two views are possible, this Court in exercise of powers under Section 100 of the Code of Civil Procedure would not interfere. [See : *Kondiba Dagadu Kadam v. Savitribai Sopan and others*, (1999) 3 SCC 72. and *Veerayee Ammal v. Seenii Ammal*, (2002) 1 SCC 134]. It has further been held by the Supreme Court that interference with a question of fact is not permissible. [See : *Basayya I. Mathad v. Rudrayya S. Mathad and Others*, (2008) 3 SCC 120]. In *S. Appadurai Nadar & another v. A. Chokalinga Nadar and Another*, (2007

774. it has been held by the Supreme Court that in exercise of power under Section 100 the Courts should be slow in reversing the finding of fact. The finding of fact even if erroneous would not be 4 SA No.118/1997 disturbed in second

appeal unless the finding is shown to be perverse and based on surmises and conjectures. [See : Kulwant Kaur and others v. Gurdial Singh Mann and others, (2001) 4 SCC 262.Hafazat Hussain vs. Abdul Majeed and others, (2001) 7 SCC 18.and Bharath Matha v. R. Vijay Rengandathan, (2010) 11 SCC 483]..

9. The Lower Appellate Court which is a final Court of fact is under an obligation to assign reasons for reversing the decree of the trial Court. From the judgment passed by the Lower Appellate Court, it is apparent that the Lower Appellate Court has assigned valid and cogent reasons for holding that the execution of the agreement Ex.P/1 has not been duly proved. It has been found by the Lower Appellate Court that both the witnesses to the sale-deed are friends of the plaintiff who did not know the defendant. The market value of the suit property is Rs.15,000/- to Rs.16,000/- however, the same was sought to be sold for consideration of Rs.3,000/- only. Though the plaintiff had paid the entire sale consideration and was placed in possession yet not cogent explanation was furnished on behalf of the plaintiff for non-execution of sale-deed except for the fact that the defendant had to return to Jabalpur. It is further held that if the agreement for sale has been executed the sale-deed could also have been executed. The Lower Appellate Court has assigned valid and cogent reasons for holding that execution of the agreement Ex.P/1 has not been proved. For the aforementioned reasons the substantial question of law is answered in affirmative and against the appellant.

10. In result, the appeal fails and is dismissed with the costs. (Alok Aradhe) Judge RC

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