

Haridas Vs. Shanker

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Court : Madhya Pradesh

Decided On : Apr-26-2013

Appellant : Haridas

Respondent : Shanker

Judgement :

Second Appeal No.359/ 2013 (Haridas & ORS.Vs.Shanker & Ors) 26-04-2013
Heard Shri Gaurav Sharma, learned counsel appearing for the appellants on the question of admission.

This appeal has been filed by the appellants being aggrieved by the judgment and decree dated 13.3.2013 passed by the FiRs.Additional District Judge, to the Court of District Judge Damoh, in Regular Civil Appeal No.24-A/ 2008, whereby the judgment dated 22.1.2007 and decree dated 25.1.2007 passed by the 5th Civil Judge Class-II, Damoh, in Civil Suit No.108A/2004, has been set side.

The brief facts leading to the filing of the present appeal are that the respondents/plaintiffs filed a suit for permanent injunction as well as for declaring the alleged Will executed in favour of the appellants to be fraudulent and concocted document and not binding.

The suit filed by the respondents was dismissed by the Trial Court against which the respondents had filed an appeal which has been allowed by the impugned judgment.

The learned counsel for the appellants submits that the fiRs.appellate Court has totally ignored the statements of the attesting witnesses to the Will executed by Aaman in their favour on 9.4.2001.

It is submitted that Gulzar (DW.2) and Halkai (DW.3).who were attesting witnesses have clearly stated that the Will was executed and signed by Aaman in front of them but the fiRs.appellate Court by relying upon the statement of K.R.Pillai (DW.5).who admittedly, is not a finger print expert, has set aside the judgment and decree passed by the trial Court.

From a perusal of the impugned judgment it is clear and apparent that the Court below has clearly discussed and considered the statements of Gulzar (DW.2) and Halkai (DW.3) in paragraph 26 onwards.

The Court below has taken note of the fact that Gulzar (DW.2) in his cross examination has stated that he signed the Will which was typed on a stamp paper on 9.4.2001 at about 11.00 AM and thereafter he went home at 12.00 noon whereas the document in question i.e.the Will has in fact been written on an unstamped paper and as per the statement of Halkai (DW.3) it was written in the evening when the sun was setting.

The statements of these two witnesses has also not been supported by the scribe of the Will who in fact has not been examined.

The Court below has also taken into consideration the fact that the appellants have infact asserted that their father had been adopted by Aaman and if that was the case, the question of executing a Will in favour of the appellants did not arise as they would have automatically got the property even without the Will.

While taking into consideration the aforesaid discrepancies and contradictions in the statements of the witnesses as well as the attending circumstances, the Court below has also considered the statement of K.R.Pillai (DW.5) who has stated that the thumb impression on the Will was not that of Aaman, the Court below has recorded a finding against the appellants.

In such circumstances, it is clear that the Court below has reversed the finding recorded by the trial Court not only on the basis of the statement of K.R.Pillai (DW.5).but has done so on the basis of the contradictions in the statements of the defendants' witnesses and the attending facts and circumstances of the case.

It is also clear that the finding recorded by the fiRs.appellate Court is based on proper appreciation of oral and documentary evidence produced by the parties and in such circumstances it is apparently clear that there is no perversity in the finding of the Court below as the present case cannot be said to be a case of no evidence as submitted by the learned counsel for the appellants.

In view of the aforesaid, I find no perversity or material irregularity in the finding recorded by the Court below not does any substantial question of law arise for adjudication in the present appeal.

The appeal being meritless, is accordingly dismissed.

(R.S.Jha) a Judge

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