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Court : Karnataka

Decided On : Nov-20-1997

Reported in : 1998(5)KarLJ40

Judge : T.N. Vallinayagam, J.

Acts : [Evidence Act, 1872](#) - Sections 73

Appeal No. : Regular Second Appeal No. 601 of 1990

Appellant : M/S. Sudhir Shrikant Mirje, Nipani and Others

Respondent : Krishnaji Marutirao Shendure

Advocate for Def. : Sri B.S. Kamate, Adv.

Advocate for Pet/Ap. : Sri Rajeev and ;Sri G.S. Visweswara, Adv.

Judgement :

1. The plaintiff is the appellant. The suit based on money, was decreed by the Trial Court. But, on appeal dismissed by the First Appellate Court. Hence, the second appeal.

2. The plaintiff claims to have lent Rs. 3,500/- on 5-3-1980 and according to the plaintiff, the defendant has signed in the Signature Book on that day. The defendant denied transaction and signature as well. But, contended that he had transaction earlier with the plaintiff and the said transactions have been settled and the account between them has been finalised and closed for ever.

3. When the signature was disputed, the Trial Court after considering the evidence and documents produced, compared the signature. After such comparison, the Trial Court came to the conclusion that it is the signature of the defendant that is found in the suit documents and decreed the suit. The Appellate Court merely commented upon the Trial Court about the comparison of the signature and held that it is not possible for him to have such comparison. The Appellate Court quotes the following passage given by the Trial Court.-

'I have spent about 20 minutes in comparing these signatures and I have no hesitation to hold.that there is no dissimilarity in the signature below the endorsement Ex. P-2A, and the signatures of the defendant on the written statement and vakalath. The pen stroke, pen pressure, angle and other relevant characteristics both in disputed signature and also the admitted signatures are similar. Hence, I am of the opinion that the disputed signature is that of the defendant'.

If the Appellate Court has got doubt, it should have compared the signature without dwelling upon the law and point and ought not to have rejected the finding of the Trial Court in toto. The attitude of the Appellate Court is escapism of responsibility. The Appellate Court should have attempted to find the truth. The prima facie look at the signature should be made and there is nothing wrong in the Trial Court trying to compare the signatures, for the purpose of arriving at the decision. The authority is relied on Murarllal v State of

Madhya Pradesh , is observed as follows.-

Para 12.--'The argument that the Court should not venture to compare writings itself, as it would thereby assume to itself the role of an expert is entirely without force. Section 73 of the Evidence Act expressly enables the Court to compare disputed writings with admitted or proved writings to ascertain whether a writing is that of the person by whom it purports to have been written. If it is hazardous to do so, as sometimes said, we are afraid it is one of the hazards to which judge and litigant must expose themselves whenever it becomes necessary. There may be cases where both sides call experts and the voices of science are heard. There may be cases where neither side calls an expert, being ill able to afford him. In all such cases, it becomes the plain duty of the Court to compare the writings and come to its own conclusion. The duty cannot be avoided by recourse to the statement that the Court is no expert. Where there are expert opinions, they will aid the Court. Where there is none, the Court will have to seek guidance from some authoritative text book and the Court's own experience and knowledge. But discharge it must, its plain duty, with or without expert, with or without other evidence. We may mention that *Shashikumar v Subodh Kumar* and *Fakhruddin v State of Madhya Pradesh*, were cases where the Court itself compared the writings'.

4. Thus, it is seen when signatures are disputed, a naked eye of perusal of signature may be necessary for the Courts to come to the conclusion whether there is any doubt regarding the signatures is available on record. If the comparison made with the signatures available in the Vakalath, written statement and any other admitted documents, the same is permissible in law and there can be no prohibition for the same. It is only the desire to know the truth and to cull out the real character of the parties. Therefore, I disagree with the view of the First Appellate Court and consequently the findings rendered by the First Appellate Court is set aside.

5. In this view, the second appeal is allowed restoring the decree of the Trial Court.

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