

Girish Vs. Shivamurthappa

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Court : Karnataka

Decided On : Jan-18-2001

Reported in : AIR2001Kant210; 2001(6)KarLJ210

Judge : V. Gopala Gowda, J.

Acts : [Evidence Act, 1872](#) - Sections 45; [Code of Civil Procedure \(CPC\), 1908](#) - Order 41, Rule 27

Appeal No. : Regular Second Appeal No. 772 of 1997

Appellant : Girish

Respondent : Shivamurthappa

Advocate for Pet/Ap. : M. Ram Bhat, Adv.

Disposition : Appeal dismissed

Judgement :

The Court

1. For the sake of convenience, the parties in this appeal are referred to as per their rank in the Trial Court.

2. This appeal is filed by the plaintiff in O.S. No. 60 of 1983. The suit was filed for specific performance for execution of sale deed in respect of 2 acres 2 guntas of

land in Sy. No. 155/1 in Hulsoor Village, Basavakalyan Taluk on the basis of alleged agreement of sale dated 17-4-1980. The defendant resisted the suit by denying the execution of the alleged agreement and alleging that the suit documents were false and fabricated. The Trial Court dismissed the suit holding that the suit documents had not been proved. Aggrieved by the same, the plaintiff filed R.A. No. 25 of 1987. In the appeal before the first Appellate Court the plaintiff filed I.A. III under Section 45 of the Indian Evidence Act to send Exhibits P. 1 to P. 4 for comparison of the signatures thereon with the admitted signature of the defendant. The first Appellate Court dismissed both the application and also the appeal. The same is challenged in this second appeal.

3. While admitting this appeal, the following substantial questions of law were framed.-

'1. Whether the Appellate Court committed an error in dismissing I.A. III for sending disputed signature of the defendant by handwriting expert for his report and that too only on delay?

2. Whether the plaintiff has proved Ex. P. 1-the agreement of sale executed by the defendant?

3. Whether the plaintiff had proved the payments made under the agreement of sale?'

4. Having heard the learned Counsel for the appellant, I have perused the judgments of the Courts below. The first Appellate Court has assigned valid and cogent reasons for rejecting I.A. III filed by the plaintiff. It has been observed that plaintiff had not taken any steps to send the suit documents for handwriting expert. It is stated that D.W. 1 was examined on 18-2-1987 and his specimen signature was obtained in the Trial Court but the plaintiff failed to move the Trial Court for appointment of handwriting expert. The lower Appellate Court also found that appeal before it was filed in the year 1987 but I.A. III was filed only on 3-3-1997, after a lapse of nearly 10 years from the date of filing of the appeal. The Court found that plaintiff had not offered any explanation for the delay. It was also found that plaintiff has not explained as to why he had not taken any steps in the Trial

Court in this regard. The first Appellate Court made reference to Order 41, Rule 27 of the CPC and held that it could have allowed the plaintiff to lead additional evidence provided the Trial Court refused to admit such evidence. It has been further stated that plaintiff came to know about the definite stand taken by the defendant in the written statement and he was required to take necessary steps for appointment of handwriting expert. In the circumstances, the lower Appellate Court has rightly rejected I.A. in filed by the plaintiff. That application was filed by the plaintiff after reading the judgment of the Trial Court holding that plaintiff miserably failed to prove the execution of suit documents, Therefore, no fault can be found with the rejection of I.A. III by the lower Appellate Court. It follows that the first substantial question of law is held in the negative.

5. The other two substantial questions of law relate to execution of suit documents Exs. P. 1 to P. 4. Ex. P. 1 is the agreement of sale and Exs. P. 2 to P. 4 are receipts said to have been executed by the defendant. While examining the genuineness or otherwise of the alleged agreement of sale, Ex. P. 1, the Trial Court made reference to the evidence adduced on behalf of the plaintiff by P.Ws. 1 to 4. The evidence of P. W. 1 was tested with reference to the date of purchase of stamp paper. According to P.W. 1 the stamp paper was purchased by the defendant himself on 16-4-1980 and agreement for sale was executed on 17-4-1980. But the endorsement of the stamp vendor on the stamp paper disclosed that the stamp paper had been purchased on 31-3-1980. It was found that the evidence of P.W. 1 and the scribe, P.W. 4 were conflicting in the matter of alleged payment of advance on the date of execution of Ex. P. 1. According to P.W. 1, he counted the money and directly paid to the defendant whereas according to P.W. 4, he himself counted the money and gave it to the defendant. The Trial Court also observed that though this is a minor discrepancy, if the other circumstances are taken into consideration, this discrepancy also assumes importance.

6. The Trial Court also disbelieved the agreement of sale due to the discrepancy in the total extent of land. It was found that the land in question measuring 2 acres 01 guntas was purchased by the defendant but in the alleged agreement of sale the extent has been mentioned as 2 acres 02 guntas. Hence, the Court held that one fails to understand as to how the defendant could enter into contract to sell 2 acres

02 guntas when he is the owner of 2 acres 01 guntas only.

7. According to the plaintiff the defendant handed over possession of the land pursuant to the alleged agreement of sale. The said fact has been reiterated by P.Ws. 2 and 3. The Trial Court disbelieved this version on the basis of the entries in the record of rights. It was found that the name of the defendant has been entered as owner. Land revenue has been paid by the defendant under Ex. D. 7, Thus even delivery of possession of the suit land to the plaintiff as contended by him was also disbelieved by the Trial Court.

8. With regard to the receipts Exs. P. 2 to P. 4 said to have been executed by the defendant, the Trial Court considered the evidence adduced on behalf of the plaintiff and found that P.W. 4 has stated that no amount was paid in his presence at the time of alleged execution receipts, Exs. P. 2 to P. 4. But, the evidence of P.Ws. 1 and 2 revealed that the payments under these documents were made on the same day when they were executed, Though D.W. 2 being a signatory to some of the suit documents supported the defendant, the Trial Court has rightly ignored his evidence and recorded its findings against the plaintiff on the basis of other material - both oral and documentary - available on record. The very fact that plaintiff has filed I.A. III in the first Appellate Court would establish that the suit documents have not been proved and in order to prove the same he had filed such an application. Viewed from this angle, the dismissal of plaintiffs suit by the Trial Court and affirmed by the lower Appellate Court cannot be found fault with.

9. The lower Appellate Court concurred with the findings of the Trial Court and dismissed the appeal. It also assigned its own reasons to arrive at such a conclusion. It was found that there was no direct evidence or circumstantial evidence to show that there was compulsion on the part of the defendant to sell the land in question. The evidence of P.W. 1 was tested and found that his evidence excludes the presence of D.W. 2 at the time of execution of Ex. P. 1. It was noticed that the terms of the sale agreement are contrary to the recitals of Ex. P. 1. Having held that plaintiff has not proved execution of suit documents, it has been held that question of he being ready and willing to perform his part of the contract under the alleged agreement of sale does not arise. Since the defendant

has categorically denied execution of the suit documents and as the plaintiff failed to prove execution of those documents, the Courts below rightly disbelieved the case put forth by the plaintiff and dismissed the suit and the appeal preferred by him.

10. In the light of the findings recorded by the Courts below, this Court has to hold that the suit of the plaintiff was frivolous. Thus, the other two substantial questions of law framed by this Court are answered against the plaintiff.

11. The appeal is devoid of merit and the same is hereby dismissed.

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