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Court : Allahabad

Decided On : Oct-04-2004

Reported in : 2005(1)ARC324; 2005(1)AWC369

Judge : S.N. Srivastava, J.

Acts : Evidence Act, 1872 - Sections 45; Specific Relief Act, 1963 - Sections 20

Appeal No. : Second Appeal No. 1355 of 1990

Appellant : Nathu Ram

Respondent : Satya Narain

Advocate for Def. : H.N. Singh, ;Ravi Ranjan, ;Satyendra Singh, ;R.C. Saxena, ;Yogesh Agarwal, ;Ganga Ram Gupta, ;A.P. Bajpai and ;Anuradha Sundaram, Advs.

Advocate for Pet/Ap. : Pradeep Kumar, ;M.C. Gupta, ;T.N. Porwar, ;Shailendra Singh, ;R.K. Pandey and ;Dinesh Pathak, Advs.

Judgement :

S.N. Srivastava, J.

1. Present second appeal has been preferred impugning the Judgment and decree dated 13.4.1990, passed by lower appellate court in Civil Appeal No. 57 of 1989

dismissing suit whereby the finding of the trial courtmandating to execute the sale deed in favour of plaintiff within the time-lag as embodied in the agreement dated 26.6.1976 was reversed and Judgment and decree passed by the trial court in Suit No. 57 of 1989 was set aside.

2. The factual matrix of the case as contained in the plaint is that the defendant was the owner of the shop in question situated in the town of Phaphund and according to the plaint allegations, the defendant earlier being the owner of shop, wanted to sell the said shop and with that object, entered into agreement with the plaintiff vide unregistered agreement dated 26.6.1976 subject to the postulates that the sale deed would be executed on a consideration of Rs. 15,000 ; that at the time of execution of agreement, a sum of Rs. 2,000 would be payable to the defendant and further a sum of Rs. 11,000 would be payable to the defendant by the plaintiff at the time when the defendant would deliver vacant possession of the shop in question and further that the rent of the shop would not be payable from the date of agreement and the defendant would cease to be the owner of the shop from the date of agreement. It is further alleged that the plaintiff, according to the conditions in the agreement, became owner of the shop with effect from 15.3.1978 and he had also paid a sum of Rs. 2,000 to the defendant as agreed between them. It is also alleged that thereafter the defendant evaded execution of sale deed and hence, the plaintiff was constrained to institute the suit in question. In the written statement, the defendant denied the allegations averring that the plaintiff had prepared a fake agreement ; that no such agreement was entered into between the parties ; that the alleged receipt does not bear his signatures and has been forged and that the plaintiff was a tenant of the shop on a rent of Rs. 30 per month against whom he had filed a suit for the relief of eviction and arrears of rent.

3. The trial court framed as many as seven issues and upon appreciation of evidence of four witnesses examined on behalf of the plaintiff namely. P.W. 1, P.W. 2, P.W. 3 and P.W. 4 came to the conclusion that the agreement was entered into between the parties and defendant had accepted earnest money and in the ultimate analysis mandated the defendant to execute sale deed in favour of the plaintiff. The defendant examined himself as D.W. 1 and also one Mool Chand as D.W. 2. The defendant also examined one Rajendra Prasad D.W. 3 as Finger

Expert in support of his case. In Civil Appeal No. 57 of 1989. the learned District Judge reversed the finding recorded by the trial court holding therein that the agreement was forged one and while disbelieving the evidence adduced by the plaintiff, it was held that the witnesses perjured themselves and directed prosecution against the witnesses for giving false leads in the case before the Court.

4. It would appear from the record that at the admission stage, the Court framed following substantial questions of law :

(a) Whether an opinion of a person who is not duly qualified for the subject can be relied by a Court and expert opinion and such opinion is admissible under Section 45 of the Evidence Act?

(b) Whether expert opinion that corroborated by other evidence can be rejected without assigning reasons and opinion uncorroborated accepted without assigning reasons?

5. In so far as substantial question No. (a) as framed by the Court is concerned, I have scanned the finding recorded by the appellate court. While believing the opinion of Rajendra Kumar, examined as D.W. 3 by the defendant, it has been observed by the appellate court that he had received his training in the field from Sri A.N. Majomdar of Allahabad, who is recognized as handwriting expert and he has also been issued certificate from Indian Institute of Criminology, Nagpur and he has been practising as such for the last 18 years. The appellate court has also gleaned In cross-examination of the hand-writing expert examined as D.W. 3 in the case that there is no Institute in the country which awards degree in the discipline of hand-writing skill. Thereafter, the appellate court proceeded to examine the opinion and statements of the two Hand-writing experts, i.e., one examined on behalf of the plaintiff and the other on behalf of the defendant and also compared the original - signatures of the defendant with the writing on the agreement and on the alleged receipts. Upon close scrutiny, the appellate court converged to believe the evidence of D.W. 3 and concluded that the agreement was forged and fabricated one and the agreement and alleged receipts did not bear the signatures of the defendant thereon. I have also closely vetted the finding

on this aspect and am of the view that the appellate court rightly converged to the conclusion that the signatures on the alleged agreement and the alleged receipts were not that of the defendant and the same have been coined and forged after much practice. The reasons assigned by the appellate court in coming to the conclusion, appear to be cogent and convincing and there is nothing on the record to dislodge the reasoning and therefore, the finding recorded by the appellate court cannot be held to be suffering from any infirmity and is held good.

6. Section 45 of the Indian Evidence Act envisages that when the Court has to form an opinion upon a point of foreign law, or of science or art, or as to identity of hand-writing or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, science or art, or in questions as to identity of handwriting or finger impressions, are relevant facts. In this section, an Expert has been defined to be one who has acquired special knowledge, skill or experience in any science, art, trade or profession. Such knowledge may have been acquired by practice, observation or careful studies. In various decisions of the Apex Court as well as of various High Courts, it is settled that an expert in order to be competent as a witness need not have acquired his knowledge professionally, and it is sufficient if he has acquired a special experience therein. One such decision in view is Collector, Jabalpur v. A.Y. Jahangir, AIR 1971 MP 32. In this case, it was held that person having special knowledge of the market value of land by experience is an expert. In Sri Chandra Batra v. State of U.P., AIR 1974 SC 639, it has been held by the Apex Court that an expert in order to become competent as a witness need not have acquired his knowledge professionally. It is sufficient if he has acquired special experience therein. In this case, the Court was seized of the question whether Excise Inspector was an Expert or not and after scrutiny, it was held that Excise Inspector who had tested lakhs of samples of liquor and illicit liquor his opinion may be treated as opinion of an expert. From the finding recorded by the lower appellate court, it is obvious that the D.W. 3 had acquired skill in the science through valid sources and therefore, he cannot be said to be layman or incompetent or not duly qualified. Besides, it should also be noticed that opinion of an Expert is after all an opinion and it is usually considered to be of light value and it should be approached with considerable caution. The weights due to such testimony is a matter to be determined by the Judge and it will be

proportionate to the soundness of the reasons. The Court in order to test the - veracity of an opinion of handwriting of an expert is called upon to apply its own observations to the admitted or proved writings and compare them with the disputed one. In the instant case, it cannot be said that the lower appellate court put blanket credence upon the opinion of the handwriting expert. It is revealed that the Court applied its own observations and compared the original signatures of the defendants with the disputed one. Therefore, the question No. 1 is answered accordingly.

7. In so far as question No. (b) is concerned, I would revert to the finding recorded by the trial court as well as the lower appellate court to glean whether opinion relied upon by the lower appellate court was uncorroborated or was believed without assigning any reason. From a perusal of the verdict of the lower appellate court, it leaves no manner of doubt in my mind that the lower appellate court rightly disbelieved the statements of plaintiff witnesses and in relying upon the evidence of D.W. 3, the Court has given cogent and convincing reasons. The appellate court noticed various discrepancies in the statements of the witnesses examined on behalf of the plaintiff and also disbelieved the payment of earnest money and also subsequent payment of Rs. 11,000 to the defendants by the plaintiff. The lower appellate court also noticed that no time limit was prescribed in the agreement for execution of sale deed and also disbelieved the statement as unnatural in which stamp for execution of agreement was said to have been agreed to be purchased by the defendant. It is thus eloquent that the trial court misread the evidence and rushed to the conclusion without close scrutiny and the finding recorded by the trial court cannot be said to be based on correct appreciation of evidence on record.

8. Yet another disquieting aspect and which, in my opinion, does not lend credence to. the case of the plaintiff is that the agreement for specific performance which is an unregistered agreement is said to have been executed on 26.6.1976, while the suit was instituted on 7.1.1985. I have searched the entire record but there is no plausible explanation forthcoming on the record to show why the plaintiff waited for so long and did not send any notice to the defendant reminding him to execute the sale deed during these nine years. It would thus transpire that the plaintiff did not initiate any step by approaching the defendant to execute the

sale deed and mere allegation that he was always ready and willing to perform his part of agreement, does not lend credence to his failing case. It would thus appear that upon over all consideration of the evidence on record, the appellate court rightly converged to the conclusion reversing the finding of the trial court. It would also transpire that the expert evidence is supported by other evidence recorded in the case and therefore, it cannot be held that the lower appellate court based his finding on expert evidence alone. The finding of lower appellate court could be sustained on consideration of other evidence of the parties. The lower appellate court also rightly-disbelieved the plaintiffs case on the execution of the agreement deed and has given cogent and convincing reasons for dismissing the suit.

9. It is also noticeable from the record that the plaintiff was a tenant of the shop and had defaulted in payment of rent and the defendant had instituted a suit for eviction and recovery of arrears of rent. In the circumstances and considering the evidence on record, it cannot be ruled out that the plaintiff invented a new theory as a counter blast to emasculate and stultify the suit of the defendant and in furtherance of that object, manufactured the agreement and forged signatures of the plaintiff with a design to frustrate the attempt of the defendant in proceeding for eviction and recovery of arrears of rent.

10. Lastly, it has been commiseratingly submitted by the learned counsel for the plaintiff that prosecution of witnesses ordered by the appellate court may not be sustained as it is borne out from the record that the witnesses had intended to give false evidence. Having considered the matter in all its pros and cons, I am of the view that the lower appellate court has not recorded any finding on this aspect whether the witnesses intended to give the evidence. Without dwelling in details on this aspect, I am of the view that the direction of the lower appellate court on this aspect should not be allowed to sustain.

11. As a result of foregoing discussion, the second appeal is allowed and decreed in part and the judgment and decree of the lower appellate court so far as it reverses the finding and decree of the trial court and dismisses the suit is upheld attended with costs but in so far as It deals with the prosecution of the witnesses it cannot be sustained and it is set aside. It is ordered accordingly.

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