

Sushanta Kumar Biswal Vs. Jatindranath Roy

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Court : Orissa

Decided On : Dec-10-2008

Reported in : 2009(I)OLR381

Judge : A.S. Naidu, J.

Appellant : Sushanta Kumar Biswal

Respondent : Jatindranath Roy

Judgement :

A.S. Naidu, J.

1. The judgment and decree dtd. 3rd March, 2000 passed by Addl. District Judge, Jagatsinghpur in T.A. Case No. 32/1997 reversing the judgment and decree of the Civil Judge (Sr. Division), Jagatsinghpur in T.S. No. 29 of 1990 is assailed in this Second Appeal.

2. Admittedly, the appellant had filed T.S. No. 29/1990 in the Court of Civil Judge (Sr. Division), Jagatsinghpur. The said suit was one for specific performance of contract and direction to the defendant to execute and register a deed of sale in respect of the suit lands by accepting Rs. 5007- from the plaintiff.

3. The plaint averments reveal that the defendant was the absolute owner in possession of the lands morefully described in Schedule 'A' of the plaint. In the

year 1984, the defendant was in urgent need of money for treatment of his mother and his younger brother and coming to now such facts, the plaintiff, who was in search of a piece of land, approached the defendant and after being satisfied that the defendant had valid right, title and interest over the land in question an agreement was entered into between the defendant and the plaintiff for alienation of the properties in favour of the plaintiff for a consideration of Rs. 7,500/-. It is alleged that out of the said amount a sum of Rs. 7,000/- was paid to the defendant towards part satisfaction of the agreement and in his return the defendant delivered possession of the land to the plaintiff and permitted him to construct a house thereon. The agreement for sale was executed on 10.6.1984. The agreement further stipulated that the balance consideration of Rs. 500/- along with registration charges would be paid by the plaintiff to the defendant at the time of delivery of registration ticket. In case of refusal to register the required sale deed within the stipulated period of five years, it was stipulated that the plaintiff might take shelter in Court of law for redress. It is further averred that the plaintiff after taking possession of the land constructed a shop room along with verandah and sitting floor. It was alleged that in spite of several approaches the defendant neither accepted the balance consideration of Rs. 600/- nor did execute the sale deed. Consequently, the plaintiff had no other way but to file the suit.

4. The defendant filed his written statement assailing the maintainability of the suit and further while refusing all averments made in the plaint, specifically averred that the agreement was never executed by the defendant and the same, was a created one. The further case of the defendant was that the house site as well as the house standing thereon was let out to the defendant by the plaintiff as a monthly tenant who is occupied the same as such.

5. On the basis of the aforesaid pleadings, the trial Court framed seven issues, Issue No. 4 being:

Whether an agreement was executed by the defendant on 10.6.84 for registration of the suit land in favour of the plaintiff.

6. In course of hearing though objections were raised by the defendant with regard to the genuineness of the agreement Ext.1 and in his deposition the defendant

denied his alleged signatures in Ext.1, the Trial Court without sending the documents as well as the admitted the signatures of defendant for examination by a handwriting expert, examined the same itself and came to the conclusion that the signatures appeared to be of the same person i.e. defendant, and decreed the suit.

7. Being aggrieved by the judgment and decree of the trial Court, the defendant preferred T.A. No. 32/1997. The appellate Court though discussed the findings of the trial Court on all the issues, concentrating on Issue No. 4 came to the conclusion that the Trial Court committed an error in not sending Ext.1, the alleged agreement of sale, for comparison of the signatures of the parties appearing thereon with the admitted the signatures and allowed the appeal setting aside the judgment and decree passed by the trial Court. The said reversing judgment and decree are assailed in this appeal.

8. Heard learned Counsel for the parties at length, perused the pleadings and the evidence available on record.

9. The sole dispute in this appeal is as to whether Ext.1, the agreement, said to have been executed on 10.6.84 was a valid document or had been created for the purpose of the suit. The Trial Court on the basis of the pleadings has rightly framed issue No. 4. It appears from the pleadings and evidence that the defendant all along disputed his signatures appearing in the agreement Ext.1. The trial Court without referring the matter to a handwriting expert for comparison of the signatures took pain to scrutinize the signatures itself and applying the principle that the Court is expert of experts came the conclusion that the signatures were that of the defendant. The appellate Court though disagreed with such procedure committed an error in not sending the impugned agreement Ext.1 for comparison of the signatures to a handwriting expert. It only set aside the judgment and decree passed by the trial Court only on the ground that the trial Court could ought not to have compared the signatures itself.

10. In view of the aforesaid infirmity, this Court sets aside the judgments and decrees passed by both the Courts below and remits the matter back to the trial Court with a direction to it to decide issue No. 4 de novo. The said Court is

directed to send Ext.1, the agreement dtd. 10.6.84 to a handwriting expert for comparison of the signatures appearing therein along with the admitted signatures of the parties and thereafter come to its conclusion. It is needless to say that the findings of the trial Court so far as other issues are concerned, shall remain untouched. The trial Court after getting the report of the handwriting expert and hearing the counsel for both sides as also taking all the materials available on record into consideration shall dispose of the suit afresh.

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