

State of Kerala Vs. Babu

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Court : Kerala

Decided On : Apr-04-2003

Reported in : AIR2003Ker278; 2003(2)KLT526

Judge : Pius C. Kuriakose, J.

Acts : [Evidence Act, 1872](#) - Sections 91 and 92; [Constitution of India](#) - Article 227

Appeal No. : R.P. No. 240 of 2003 in O.P. No. 3064 of 2003

Appellant : State of Kerala

Respondent : Babu

Advocate for Def. : K. Gopalakrishna Kurup, Adv.

Advocate for Pet/Ap. : M. Lalitha Nair, Government Pleader

Judgement :

ORDER

Pius C. Kuriakose, J.

1. The State/first respondent in the O.P. seeks review of my judgment dated 13th February, 2003 since clarified by me by order dated 5.3.2003 in C.M.P. 13097/03. Under judgment dated 13th February, 2003, I had afforded an opportunity to the revision petitioner, who is claimant in a land acquisition reference case to examine

a witness competent to speak about a particular document which was sought to be relied on by the second respondent - Kerala Water Authority, the requisitioning authority on certain conditions. The opportunity given under judgment dated 13.2.2003 was to examine one of the parties to the particular document. Later, under the order of clarification, the expression one of the parties to the particular document was corrected as either the son of the executant of the document who is the attestor of the document or any other person who is closely acquainted with the execution of the document.

2. Review is sought essentially in respect of the correction or clarification made by me under order dated 5.3.2003 in C.M.P. 13097/03.

3. Heard the Government Pleader Smt. M. Lalitha Nair for the review petitioner and Sri. Gopalakrishna Kurup, learned counsel for the first respondent-claimant, the petitioner in the O.P. Significantly, there is no representation for the requisitioning authority-Kerala Water Authority who should have been more concerned about the matter. Smt. M. Lalitha Nair submitted that the order of clarification under which permission has been given to examine the attestor of the document or any other person acquainted with the execution of the document is contrary to the decision of the Court reported in Raveendranatha Menon and Anr. v. Leelamma (1999 (1) KLJ 352) and also to the express provisions of Sections 91 and 92 of the Indian Evidence Act which prohibits adducal of oral evidence in variation of the terms of the written document. Learned counsel also submitted that in as much as the order of the learned Judge, North Paravoor, against which the O.P. was filed by the first respondent does not suffer from any apparent errors, lover-stepped by my jurisdiction under Article 227 of the Constitution in interfering with the said order.

4. I cannot agree. The decision of this Court in Raveendranatha Menon and Anr. v. Leelamma (supra) as well as the decisions of the Supreme Court in Raval & Co. v. Ramachandran ((1974) 1 SCC 424) and Mohinder v. State of Haryana ((1974) 4 SCC 285) dealt specifically with the admissibility of oral evidence against the express terms of the recitals in written agreements unregistered and registered in the context of Sections 91 and 92 of the Indian [Evidence Act, 1872](#). Section 91 is

subject to exceptions and explanations and explanation No.3 does permit oral evidence in a limited sphere. Section 92 is the section which deals specifically with exclusion of evidence regarding oral agreements varying the terms of documents which are required by law to be registered in writing. Section 92 is subject to as many as six provisos and to the extent allowed by the provisos, oral evidence can be adduced. In the instant case as Sri. Gopalakrishna Kurup submits oral evidence was sought to be adduced not to show that the price shown in that document is not the price that was paid and received, (though it may be possible for a claimant to argue on the authority of *Anamalais Bus Transport Pvt. Ltd. Chalakudy v. D. Ramakrishna Pillai and Anr.* (AIR 1969 Kerala 265) that it is notorious that people will undervalue documents of sale atleast for the purpose of saving on stamp duty) but the purpose of the examination was to give evidence regarding the special or compelling circumstances under which the property in question had to be sold for the value shown in the document. To that extent, notwithstanding Section 92 there is scope for oral evidence in the context of registered documents. As indicated by me above, the grievance of the Government is that I permitted examination of the attesor of the document or anybody closely acquainted with the execution of the document as a substitute for the party to the document. Smt. M. Lalitha Nair submits that an attesor does nothing other than to subscribe his signature in attestation of the signatures put by the executant to the document. Smt. M. LalithaNair is certainly right in her submission regarding the role of an attesor especially in the context of Transfer of Property Act, which has interpreted the term 'attested' in relation to an instrument. But then one cannot be unmindful of the realities of everyday life that when the son functions as attesor to a document executed by his own old, sick and infirm father, the son may be playing a major role in the matter of arranging for the sale, identifying the purchaser and even negotiating as to what should be the consideration for the sale. Attesor to a document cannot by mere attestation be imputed with the knowledge of the contents of the document. However, on the facts of a given case where there is a close relationship between the executant and the attesor such as husband and wife, father and son, the possibilities of the attesor having knowledge regarding the recitals in the documents and about the circumstances under which the document came to be executed cannot be ruled

out. Under the order of clarification I permitted the petitioner to examine the son of the executant, an attester to the document as a substitute for his father only because of the submission that the son is competent to speak about the circumstances under which the document was executed. I had of course, permitted examination of any other person who is closely acquainted with the execution of the document and in saying so, I only meant the examination of a witness who is competent to speak about those matters pertaining to the document or document properly which are relevant for the adjudication of the issue before the reference court. I am told that pursuant to my orders witness has been examined and has been cross-examined not only the State, but also by the requisitioning authority. The learned Judge will evaluate the evidence. Evidentiary value and probative force of the evidence which has come from the mouth of the witness will be assessed on the basis of well-known tenets of appreciation of evidence.

5. The learned Government Pleader did not address any argument in the context of the ground taken in the review memorandum that I exceeded the limits of my jurisdiction under Article 227. The visitorial jurisdiction under Article 227 is certainly a narrow one. In my opinion, the same must certainly be invoked in cases where the order passed by the Subordinate Courts or Tribunal is so wholly unreasonable that it can be said to be tainted with perversity. In the instant case, I certainly did not opine that the order passed by the learned Subordinate Judge against which the O.P. was filed is tainted with perversity. But then Article 227 can be and should be invoked for avoiding manifest injustice also. On the facts obtaining in this case, I was convinced that to avoid a situation of gross injustice from the point of view of the claimant/petitioner, grant of the permission which I granted was necessary.

Subject to the above observations, the Review Petition is disposed of.