

Dhanakodi Padayachi Vs. Muthukumaraswami

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Court : Chennai

Decided On : Sep-17-1996

Reported in : (1997)2MLJ37

Appellant : Dhanakodi Padayachi

Respondent : Muthukumaraswami

Judgement :

ORDER

Raju, J.

1. The defendant in O.S. No. 573 of 1980 on the file of District Munsif Court, Cuddalore, who succeeded before the trial court, but lost in the first appellate court, is the appellant in the above second appeal.

2. The respondent herein has filed the suit for recovery of a sum of Rs. 400 and Rs. 2,400 with interest due thereon as said to be due under two promissory notes dated 27.2.1971 and 12.2.1973 respectively. The defendant/appellant disputed the suit claim. So far as the promissory note dated 27.2.1971 is concerned, the plea was that the same was not fully supported by consideration and the claim of the basis of the said promissory note has to fail on account of partial consideration only. As far as the promissory note dated 12.2.1973 as also the endorsement dated 5.1.1976 thereon was concerned, the claim of the defendant was that they were fabricated documents and not supported by any consideration. At the time of

trial, both parties adduced oral evidence and so far as the plaintiff is concerned, he adduced documentary evidence also and there was no documentary evidence on the side of the defendant. On a consideration of the materials on record, the learned trial Judge sustained the claim due under the promissory note dated 27.2.1971 and so far as the promissory note dated 12.2.1973 is concerned, the learned trial Judge was of the view that the plaintiff has not proved that signature in the pronote as well as the endorsement was that of the defendant. In coming to such a conclusion the learned trial Judge has chosen to compare himself the signature found in the disputed document as well as the admitted signatures and observed that the signatures in the disputed document, in his view, are not that of the defendant. Consequently, the suit came to be decreed partially. Aggrieved the plaintiff pursued the matter on appeal in A.S. No. 28 of 1983 on the file of the District Court, South Arcot at Cuddalore. The learned first appellate Judge has chosen to re-appreciate the evidence as it appealed to him and set aside the findings of the learned trial Judge on the view that the court below committed serious error in resting its conclusion to disbelieve the claim of the plaintiff by mere comparing the signatures found in the disputed promissory note and endorsement itself and it also committed an error in rejecting the evidence of R.W. 2 on the only ground that he was the relative of the plaintiff and taking into account the reckless attitude and denial exhibited by the defendant in disputing his own signature found in the written statement filed in the case. The learned first appellate Judge considered the evidence on record afresh and reversed the finding of the learned trial Judge and thereby decreed the suit as prayed for in respect of the other promissory note also. Aggrieved the defendant has filed the above second appeal.

3. Mr. R. Aravind, learned Counsel appearing for the appellant, while elaborating the substantial question of law formulated at the time of the admission of the second appeal, contended that the first appellate court committed a grave error of law in not discussing the findings of fact recorded by the trial court and that the view taken by the learned first appellate Judge that the learned trial Judge had no power to himself compare the signature and come to a conclusion on the genuineness of the signature does not lay down the correct position of law and consequently the judgment and the decree of the first appellate Judge are liable to

be set aside. The learned Counsel, in support of his said stand taken on the observations of the first appellate Judge on the competency of the trial Judge to himself undertake the task of comparing the signatures and coming to the conclusion on the genuineness of signatures found, relied upon two earlier decisions of this Court In *R. Ramaswamy v. Seethammal* (1990) 2 L.W. 15, a learned single Judge of this Court held that inasmuch as Section 73 of the Evidence Act does not specifically state by whom the comparison of a disputed writing with an admitted writing should be made, but, however, the second paragraph of Section 73 expressly provides that the court may also undertake such comparison, it was observed that the comparison can be made either by a witness acquainted with the handwriting or by an expert witness skilled in deciphering handwriting or without the intervention of any witness at all by jury themselves or in the event or there being no jury, by the court, and it was not essential that the handwriting expert must be examined to prove or disprove a writing. The learned Judge also observed that the court was competent to compare the disputed writing with the writing admitted or prove to be that of the person concerned, while at the same time clarifying the position that the court may get the writing compared by an expert and examine him, if it thinks fit to do so, though it is not bound to do so.

4. In *Muniswamy, R. and six Ors. v. P. Pandiarajan and three Ors.* (1993) 1 L.W. 186, a Division Bench of this Court expressed the view that while considering the scope of Section 73 of the Evidence Act in the light of certain case law on the subject that it is not essential for the court to get the opinion of the expert and the court is competent to compare the signature with the admitted signature and there is absolutely no bar to do so in view of Section 73 of the Act.

5. I have carefully considered the submissions of the learned Counsel for the appellant. The principles laid down in the two decisions referred to supra cannot be construed to have laid down any absolute propositions of law as sought to be projected by the learned Counsel for the appellant, apart from even the peculiar features of the case and the overwhelming materials on record and the reasons assigned by the first appellate Judge to reverse the finding of the learned trial Judge, to which a reference will be made separately.

6. The latest pronouncement of the Apex Court reported in *O. Bharathan v. K. Sudhakaran* : AIR 1996 SC1140 cannot be ignored in dealing with the scope of the powers as also the corresponding duties and obligations case upon a competent civil court in exercising the powers envisaged under Section 73 of the Evidence Act. The Apex Court while advertent to its earlier decisions reported in *State (Delhi Admn.) v. Pali Ram* : 1979 CriLJ17 and *Fakhruddin v. State of M.P* 1967 M.L.J. (Cri.) 925 : A.I.R. 1967 S.C. 1326 : 1967 Cri.L.J. 1197.

18. The learned Judge in our view was not right either in brushing aside the principles laid down by the court in *Pali Ram* on the ground that it was not a criminal case or taking upon himself the hazardous task of adjudicating upon the genuineness and authenticity of the signatures in question even without the assistance of a skilled and trained person whose services could have been easily availed of. Annulling the verdict of popular will is as much a serious matter of grave concern to the society as enforcement of laws pertaining to criminal offences, if not more. Though it is the province of the expert to act as judge or jury after a scientific comparison of the disputed signatures with admitted signatures, the caution administered by this Court is to the course to be adopted in such situations could not have been ignored unmindful of the serious repercussions arising out of the decision to be ultimately rendered. To quote, it has been held in *Pali Ram* : 1979 CriLJ17 at 168, para 30. The matter can be viewed from another angle, also. Although there is not legal bar to the Judge using his own eyes to compare the disputed writing with the admitted writing, even without the aid of the evidence of any handwriting expert, the Judge should, as a matter of prudence and caution, hesitate to base his finding with regard to the identify of a handwriting which forms the sheet anchor of the prosecution case against a person accused of an offence, solely on comparison made by himself. It is, therefore, not advisable that a Judge should take upon himself the task of comparing the admitted writing, with the disputed one to find out whether the two agree with each other; and the prudent course is to obtain the opinion and assistance of an expert.

19. The necessity for adhering to the said sound advice and guidance is all the more necessary in a case where hundred of signatures are disputed and the striking dissimilarities noticed by the court at the time of trial of the election petition.

20. The learned Counsel appearing for the first respondent was not able to convince us that the learned Judge was right in comparing the signatures himself at any rate in the peculiar facts and circumstances of the case and rendering the findings against the appellant therein. As we are satisfied on the peculiar facts of this case also that the learned Judge was not right in deciding hundreds of the disputed signatures by comparing the counterfoils by himself to declare the votes as void, we need not go into other arguments advanced before us.

7. The role of the court while exercise the powers under Section 73 of the Evidence Act and method of approach to be adopted would vary also depending upon the relative facts and circumstances of the case. In the light of the principles laid down by the Apex Court in the latest pronouncement referred to above, one of the reasons assigned by the learned first appellate Judge in this case to reverse the finding of the learned trial judge which has been recorded on undertaking a comparison by himself of the disputed signature with the admitted signatures cannot be said to be wholly erroneous in law or an unjustified criticism of the method of test adopted by the learned trial judge in the case.

8. That apart, the learned first Appellate Judge has chosen to assign further and additional reasons also to disturb the findings of the learned trial Judge that the promissory note dated 12.2.1983 and the endorsement found entered therein did not contain the genuine signatures of the defendant. The learned first Appellate Judge, in re-appreciating the evidence, has pointed out the reckless attitude of the appellant, in this case in bluntly denying even his own signature in the written statement filed in the present case as indication of the extent to which the appellant was prepared to go to record a finding that the appellant was an unreliable witness too. The learned first appellate Judge also, in my view, rightly found fault with the manner of appreciation of the evidence of P.W. 2 by the trial Judge and the reasons assigned for rejecting his evidence. It is by now well-settled by several decisions of this Court as also the Apex Court that proximate relationship of a witness with any party to the proceeding is by itself no ground to reject such evidence unless any tangible or concert defects are pointed out or any convicting reasons are assigned to reject the evidence otherwise than on the mere ground of relationship. In this case, the evidence of P.W. 2 who has been one of the

attestors to the promissory note dated 12.2.1973 and the endorsement, appears to have been rejected only on the ground of his relationship with the plaintiff. This procedure adopted cannot be said to be in sound exercise of discretion left to the learned trial Judge and no exception could be taken to the first appellate court disapproving of such approach adopted by the learned trial Judge. The materials on record disclose that the scribe and the author of the promissory note was no more and of the two attestors, P.W. 2 was only readily available and the other attesor was not readily available in the village. As rightly commented upon by the learned first Appellate Judge, nothing precluded the defendant/appellant from securing him, if he was sure of his presence as a witness to disprove the signature of the appellant on the disputed documents of which he as attesor in the promissory note or to the endorsement. This has not been done by the appellant, but in spite of prima facie proof of the factum of due execution of the promissory note by the defendant by tendering his own evidence and producing the evidence of one of the attestors, the defendant has not chosen, as-noticed above, either to get the other attesor to examine on his side or take steps to send the document to the expert for getting his opinion. That apart as it was open to the learned trial Judge to compare, even as per the claim of the appellant, there is no impediment in law to the first appellate Judge also equally to reapprciate the signatures on the disputed document and the evidence let in this regard and come to his own conclusion in the matter.

9. In view of the above, the reasons assigned by the learned first appellate Judge to reject and reverse the findings of the learned trial Judge cannot be said to suffer any patent error of law or perversity of approach in the matter of appreciation of evidence warranting interference of this Court by undertaking a further reapprciation of the matters in exercise of its powers under Section 100 of the Code of Civil Procedure. The findings recorded by the first appellate Judge, in my view, are more in conformity with reason aid law than the reasons assigned by the learned trial Judge as also the manner of approach and procedure adopted by the trial court. Consequently, I see no reason to interfere with the judgment of the learned first appellate Judge in the second appeal. The appeal therefore fails and shall stand dismissed. No costs.

10. In view of the dismissal of the main appeal, the stay petition in C.M.P. No. 4211 of 1989 shall also stand dismissed.

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