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Court : Chennai

Decided On : Sep-25-2012

Judge : M. Venugopal

Appeal No. : C.R.P. PD. NO. 664 OF 2010 & M.P. NO. 1 OF 2010

Appellant : Muthukumar

Respondent : Shanmugham

Advocate for Pet/Ap. : For the Petitioner: S. Dhanasekar, Advocate. For the Respondent: P. Valliappan, Advocate.

Judgement :

(Prayer: Petition filed under Article 227 of the Constitution of India, against the Judgment and Decree dated 03.07.2009 in I.A.No.142 of 2009 in O.S.No.117 of 2008 on the file of Subordinate Judge, Tiruchengode.)

ORDER

1. The Petitioner/Defendant has projected the instant Civil Revision Petition as against the order dated 03.07.2009 in I.A.No.142 of 2009 in O.S.No.117 of 2008 passed by the Learned Subordinate Judge, Tiruchengode.

2. The Learned Subordinate Judge, Tiruchengode, while dismissing I.A.No.142 of 2009 in O.S.No.117 of 2008 on 03.07.2009, has, among other things, held that

'Moreover, in the written statement filed by the defendant, the signature of the defendant has been admitted and only thing averred is that plaintiff has concocted the document by using the papers containing signatures of defendant. So when the signature is admitted, this petition to appoint Commissioner to take the document to the expert for his opinion does not arise'.

3. According to the Learned Counsel for the Petitioner/Defendant, the Learned Subordinate Judge, Tiruchengode has failed to appreciate that the Petitioner never executed a sale agreement to and in favour of the Respondent/Plaintiff and in fact, the Respondent/Plaintiff has fabricated the suit agreement with a view to grab the property.

4. The principal plea taken by the Petitioner/Defendant is that the signature seen in the sale agreement does not belong to him and also that the attestors and scribe mentioned in the agreement are not known to him.

5. The Learned Counsel for the Petitioner/Defendant projects an argument that in a suit for specific performance, when the signature in issue is disputed in the sale agreement, then, a Court of Law should suo motu send the disputed instrument/document to an Expert.

6. Finally, it is the stand of the Petitioner/Defendant that the Learned Subordinate Judge has gone wrong in not adverting to the aspect as to whether the appointment of Commissioner is very much necessary to transmit the disputed document for Expert's examination.

7. Conversely, it is the submission of the Learned Counsel for the Respondent/Plaintiff that earlier in the main suit, an Exparte Decree has been passed, since the Petitioner/Defendant has not filed the Written Statement and later I.A.No.84 of 2005 under Order 9 Rule 13 of Civil Procedure Code had been filed by the Petitioner/Defendant, which has been allowed.

8. That apart, it is the submission of the Learned Counsel for the Respondent/Plaintiff that the Petitioner/Defendant admits the signature in sale agreement dated 08.05.1999 and that I.A.No.142 of 2009 filed by the

Petitioner/Defendant is not maintainable in law.

9. Added further, the Learned Counsel for the Respondent/ Plaintiff contends that I.A.No.142 of 2009 has been filed by the Petitioner/Defendant belatedly when the main suit has been posted in the list with an intention to delay the Court Proceedings as long as possible.

10. At this stage, the Learned Counsel for the Respondent/ Plaintiff cites the decision of this Court in N.Chinnasamy V. P.S.Swaminathan, 2006 (4) CTC 850 at page 863 and 864, in paragraph 37, it is held hereunder:

"37. It is not in dispute that the written statement was filed on 10.6.99 and the Application was filed on 19.10.2004 only. But in the affidavit filed in support of I.A.No.1531/2004 no explanation much less an acceptable explanation was given by the defendant for taking out the Application under Section 45 of the Indian Evidence Act after nearly more than 5 years. Further, even though it was stated in the affidavit that the signature in the sale agreement dated 15.2.94 should be compared with his admitted signature by handwriting expert, there was no mention about the document containing his signature which was admitted by him and which should be compared with the disputed signature. In such circumstances the Trial Court has rightly observed that the application lacks bona fide. This Court, in T.A.Narasimhan V. Narayana Chettiar, 1968 (2) MLJ 48, has deprecated the practice of filing Applications for examination of documents by handwriting experts at a late stage and thereby protracting and holding up the proceedings. This decision is applicable to the facts of the present case and I do not find any illegality nor infirmity in the order of the Trial Court."

11. In this connection, this Court pertinently points out that in the affidavit in I.A.No.142 of 2009, the Petitioner/Defendant has, inter alia, mentioned that the signature found in the agreement for sale does not belong to him and further, the attestors and scribe are not known to him and as such, to prove his bona fide statement and signature found in the sale agreement, the same has to be sent to an Expert, to obtain his opinion.

12. In the counter filed by the Respondent/Plaintiff, it is stated that the I.A.No.142 of 2009 filed by the Petitioner/Defendant is defective, since it does not point out the address of an Expert to whom the disputed document is sent for comparison and obtaining an opinion and also it does not accompany an admitted signature of the Petitioner /Defendant.

13. It is well settled principle in law that an Expert opinion is admissible in evidence as relevant facts as per Section 45 of the Indian Evidence Act. The evidence of an Expert is to be interpreted like any other evidence. An Expert witness may offer his opinion evidence. However, it is for the Court of Law to draw its own conclusions. An Expert's evidence is not limited to what actually has taken place, but he can offer his opinion on facts. He can also speak to the experiments conducted by him behind the back of a person. A Court of Law is to be vigilant when an Expert witness appears before it.

14. It is to be borne in mind that a Court of Law can form its opinion in regard to the disputed handwriting/signature either on the opinion of the expert or on the opinion of a person acquainted with the handwriting. One cannot ignore an important fact that the opinion of the handwriting expert is not conclusive. After all, the evidence of handwriting expert being opinion evidence, is by its very nature is an infirm and weak and as such, it cannot of itself form the basis for a Court to arrive at the conclusions as regards the disputes/ controversies encircling the case.

15. As seen from Section 91 of the Indian Evidence Act, it is clear that it deals with exclusiveness of documentary evidence. But, Section 92 of the Act deals with not only conclusiveness but also inclusiveness of such evidence. Section 91 of the Act would be frustrated without the help of Section 92 of the Act. Likewise, Section 92 of the Act would be inoperative without the aid of Section 91 of Indian Evidence Act. To put it shortly, Section 91 applies to instruments/documents which are not only unilateral, but also bilateral. Whereas Section 92 applies to documents which can be described as dispositive.

16. It is to be remembered that Section 106 of the Indian Evidence Act applies to Civil and Criminal proceedings, although in criminal cases it should be applied with

great care and caution. Ordinarily, in the decision Blatch V. Archer (1774) 1 Cowp 53 at 65; Cross, 5th Ed., p.103, according to Lord Mansfield, 'all evidence is to be weighted according to the proof which it was in the power of one side to produce, and in the power of the other to have contradicted.'

17. It is to be noted that every individual is to discharge the 'Burden of Proof' which rests upon him. Further, the onus of proof, in the sense of burden of proof introducing evidence to establish a particular fact may, and constantly does, shift during the trial. The amount of evidence required to shift upon a person the burden of displacing a fact may depend on the facts and circumstances of each case.

18. In law, the term 'Legal Onus' is nothing but onus of proof on the pleadings. Admittedly, Burden of Proof in the initial stage is always static, the burden of onus in second sense may swing constantly according to the scale of evidence of the other preponderates. Also, the evidential onus, similar to the legal burden pertains to a certain issue and may be differently placed in respect of the different issues, which may arise in a case. In fact, the Legal Burden may shift tactically in the course of a trial.

19. A perusal of the Written Statement filed by the Petitioner/ Defendant, in paragraph 8, indicates that his father Shanmugam expired on 21.04.1999 and after his demise, the Respondent/Plaintiff on 13.05.1999 has come to the Petitioner/Defendant and informed that his father Shanmugam has taken a loan of Rs.1,00,000/- from him, for which, his father has executed two pronotes in favour of Respondent/Plaintiff and when a demand has been made for return of the amount, the Petitioner/Defendant has requested for two months time and the Respondent/Plaintiff handed over two pronotes signed by Shanmugam to the Petitioner/Defendant and the Respondent/Plaintiff compelled the Petitioner/Defendant to sign in four pronotes, each pronote at a value of Rs.25,000/- and accordingly, it has been filled with a date 13.05.1999. Also, it is mentioned that later on 08.05.1999 the Respondent/Plaintiff has come to the Petitioner/Defendant and demanded immediate payment of Rs.1,00,000/- failing which the Petitioner/Defendant has been asked to sign in a blank paper, which has been refused by the Petitioner/Defendant. Subsequently, the Petitioner/Defendant

has put his signature in a blank paper out of compulsion of the Respondent/Plaintiff.

20. The clear-cut case of the Petitioner/Defendant, as set out in the Written Statement, is that the Respondent/Plaintiff has utilised the blank document and he has created a forged sale agreement and has filed the present suit. Also, the Petitioner/Defendant has pleaded that the plaint schedule properties are valued about more than Rs.20,00,000/- and there is no necessity for him to sell the property for a value of Rs.3,00,000/-

21. In the instant case on hand, the Petitioner/Defendant has specified, in the Written Statement, the circumstances under which he has affixed his signature in the blank paper. Therefore, there is no dispute as to the signature of the Petitioner/Defendant in the sale agreement. Obviously, the dispute centers around the manner in which the Petitioner/Defendant has affixed his signature in the blank paper and also the allegation made by the Petitioner/Defendant that the Respondent/Plaintiff has created forged sale agreement utilising the blank signature. These allegations/factual aspects of the matter raised by the Petitioner/Defendant, in the considered opinion of this Court, will have to be taken note of by the trial Court along with the evidence of witnesses tendered at the time of trial of the main suit. Also, the opinion of Handwriting Expert alone is not a guiding or deciding factor in finding out the veracity of the sale agreement dated 08.05.1999. The contentions of the Petitioner/Defendant could be put the acid test by examination of attestors to the sale agreement and also, it is open to the Petitioner/Defendant to prove his case in some other methods. Further, it is the primordial duty of the Respondent/Plaintiff to substantiate his case by letting in oral and documentary evidence encircling the facts and circumstances of the case.

22. Be that as it may, one cannot ignore a vital fact that the present suit has been filed before the Learned Sub Judge, Namakkal on 24.09.2002. Obviously, once an Exparte Decree has been passed and later, after filing of I.A.No.84 of 2005 under Order 9 Rule 13 (filed by the Petitioner/Defendant), the Exparte Decree has been set aside and now, the suit is pending for final determination after settlement of pleadings. Therefore, this Court, taking note of the entire conspectus of the facts

and circumstances of the case in an integral manner, comes to an inevitable conclusion that I.A.No.142 of 2009 filed by the Petitioner/Defendant is only a futile one and further, an opinion of Handwriting Expert alone is not the conclusive/decisive factor in finding out the veracity of sale agreement dated 08.05.1999. Further, the genuineness of the sale agreement can be established by examining appropriate attesting witnesses and also by any other methods in the manner known to law by the respective parties to the case. It is to be noted that always it is open to the Petitioner/Defendant to adduce necessary oral and documentary evidence as to the circumstances under which he has affixed his signature in the sale agreement. Viewed in that perspective, I.A.No.142 of 2009 filed by the Petitioner/ Defendant is only a luxury and a surplusage one. Consequently, the Civil Revision Petition fails.

23. In the result, the Civil Revision Petition is dismissed, leaving the parties to bear their own costs. Consequently, the Judgment and Decree dated 03.07.2009 in I.A.No.142 of 2009 in O.S.No.117 of 2008 passed by the Subordinate Judge, Tiruchengode is affirmed by this Court. Consequently, connected Miscellaneous Petition is closed.

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