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HIGH COURT OF JUDICATURE AT ALLAHABAD

MATTERS UNDER ARTICLE 227 No. - 5047 of 2017

Smt. Adlene Massey And 2 Others

.....Petitioner(s)

Versus

Manish Das And Another

.....Respondent(s)

Counsel for Petitioner(s) : Manish Tandon

Counsel for Respondent(s) : Manohar Singh, Pt. K. K. Dubey, Rahul Jain

Court No. - 5

HON'BLE VIKAS BUDHWAR, J.

1. Heard Sri Manish Tandon, learned counsel for the defendant-petitioners, who are three in number and Sri Rahul Jain for the plaintiff-respondents.

2. Since counter and rejoinder affidavits have been exchanged between the parties, and they do not propose to file any further affidavits, with the consent of the parties, the case is being decided at the admission stage.

3. The case of the defendant-petitioners is that the plaintiff-respondents instituted an Original Suit no.996 of 2002 before the Court of Civil Judge (Senior Division), Kanpur Nagar, Manis Das and others vs. Mrs. Adlene Massey and others verified on 26.08.2002 seeking a decree of declaration to be passed in favour of the plaintiffs declaring that the plaintiffs are the owners and the landlord of the property in question on the basis of a Will of the deceased Smt. Baithal Kripal Singh and a decree of permanent injunction be passed in favour of the plaintiffs and against the Defendants/Petitioners restraining them from selling / disposing of or entry into any sale agreement. On being noticed, the defendant-petitioners filed their written statement coming with a stand that the will deed dated 29.09.2001, so executed by (Smt.) Baithal Kripal Singh in favour of the plaintiffs, prior to her death on 11.10.2001 was a forged document. In the Suit, the following issues were framed :-

“1-क्या वादीगण विवादित भवन के स्वामी हैं?

2-

क्या प्रतिवादीगण का विवादित भवन के एक भाग का कब्जा गैरकानूनी है और उन्हें अध्यासन का कोई अधिकार नहीं है?

3- क्या कोई वाद का कारण उत्पन्न नहीं हुआ?

4- क्या वाद का मूल्यांकन कम किया गया है?

5-क्या प्रदत्त न्यायशुल्क अपर्याप्त है?

6-क्या दावा 41 एच विशिष्ट अनुतोष अधिनियम से बाधित है?

7-क्या वादी किसी अनुतोष को पाने के अधिकारी हैं?"

4. The said suit came to be decreed on 31.08.2013 by the Court of Civil Judge Senior Division, Court Number 2, Kanpur Nagar. Aggrieved against the judgment and decree dated 31.08.2013, passed in O.S. No. 996 of 2002 by the Court of Additional Civil Judge (Senior Division), Court No. 2, Kanpur Nagar, the defendant-petitioners preferred First Appeal No. 565 of 2013, Smt. Adlene Massey and 2 others vs. Manish Das, before this Court, in which, on 30.10.2013, the appeal was admitted, notices were issued, and both the parties were restrained from alienating the property in question. Thereafter, the papers were sent back to the Court of District Judge on account of pecuniary jurisdiction, and the same came to be numbered as Civil Appeal No. 62 of 2016. During the pendency of the appeal, an application came to be preferred on 04/05/2017 for examining the signatures so made upon the will deed dated 29/09/2021, that is, the hand writing expert report. The said application was objected by the plaintiff respondents, which came to be rejected by the Court of Additional District Judge FTC, Court No. 41, Kanpur Nagar on 20.07.2017.

5. Questioning the said order, the present petition came to be preferred.

6. This Court, on 05.09.2017, proceeded to pass the following orders:-

"Issue notice to respondents fixing 30.09.2017.

Steps to be taken within one week by both ways i.e. by ordinary post as well as registered post A.D.

List on 30.09.2017.

By the next date fixed, the appellate Court may proceed with the appeal but shall not pass any final order.”

7. Counter Affidavit and Rejoinder Affidavit have been exchanged, which are available on record.

8. Sri Manish Tandaon, learned counsel for the defendant-petitioners has sought to argue that the order dated 20.07.2017 passed by the Court of FTC Court No.41/ Addl. District Judge, Kanpur Nagar in Civil Appeal no. 62 of 2016 rejecting the application for getting the report of Hand Writing Expert with relation to the Will deed dated 29.09.2001 cannot be sustained particularly when it is always open for the appellate court to have allowed the said application looking into the facts and circumstances so emanated in an individual case. Submission is that there was ample evidence available on record so as to suggest that the will deed dated 29.09.2001 was a fictitious document and in case Hand Writing Expert Report was obtained then the truth would have surfaced. Submission is that appeal is in extension to the Suit and at the appellate stage, the Courts are not powerless to ask for getting Hand Writing Expert Report. Further contention is that in the Original Suit no. 996 of 2002 instituted by plaintiff-respondents verified on 26.08.2002, the entire claim set up by the plaintiff-respondent is hinges upon the Will deed dated 29.09.2001 and the defendant petitioners in their written statement so filed by them in para-2 have themselves taken a ground that the will deed dated 29.09.2001 was forged and fictitious as in this regard another Will deed was claimed by defendant-petitioners. Submission is that even otherwise in the suit itself the said question was argued on the basis of the pleadings, but on irrelevant considerations, which are foreign to Civil Law, the court below has rejected the said application. Contention is to the extent also that in view of the provisions contained under Section 45 of the Indian Evidence Act, the opinion of the Expert when the Court is of the opinion that report of Expert is needed then obviously the provisions empowers the Court to ask for opinion, thus it is prayed that the order impugned be set aside. Reliance has also been placed upon the judgment of the Hon'ble Apex Court in ***O. Bharathan vs. K. Sudhakaran and another***, 1996(2) SCC 704, ***Lalit Popli vs. Canara Bank and others***, 2003 AIR (SC) 1795 and a judgment of Madras High Court in ***Bomma***

Naicken vs. Chinna Gounder and another, 1998 AIR (Madras) 375.

9. Countering the submissions so made by learned counsel for the defendant-petitioners, learned counsel for the plaintiff-respondents submits that none of the contentions so raised by the counsel for the defendant-petitioner has legs to stand. Submission is that suit is of the year 2002 and in paragraph nos. 2 and 3 of the plaint, the entire claim set up by the plaintiff-respondent is upon the will deed dated 29.09.2001 and even in the prayer clause, relief 'A' is dependent upon the rights so claimed on the basis of the will of the deceased Smt. B. Kripal Singh and the said will itself was disputed by the defendant-respondents while filing written statement in para-2 while alleging it to be a forged document and once the issues themselves were framed, the defendant-petitioners did not insist for framing of the issue regarding validity of the said will and the said suit came to be decreed on 31.08.2013 and a First Appeal came to be preferred before the High Court in the year 2013 itself being First Appeal No.565 of 2013 by the defendant-petitioner. However, for the first time, on 04.05.2017, now, the opinion of the Expert is being sought and rightly the order dated 20.07.2017 came to be passed rejecting the said application seeking the report of the Hand Writing Expert, particularly at an appellate stage in view of the additional factor that the existence of the will was very well within the knowledge of the defendant-petitioners. Reliance has been placed upon the decision of the Hon'ble Apex Court in ***State of Karnataka vs. K.C. Subramanya and others, (2014)13 SCC 468, Rais Ahmad vs. Special/Additional District judge, Saharanpur, 1997 AWC 231*** and a decision of this Court in ***Matters Under Article 227 No.4065 of 2018, Girja Shankar Tripathi vs. Kamla Shankar Shukla and 5 others*** decided on 19.07.2018.

10. I have heard the submissions so made across the Bar and perused the records carefully.

11. Facts are not in issue. It is not in dispute that based upon an unregistered will dated 29.09.2001, an O.S. No. 966 of 2002 came to be instituted by the plaintiff-respondents against the defendant-petitioners verified on 26.08.2002, seeking a decree of declaration declaring that the plaintiffs are the owners and landlord of the property in question by virtue

of the Will deed dated 29.09.2001 and a suit for permanent injunction. The said suit on being noticed was contested by the defendant-petitioners, they filed their written statement on 27.01.2003 and in para-2, they came up with the stand that the will deed dated 29.09.2001 so alleged to be executed by (Smt.) B. Kripal Singh in favour of the plaintiffs being unregistered is a forged document and in para-18 of the written statement, an unregistered will deed dated 05.10.2001 was being put to motion in order to claim devolution of rights by the defendant petitioners. Issues were framed and post contest the suit was decreed. Interestingly, as many as 7 issues were framed, but none of the issues pertains to the validity or the legality of the will deed dated 09.09.2001. Thereafter, the suit stood decreed in favour of the defendant-respondents. A regular First Appeal was preferred before this Court which was transferred to the District Court on account of pecuniary jurisdiction and it was numbered as Civil Appeal No. 62 of 2016, however, on 04.05.2017, now, an application came to be preferred for examining the signature made upon the will/ obtaining Hand-Writing Expert Report, which on objection came to be rejected on 20.07.2017 by the court below.

12. The entire sequence of events clearly goes to show that the defendant-petitioners were well aware of the unregistered will dated 29.09.2001 even they had staked their claim upon another unregistered will dated 05.10.2001. Thus it is a clear cut case of knowledge about the will deed which is alleged to be fraudulent but no steps were undertaken for getting the report of the Hand Writing Expert. The suit proceeded on the basis of the stand taken by the respective parties and the efforts made by them and ultimately the suit stood decreed in the year 2013. However, at the belated stage in the year 2017 and 04.05.2017, an application is being filed for getting the Hand Writing Expert Report.

13. The basis purpose of getting the hand writing expert report in view of the provisions contained under Section 45 of the Indian Evidence Act is to act with diligence and it cannot be deployed as a tool to fill up the lacunae at the appellate stage. The position might have been different in case the alleged will was not within the knowledge of the party and it was suddenly pressed upon at the appellate stage, however, things are converse in the present facts and circumstances of the case.

14. Even otherwise, under Order 41 Rule 27 of CPC also in case analogy is being extended on mere asking additional evidence cannot be permitted to be adduced, particularly when there happens to be certain criteria enumerated therein, i.e. the Court from whose decree the appeal has been preferred, has refused to admit the evidence which ought to have been admitted, or the parties seeking to produce additional evidence establishes that notwithstanding the exercise of the diligence, such evidence was not within his knowledge or could not after the exercise of the diligence be produced by him at the time when the decree appealed against was passed or when the appellate court was requires any documents to be produced or any witness to be examined to enable to pronounce judgment or for any substantial cause. Here even otherwise adopting the analogy none of the ingredients stands applied. So far as the reliance so placed upon the judgments in *Lalit Popli (supra)*, *O. Bharathan (supra)*, *Bomma Naicken (supra)* are concerned, there is no quarrel to the proposition so laid down that the Judicial Officer should not act as a Hand Writing Expert and the comparison of disputed signatures must be supported by the expert opinion or substantive evidence and the entries in the revenue records must be thoroughly scrutinized and made in accordance with the Land Revenue Manual.

15. Here in the present case, there is one additional redeeming feature, which also needs to be noticed in the order of the learned Trial Court, the following was observed:-

“उभय पक्ष द्वारा अनुरोध किए जाने पर न्यायालय ने श्रीमती बी कृपाल सिंह के संबंधित विभाग से अभिलेख मांगे थे जिसमें श्रीमती भी कृपाल सिंह ने मृत्यु के पूर्व हस्ताक्षर किये है। सम्बन्धित विभाग से फाजील अहमद सी डब्लू । न्यायालय में दिनांक 20-8-2013 को सभी कागजात लेकर उपस्थित हुये थे एवं न्यायालय में अपना बयान भी दर्ज कराया था। पत्रावली पर दाखिल किये गये उक्त असल कागजात कागज संख्या 196क में बी कृपाल सिंह के हस्ताक्षर अंकित है। बी कृपाल सिंह द्वारा जो मेडिकल आख्या डा० दिलीप सिंह से प्राप्त की गयी थी वह दिनांक 15-12-95 की है जिस पर बी कृपाल सिंह के हस्ताक्षर है जिसे सम्बन्धित डा० द्वारा अटेस्ट किया गया है।

जहां तक सी डब्लू । फाजील अहमद द्वारा दाखिल किये गये प्रपत्रों का प्रश्न है तो न्यायालय विशेषज्ञ के तौर पर अपनी आख्या नहीं दे सकती है। चूंकि प्रस्तुत वाद में वादीगण ने अपने

वसीयत को धारा 63 इण्डियन सक्सेशन एक्ट 1925 एवं धारा 68 भारतीय साक्ष्य अधिनियम 1872 के तहत पूर्ण रूप से साबित किया है एवं न्यायालय का उक्त वसीयत के सम्बन्ध में निष्कर्ष भी आ चुका है। ऐसी स्थिति में न्यायालय विशेषज्ञ के तौर पर हस्ताक्षर का मिलान कराना न्यायोचित नहीं समझती है प्रतिवादीगण ने अपनी वसीयत को अपने साक्षियों के द्वारा साबित नहीं किया है एवं उनके साक्षियों के बयान आपस में काफी विरोधाभासी हैं।”

16. The Trial Court even otherwise on the basis of the documents available on record proceeded to consider the material decreed the suit. Even otherwise it is always open for the defendant-petitioner to canvass its argument and to substantiate its claim on the basis of the documents available on record and specially not upon the factors which amount to filling of the lacunae in this regard. Moreso, the judgment so relied upon by the counsel for the respondents in *K.C. Subramanya (supra)* and *Rais Ahmad (supra)*, do apply.

17. Considering the over all fact situation and after perusing the records in entirety, the Court doe not find any palpable or manifest illegality committed by the court below so as to invoke the jurisdiction under Article 227 of the Constitution of India.

18. Resultantly, the interference is declined. The petition stands **disposed of** requiring the appellate court to expedite and to decide the appeal with most expedition without granting unnecessary adjournment and in case, adjournments are granted on exceptional circumstances, beyond the apprehension and the control that too not beyond two weeks at a stretch.

19. It is always open for the parties to take all legal and factual grounds which are available under law.

May 11, 2026
N.S.Rathour

(Vikas Budhwar,J.)