

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

39. SA/432/2012

SHIVAJI KAKASAHEB MOTE, DIED THR. L.RS. SUMANBAI AND ORS.
V/S
RAOSAHEB BABURAO HADULE, DIED THR. L.RS. SUBHADRABAI @ CHAND
RAKALA AND ORS.

Mr. S.R. Choukidar, Advocate for appellants.

CORAM : T.V. NALAWADE, J.
DATED : 21st September, 2015.

ORDER :

1. The appeal is filed against judgment and decree of Regular Civil Suit No. 73/1993, which was pending in the Court of Civil Judge, Junior Division, Bhoom and also against the judgment and order of Regular Civil Appeal No. 37/2006, which was pending in the Court of Principal District Judge, Osmanabad. Heard the learned counsel for the appellants.

2. It is the case of appellant/plaintiff that defendant, grant-father of plaintiff from maternal side had agreed to sell his agricultural lands for valuable consideration of Rs. 25,000/- under agreement dated 13.1.1992. It is contended that the amount of Rs. 20,000/- was given to defendant under the agreement and so, the possession was given to plaintiff by the defendant. It is contended that defendant then avoided to

execute the sale deed. It is contended that notice was given, but the defendant did not show willingness to perform his part of contract.

3. The defendant contested the matter by filing written statement. He contended that he had no son, but he had two daughters. According to him, to grab his lands, some fabricated document is prepared by the plaintiff and on that basis, the plaintiff has got mutated the lands in the name of his mother, daughter of defendant. It is contended that defendant had filed Civil Suit No. 362/1992 due to this conduct of the plaintiff, but then plaintiff created such false document and plaintiff is trying to grab the property of defendant. It is contended that some portion of the land was acquired for Manjara Dam and the plaintiff wants to see that the defendant is not able to get compensation in respect of the land acquired by the Government and with that intention, the suit is filed.

4. Both the sides examined witnesses in the trial Court. As the defendant denied the execution of agreement, at the instance of the defendant, the disputed hand writing and specimen signatures of defendant were sent to hand writing expert. The said hand writing expert was examined before the

trial Court. On the other hand, the plaintiff examined one witness, attesting witness of aforesaid agreement of sale.

5. The Courts below have accepted the opinion given by the hand writing expert that there is difference between the signatures between the specimen signatures and disputed signature. The Courts below have considered the other circumstance like the evidence of plaintiff that defendant had put the signature in 'Urdu' script when signature appearing on the document is in 'Modi' script. After considering the surrounding circumstances, the Courts below have refused to rely on the evidence of attesting witness and evidence of plaintiff.

6. The learned counsel for the appellant/plaintiff submitted that substantial question of law can be formulated on the basis of circumstance that specific points were not framed and considered by the appellate Court in respect of the appreciation of evidence of attesting witness done by the trial Court. He also submitted that substantial question of law can be formulated on the contention that judgments are perverse as over much importance is given to minor discrepancies in the evidence of plaintiff and his witnesses.

7. It cannot be disputed that the appellate Court is not expected to lightly interfere in the appreciation of oral evidence done by the trial Court. The first appellate Court has considered the oral evidence, though no specific point was framed with regard to proof of the document by examining attesting witness. The evidence of expert is also considered by the first appellate Court. Thus, it can be said that the findings of the Courts below are concurrent.

8. Though expert evidence is on opinion, the Court is expected to consider the relevant circumstances before accepting or rejecting the opinion evidence. The Courts are required to see the conduct of the witnesses and so, that is the matter of appreciation of oral evidence. It can be said that there is discretion with the trial Court either to accept or not to accept the expert opinion. In the second appeal, it is not possible for this Court to interfere in the finding given on such point.

9. The judgments delivered by the Courts below show that the entire evidence is considered by the Courts below and it cannot be said that there is perversity. Even if it is presumed that there was evidence of attesting witness as against the

opinion of expert, it can be said that two views were possible and the Courts below have taken one view. In such case also, it is not possible for this Court to disturb the decisions of the Courts below in second appeal. Thus, no substantial question of law as such is involved in the matter.

10. In the result, the appeal stands dismissed.

[T.V. NALAWADE, J.]

ssc/