

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No. 904 of 1997****Reserved on 06.03.2017****Pronounced on 28.03.2017**

- Inderjeet Singh, aged about 29 years, S/o late Sardar Jaidev Singh, r/o Gurunanak Nagr, near Gurudwara, Raipur (MP now CG)

---- Appellant / Defendant**Versus**

1. Smt. Nasim Meman, aged about 53 years, Widow of Abdul Majid Meman
2. Ku. Aisha Meman, aged about 20 years, D/o Abdul Majid Meman.
3. Kahekasha Memon, daughter of Abdul Mzid Memon, aged about 32 years,
4. Kosar Memon, daughter of Abdul Mazid Memon, aged about 30 years,
5. Mahezabeen Busara Memon, daughter of Abdul Mazid Memon, aged about 28 years,

All residents of Raja Talab Nurani Chowk, Irani Dera, near Railway Crossing, Raipur, Distt. Raipur (C.G.)

-- Respondents

For Appellant	:	Shri Vishnu Koshta and Shri Shobhit Koshta, Advocates
For Respondents	:	Shri B.P.Sharma along with Shri Hari Agrawal, Advocate

Hon'ble Shri Justice Sanjay Agrawal**CAV JUDGMENT**

1. This is defendant's second appeal preferred under Section 100 of the Code of Civil Procedure, 1908 (hereinafter referred to as the Code of 1908 in short) against the judgment and decree dated 29.08.1997 passed by the District Judge, Raipur, in Civil Appeal No. 39-A/1995, by which, the appellate Court while reversing the findings of the trial Court, has decreed the plaintiffs' claim for

possession and damages.

2. The undisputed facts of the case are that the plaintiff Abdul Mazid (Since deceased represented by his L.Rs.) instituted a suit for possession and damages by submitting, inter alia, that by virtue of the registered deed of sale dated 01.09.1973, he acquired the valid title upon the suit land bearing Kh.No.1131/5 area 2.51 acres situated at village Kurra, Patwari Halka No.89 of Dharsinwa-1, Tahsil and District Raipur, along with Kh.No.669/4, area 2.66 acres (Not in dispute herein), from one Mahmood Ali and his minor brother and sisters for a sale consideration of Rs.2000/-. The possession of the suit land was accordingly delivered to him, but, the defendant, by unlawful means, has obtained its possession in the month of June – July, 1982 and cultivated the suit land forcibly by dispossessing him. It is pleaded further in the plaint that he lodged the report of the said incident before the concerned Station House Officer, Dharsinwa where the defendant had produced a registered deed of sale dated 27.04.1983 executed by his vendors, i.e., Mahmood Ali and his brother and sisters. Upon considering the said sale, the concerned Police authorities have refused to initiate any action against the defendant, giving rise to an instant action, instituted on 16.07.1986.

3. The defendant has contested the aforesaid claim of the plaintiff and stated that the plaintiff had never purchased the suit land as alleged nor was ever in possession over it. It is pleaded that he acquired the possession and valid title upon the suit land by virtue of a registered deed of sale dated 27.04.1983 and revenue papers are also mutated in his name and since then he has been cultivating the land in question peacefully.

4. In support, the plaintiff has examined himself as P.W.1 and one of his witness, namely, Abdul Jabbar (P.W.2) and produced the copy of the alleged registered deed of sale dated 01.09.1973 (Ex.P.1) along with other documents,

like, notices, etc., while the defendant, in rebuttal, has examined himself as D.W.1 and two of his witnesses including the vendor, namely, Mahmood Ali (D.W.2) and Patwari of the village Suraj Prasad (D.W.3) by producing the registered deed of sale dated 27.04.1983 (Ex.D.1), Rin Pustika and Revenue Papers in order to show his possession as well as of his vendor Mahmood Ali.

5. The trial Court, after examining the evidence led by the parties, has observed that the plaintiff has failed to prove the execution of alleged registered deed of sale dated 01.09.1973 (Ex.P.1) even upon the denial of its execution by its executor, Mahmood Ali. It held further that the plaintiff has just produced the copy of the alleged deed of sale (Ex.P.1) and examined himself only in order to prove his title over the suit land, however, has failed to produce any of its witnesses for establishing the said sale. It was further observed that despite of the alleged acquisition, the plaintiff has not obtained the revenue papers nor had produced any document in order to establish his possession over the suit land and, contrarily admitted the fact that name of his vendors are still shown in revenue papers, i.e., Khasra Panchshala (Ex.P.8) for the year 1982-83, much after the execution of the alleged sale (Ex.P.1). Consequently, the trial Court has dismissed the entire claim of the plaintiff by its judgment and decree dated 26.03.1991.

6. The aforesaid findings of the trial Court have been reversed by the first appellate Court in an appeal preferred by the plaintiff under Section 96 of the Code of 1908 by its impugned judgment and decree dated 29.08.1997. It was held by the appellate Court by relying upon the plaintiff's evidence that the executor Mahmood Ali (D.W.2) has executed the alleged document (Ex.P.1) in his presence and the executor has also admitted his signature in one of its pages. In consequence, decreed the plaintiff's suit by reversing the findings of the trial Court.

7. Being aggrieved, the defendant has preferred this appeal, which was admitted for its hearing vide order dated 19.10.2012 on the following substantial questions of law:

- “(i) Whether the first appellate Court was justified in holding that Ex.P/1, dated 1.9.73 executed by Mehboob Ali, despite his specific denial that the original document contained his signatures only at B to B and not at other places ?
- (ii) Whether on the facts and in the circumstances of the case, the appellate Court was justified in holding that Mehboob Ali was entitled to execute the sale deed Ex.P/1 for and on behalf of the minor brothers and sisters and was competent to convey absolute title in favour of the plaintiff ?”

8. Shri Vishnu Koshta and Shri Shobhit Koshta, learned counsel for the appellant/defendant submitted that the appellate Court has erred in reversing the findings of the trial Court by holding that the execution of alleged registered deed of sale dated 01.09.1973 (Ex.P.1) has duly been established even in absence of examination of any of its witnesses. They argued further that the burden was heavily upon the plaintiff with regard to prove the execution of the alleged sale (Ex.P.1), particularly, when its execution was specifically denied by its executor, Mahmood Ali and, submitted further that the plaintiff has failed to prove its execution, as per the provisions prescribed under Section 67 of the Indian Evidence Act, 1872 (hereinafter referred to as 'the Act of 1872' in brevity). Having failed so, the appellate Court, even without meeting the reasonings of the trial Court, ought not to have decreed the plaintiff's claim by reversing the findings of the trial Court. In support, they have relied upon the case laws rendered in the matter of “**Muddasani Sarojana v. Muddasani Venkat Narsaiah**”, “**Ramjan Khan and others v. Baba Raghunath Dass and others**”, “**Bank of India v. M/s Allibhoy Mohammed & Ors.**” “**State (Delhi Administration) v. Pali Ram**” and “**Ajay Kumar Parmar v. State of Rajasthan**” reported respectively in **AIR 2007 AP 50**, **AIR 1992 MP 22**, **AIR 2008 Bombay 81**, **AIR 1979 SC 14** and **2012 AIR SCW 5492**.

9. On the other hand, Shri B.P. Sharma and Shri Hari Agrawal, learned counsel for the respondents/plaintiffs while supporting the impugned judgment and decree submitted that the evidence of purchaser could not be rebutted in cross-examination regarding the execution of alleged sale (Ex.P.1), therefore, the appellate Court has rightly upheld its validity. They argued further that this Court can even compare the executor's disputed signature with that of his admitted one by virtue of Section 73 of the Act of 1872 in order to ascertain the fact as to whether the alleged sale (Ex.P.1) was executed by its executor or not. They submitted further that since the alleged sale deed is a registered document, therefore, it has its presumptive value regarding its due execution. In support of their contentions, they relied upon the principles laid down in the matter of “***Bellachi (dead) by Lrs vs. Pakeeran***” and “***Prem Singh and Others vs. Birbal and Others***,” reported respectively in **(2009) 12 SCC 95** and **(2006) 5 SCC 353**.

10. I have heard learned counsel for the parties and perused the entire record carefully.

11. The plaintiff's entire claim for possession and damages has been based on the registered deed of sale dated 01.09.1973 (Ex.P.1), therefore, the burden is upon the plaintiff to establish the due execution of the said sale. The plaintiff (P.W.1), in his evidence, has stated that he knew the signature of his vendor Mahmood Ali, who has executed the sale deed while signing on it in his presence over the portion marked as 'A to A' in the said sale deed (Ex.P.1). This is the only evidence available on record adduced by him in order to establish the due execution of alleged sale. However, from perusal of the record, it is clear that the same is not supported by his another witness, i.e., Abdul Jabbar (P.W.2). Pertinently to be mentioned here that the executor of the alleged sale, namely Mahmood Ali (D.W.2), who has entered into the witness box as D.W.2 has denied his signature specifically on the portion marked as 'A to A' in the said deed, as stated by the plaintiff in his evidence. Thus, the sole piece of evidence

adduced by the plaintiff in order to establish the execution of alleged sale is rebutted. No other witnesses of the said sale deed, vis-a-vis, its scribe was examined. It is the duty of the plaintiff, as required under Section 67 of the Act of 1872 to prove the signature of the executor Mahmood Ali, particularly when it was denied by him. The plaintiff could not examine any of its witnesses and/or the scribe of the said document in order to prove its genuineness. No effort whatsoever was made by the plaintiff even to summon any of its witnesses. Thus, the plaintiff has completely failed to establish its genuineness.

12. Pertinently to be mentioned here further that the suit was filed in the year 1986 three years after the occurrence of the alleged incident/quarrel even without assigning any cogent reasons in this aspect would, therefore, lead to an inference that no sale (Ex.P.1) as such was ever executed in his favour, otherwise, the plaintiff being a prudent man, would have immediately instituted a suit for possession.

13. The execution of the alleged document is required to be established in accordance with the provisions prescribed under Section 67 of the Act of 1872. The provision is relevant for the purpose is reproduced herein as under:

“67. Proof of signature and handwriting of person alleged to have signed or written document produced. – If a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in that person’s handwriting must be proved to be in his handwriting.”

14. A bare perusal of the aforesaid provision would show that if a document is alleged to be signed by any person or to have been written wholly or in part by him, then the signature or the handwriting of so much of the document as alleged to be in that person's handwriting must be proved to be in his handwriting.

15. While interpreting the aforesaid provision, the Madhya Pradesh High Court in the matter of ***Ramjan Khan and others vs. Baba Raghunath Dass***

and other, reported in **AIR 1992 MP 22**, has observed at para 15 as under:

“15. In order to prove the execution of a document it must be shown that the person executing it consciously subscribed to it in the sense that he put his mark or signature on it after having known and understood its contents. Mere proof that the person's signature appears on the document cannot, by itself, amount to execution of the document.”

16. A mere look to the alleged sale deed (Ex.P.1) along with the statement of its executor Mahmood Ali (D.W.2), particularly, para – 2 of his testimony would reveal that when he admitted his signature there in the said document with regard to the portion marked as 'B to B', at that relevant time, the contents of the said document were not explained to him so as to make him understand the true import of the document, but, the moment he came to know about its recitals, he denied his signature completely as evidenced by his statement para – 3. No evidence is available on record, much less, the cogent and reliable piece of evidence, by which, it could be held that the alleged deed of sale (Ex.P.1) was duly executed in accordance with the provisions prescribed under Section 67 of the Act of 1872.

17. The Bombay High Court in the matter of **Bank of India v. M/s. Allibhoy Mohamed & Ors**, reported in **AIR 2008 Bombay 81**, has held while dealing with the provisions contained under Section 67 of the Act of 1872, at para 36 & 37 as under:

“36. The definition of “proved” given under Section 3 must be read along with Section 67 which requires that there must be specified evidence that the signature purporting to be that of the executant is in the handwriting of the executant. Until this is proved the Court cannot proceed to consider whether execution is proved. In other words, Section 67 makes proof of execution of a document something more difficult than proof of matter other than execution of a document. Original of the public document must be proved in the manner required by the provisions of the Act (See C.H.Shah v. S.S.Malpathak, AIR 1973 Bombay, 14).

37. Under [Section 67](#), if a document is alleged to be signed by any person, the signature of the said person must be proved to be in his handwriting in the manner laid down in Sections 45 and 47 ([Venkatachala v. Thimmajamma](#) AIR 1959 SC 443). ”

18. The contention of the learned counsel for the respondents that if a document is a registered one, then it could be presumed that it was validly executed, in view of the principles laid down in **Bellachi (dead) by Lrs vs. Pakeeran, Prem Singh and Others vs. Birbal and Others** (supra). However, the said presumption is a rebuttal one and here in the instant case the said presumption has not only been rebutted as the executor Mahmood Ali himself has denied his signature specifically but the plaintiff has failed completely to prove the genuineness of the said document (Ex.P.1) by examining any of its witnesses. Presumptive value of the registration of the alleged sale (Ex.P.1) is thus rebutted and the principles laid in these decisions would not be applied in the facts and circumstances of the present case, and therefore, mere registration of the alleged sale would not confer any right or interest upon the plaintiff.

19. Besides, after purchasing the property in question in the year 1973, the plaintiff has never applied for getting the revenue papers mutated in his name on the basis of the said sale and has failed completely to produce any document in order to show his possession. Contrarily, it was still shown in the name of its executor Mahmood Ali even after the execution of the alleged sale deed, as reflected from Khasra Panchshala (Ex.P.8) for the year 1982-83. The plaintiff has thus even failed to establish the factum of delivery of possession in pursuance to the alleged deed of sale (Ex.P.1), although a recital made therein would show that the possession was delivered to the plaintiff, but, in fact, the plaintiff has failed to prove the delivery of its possession in pursuance to the alleged sale.

20. What has been held by the Andhra Pradesh High Court under such circumstances in the matter of **Muddasani Sarojana vs. Muddasani Venkat Narsaiah and others**, reported in **AIR 2007 AP 50** at paras 16 and 17 of its judgment are significant to be noted. They read as under:

“16. Coming to the second question, it needs to be discussed in two facets. The first is, as to whether Ex.A.1 was proved and the second is, whether the uncertainty

about the delivery of possession had any bearing upon it. Taking the second facet first, it needs to be noted that there is some uncertainty as to whether the possession of the suit schedule property was delivered to the first respondent, on the date of sale itself. It is true that there can be a sale, in accordance with Section 54 of the Transfer of Property Act, even if the possession of the property is not delivered. The judgments of Allahabad High Court in *Beni Madho v. A.U. John*, AIR 1973 Allahabad 110, and of this Court in *Shaik Osman v. Union of India*, 1980 (1) WR 105 are clear, on this aspect. It can safely be held that there can be a valid sale, even in the absence of actual delivery of possession. However, if there is a recital in the sale deed of the effect that possession was delivered, the purchaser cannot take shelter under the said principle, if he is not able to substantiate the factum of the delivery of possession, at the time of the sale.

17. There is a recital in Ex.A.1 to the effect that the possession was delivered on the same day, and that the first respondent was dispossessed by the appellant, about two months thereafter. The revenue records, particularly in the form of Exs. B.13 to B.15, disclose the continuous possession of the appellant over the land. It is not shown as to when the vendor of the first respondent had assumed possession from the appellant.”

21. Therefore, under such circumstances and in view of the principles laid down in the above mentioned case laws, it cannot be held that alleged registered deed of sale (Ex.P.1) was ever executed in favour of the plaintiffs. Since I hold that the execution of alleged sale (Ex.P.1) could not be established by the plaintiff, therefore, the case law as cited by the counsel for the respondents in the matter of **Prem Singh and Others v. Birbal and Others** (supra) would not be applicable in the instant matter as the facts involved therein are distinguishable from the present one.

22. As far as the further contention of the learned counsel for the respondents that by virtue of Section 73 of the Act of 1872, this Court can compare the disputed signature of the executor with that of his admitted one in order to ascertain the fact as to whether the alleged document was executed by its executor or not, is also noted to be rejected, in view of the principles laid down by the Supreme Court in the matter of **State (Delhi Administration) v. Pali Ram**, reported in **AIR 1979 SC 14**, as relied upon by Shri Koshta. It was observed therein by the Supreme Court at para 29 as under:

“29. The matter can be viewed from another angle, also. Although there is no 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 identity 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.”

23. While reiterating the aforesaid principles, the Supreme Court in the matter of ***Ajay Kumar Parmar vs. State of Rajasthan, 2012 AIR SCW 5492***, has again observed at para 23 of its judgment as under:

“23. The opinion of a handwriting expert is fallible/liable to error like that of any other witness, and yet, it cannot be brushed aside as useless. There is no legal bar to prevent the Court from comparing signatures or handwriting, by using its own eyes to compare the disputed writing with the admitted writing and then from applying its own observation to prove the said handwritings to be the same or different, as the case may be, but in doing so, the Court cannot itself become an expert in this regard and must refrain from playing the role of an expert, for the simple reason that the opinion of the Court may also not be conclusive. Therefore, when the Court takes such a task upon itself, and findings are recorded solely on the basis of comparison of signatures or handwritings, the Court must keep in mind the risk involved, as the opinion formed by the Court may not be conclusive and is susceptible to error, especially when the exercise is conducted by one, not conversant with the subject. The Court, therefore, as a matter of prudence and caution should hesitate or be slow to base its findings solely upon the comparison made by it.”

24. In view of the aforesaid principles, coupled with the fact that the executor has denied his signature specifically in the alleged document (Ex.P.1) and also with regard to the failure of the plaintiff to establish even the factum of delivery of possession in pursuance to the alleged sale, it is difficult to accept the contention of the learned counsel for the respondents that the execution of the alleged sale could be determined by this Court by comparing the signature of the executor of the alleged sale by taking aid of the provisions prescribed under Section 73 of the Act of 1872.

25. The plaintiff has thus failed completely to establish the due execution of

the alleged sale deed (Ex.P.1). Consequently, in view of the discussions in preceding paragraphs, the answer to the first substantial question of law would be in negative and the findings of the appellate Court reversing the findings of the trial Court in this regard deserve to be and are hereby reversed. Accordingly, I hold that no sale (Ex.P.1) as such was ever executed in favour of the plaintiff(s).

26. In view of the aforesaid answer to first substantial question of law, no need to examine with regard to the second substantial question of law. Resultantly, the appeal is hereby allowed and judgment and decree passed by the trial Court is hereby restored. There shall be no order as to costs.

27. A decree be drawn accordingly.

Sd/-

(Sanjay Agrawal)
Judge