

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

SECOND APPEAL No. 211 of 2019

JUDGMENT:

Appellant herein filed O.S.No.226 of 2002 for specific performance of agreement of sale dated 29.03.1997 and for issuance of a direction to defendant No.1 to receive balance sale consideration, to execute registered sale deed in favour of the appellant in respect of the suit schedule property and to deliver vacant possession of the same, in the alternative, directing defendant No.1 to refund the earnest deposit received by him from the appellant/plaintiff under the agreement of sale with interest @ 24% per annum from the date of the agreement and to award damage of Rs.2,00,000/- and to declare that the agreement of sale-cum-GPA deeds executed by defendant No.1 in favour of defendant Nos.2 and 3 in respect of the suit schedule property are null and void.

After trial, on behalf of the appellant, P.Ws.1 to 4 were examined and Exs.A.1 to A.8 were marked and on behalf of the defendants, D.Ws.1 to 3 were examined and Exs.B.1 and B.2 - registered agreement of sale cum GPA dated 31.07.2006 were marked. Ex.C.1 is the report of the handwriting expert.

The trial Court on going through the pleadings and the evidence and after considering the respective arguments, disbelieved the signature on Ex.A.1 and came to the conclusion that Ex.A.1 is a forged document as the signature appended to it appeared to have been brought in by machine. The same was based on the opinion of the handwriting expert. The lower appellate Court did not disturb any of those findings.

Sri Kowturu Pavan Kumar, learned counsel appearing for the appellant, strenuously contends that the findings of the lower appellate Court confirming the findings of the trial Court are not based on proper appreciation of evidence. He draws the attention of this Court particularly to the sentence in para 18 of the lower appellate Court's order "....The evidence of D.W.3 that the signature on Ex.A.1 said to have been made by respondent/defendant No.1 is made by printing process and not by hand would be taken as an assertive piece of material respecting the said signature and that it goes against the case of the appellant/plaintiff....." and submits that it is only a conjecture on the part of the lower appellate Court and the same cannot be said to be a definite finding. He also draws the attention of this Court to the evidence of P.W.2 and submits that P.W.2 is an attester of Ex.A.1 and there is nothing to disbelieve

the said version and the evidence of P.W.2 was not shaken in the cross-examination. He would submit that all the witnesses have spoken to with regard to payment of money to respondent No.1/executant and thus, the findings of the Court below being perverse, this second appeal deserves to be considered.

Having considered the submissions of the learned counsel for the appellant and having perused the judgments of the Courts below, it may be noted that the trial Court based on the opinion of the expert of the Andhra Pradesh Forensic Science Laboratory had recorded a categorical finding that the signature marked as 'Q' on Ex.A.1 is a forged one executed through some printed process. The evidence of D.W.3 was not shaken and there was nothing attributed against D.W.3, who was examined on behalf of the Andhra Pradesh Forensic Science Laboratory with respect to Ex.C.1. It is the specific assertion of D.W.3 that he has arrived at the conclusion in his report that disputed signature marked as 'Q' is a forgery executed by using the instruments i.e., magnifiers, stereo-microscope and video spectral comparator and given a categorical finding that Ex.A.1 was the reproduction on machine, but not by hand. This crucial finding of the trial Court remains stand scrutiny of the lower appellate Court. Practically, except trying to throw a doubt with respect to the finding recorded by

the trial Court, there was no reasonable basis on which the said finding can be ignored or put forward by the appellant before the lower appellate Court. The reliability of execution of the document as spoken to by P.W.4 is also doubtful for the reason that while P.W.4 claims to be a scribe and claims to have written documents from 1995-99, strangely, he did not remember any other transaction except the transaction relating to Ex.A.1. In his cross-examination, P.W.4 also stated that he did bricks business. P.W.2 stated in his evidence that P.W.4 did bricks business and is the son of the plaintiff's niece. P.W.4 in his evidence stated that one of the attestors of Ex.A.1 had filed an Insolvency Petition and left Khammam and his whereabouts are not known; that being the scribe of Ex.A.1, he could not explain the discrepancies particularly the gaps in Ex.A.1 and that the plaintiff is his uncle's son. The trial Court had also taken into consideration the admitted fact that the plaintiff was the attestor of the sale deeds executed by defendant No.1 and thus, it did not believe the version of the plaintiff that defendant No.1 agreed to execute the sale deed in his favour in terms of the agreement of sale after approval of layout and after obtaining income-tax clearance certificate. Practically, the findings recorded by the trial Court went unchallenged before the lower appellate Court.

In view of the above, both the Courts below concurrently find that the agreement of sale is a forged document and payment of sale consideration thereunder is not believable.

In those circumstances, there is no question of law, much less substantial question of law, arises for consideration in this Second Appeal.

Accordingly, this Second Appeal is dismissed.

Miscellaneous applications, if any pending, shall also stand dismissed.

16th JULY, 2019.

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CHALLA KODANDA RAM, J

