

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.169 of 2008**

Smt.Asha Shrivastava, W/o Rishi Kumar Shrivastava, Aged About 52 years, R/o. Shiv Sharda, Moudhapara, Tahsil and District Raipur (Chhattisgarh)

----- Appellant/Defendant

Versus

Mukund Lal Agrawal, Aged About 60 years, S/o. Late Bharat Lal Agrawal, Occupation – Manufacturer of Tractor Trolley, R/o Shankar Nagar, Tahsil and Dist Raipur (Chhattisgarh)

----- Respondent/Plaintiff

For Appellant/Defendant:

Mr.Ashish Shrivastava, Advocate

For Respondent/Plaintiff:

None present though served

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

05/08/2020

- 1.Final hearing of this second appeal has been heard through video conferencing.
- 2.The substantial question of law involved, formulated and to be answered in this second appeal preferred by the appellant/defendant is as under:-

“Whether both the Courts below were justified in holding that the sale deed dated 11/04/1990 (Ex.D/1) has not been executed by the plaintiff – Mukund Lal Agrawal in favour of the defendant – Asha Shrivastava relying upon the opinion of the handwriting expert (Ex.P/3) without taking into consideration

other direct/independent evidence by recording a finding which is perverse and contrary to the record?"

[For the sake of convenience, the parties would be referred hereinafter as per their status shown and ranking given in the suit before the trial Court].

3. Defendant-Asha Shrivastava purchased the suit land admeasuring 2800 sq.ft. being part of Khasra No.204/2 situated at Tikrapara, Raipur by registered sale deed dated 11.04.1990 (Ex.D-1) from plaintiff-Mukund Lal Agrawal and came in possession over the suit land and thereafter she has made construction and residing therein. On 6.1.96 plaintiff-Mukund Lal Agrawal filed civil suit that sale deed dated 11.04.1990 (Ex.D-1) allegedly executed in favour of the defendant is null and void and it has not been executed by him and therefore, decree for recovery of possession and damages be granted in his favour.
4. Resisting the suit, the defendant filed her written statement and denied the averments made in the plaint stating inter-alia that sale deed is registered one and she has purchased the suit land by making payment of sale consideration and she is in possession over the suit land by making construction over and as such, the suit deserves to be dismissed with cost.
5. During the course of trial, the trial Court referred

the signature of the plaintiff to handwriting expert Dr.Ku.Sunanda Dhenge (PW-2) for handwriting examination, in which she has submitted the report vide P-1 to P-8. The plaintiff examined himself as PW-1 and handwriting expert Dr.Ku.Sunanda Dhenge as (PW-2). On behalf of the defendant, four witnesses including Thakur Ram Soni (DW-4) who is witness to sale deed were examined to support her case.

6.The trial Court upon appreciation of oral and documentary evidence available on record, by its judgment and decree dated 24.9.2007, decreed the suit relying solely upon the report of handwriting expert that the plaintiff has not signed the said sale deed, which is established from handwriting expert report (Ex.P-3). On appeal being preferred by the appellant/defendant, the first appellate Court concurred with the finding of the trial Court and dismissed the appeal. Feeling aggrieved and dissatisfied with the judgment and decree of the first appellate Court, this second under Section 100 of the CPC has been filed by the appellant/defendant, in which substantial question of law has been formulated, which has been set-out in the opening paragraph of this judgment for sake of completeness.

7.Mr.Ashish Shrivastava, learned counsel for the

appellant/defendant, would submit that merely on the basis of report of handwriting expert i.e. P-1 to P-8, decree has been granted without considering other evidence particularly evidence of Thakur Ram Soni (DW-4) who is witness to sale deed and therefore, impugned decree passed relying solely on expert evidence excluding the evidence of witness to sale deed Thakur Ram Soni (DW-4) is absolutely illegal and bad in law. He would further submit that the suit is only for recovery of possession and no relief of seeking declaration that sale deed dated 11.04.1990 (Ex.D-1) is null and void was sought, which was absolutely essential for maintaining a duly constituted suit by the plaintiff in presence of valid registered sale deed existing in her favour. Therefore, the impugned judgment and decree passed by both the Courts below deserve to be set aside by answering the substantial question of law in favour of the defendant.

8. None present for the respondent/plaintiff though served.

9. I have heard learned counsel for the appellant/defendant, considered his submissions made herein-above and also went through the records with utmost circumspection.

10. From perusal of the records, it is apparent that registered sale deed dated 11.04.1990 (Ex.D-1) was executed by the plaintiff in favour of the defendant, which is duly registered in accordance with law and thereafter on 6.1.96 the plaintiff filed a bare suit for recovery of possession without seeking relief of declaration that sale deed dated 11.04.1990 is null & void or she did not claim any relief of cancellation of sale deed that it is invalid in law though the plaintiff is party to sale deed. The plaintiff's signature in sale deed was examined by handwriting expert Dr.Ku.Sunanda Dhenge (PW-2) at the instance of the plaintiff and relying upon the report of handwriting expert (Ex.P-3) the trial Court decreed the suit in favour of the plaintiff, which has been affirmed by the first appellate Court.

11. The question for consideration would be, whether a decree for recovery of possession based on expert evidence without considering other evidence is sustainable in law ?

12. Section 45 of the Indian Evidence Act, 1872 states as under:-

"45. Opinions of experts.-When the Court has to form an opinion upon a point of foreign law or of science or art, or as to identity of handwriting or finger impressions, the opinions upon that point of persons specially

skilled in such foreign law, science or art, or in questions as to identity of handwriting or finger impressions are relevant facts. Such persons are called experts."

13. From perusal of the aforesaid provision, it is quite vivid that when the Court has to form an opinion upon a point of foreign law or of science or art, or as to identity of handwriting or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, science or art, or in questions as to identity of handwriting or finger impressions are relevant facts.

14. The Supreme Court in the matter of **Shashi Kumar Banerjee and others v. Subodh Kumar Banerjee since deceased and after him his legal representatives and others**¹ has held that expert's evidence as to handwriting is opinion evidence and it can rarely, if ever, take the place of substantive evidence. Before acting on such evidence it is usual to see if it is corroborated either by clear direct evidence or by circumstantial evidence.

15. In the matter of **Fakhruddin v. The State of Madhya Pradesh**² the Supreme Court has laid down the principles with regard to evidentiary value of opinion of handwriting expert and held as under:-

1 AIR 1964 SC 529

2 AIR 1967 SC 1326

"10. Evidence of the identity of handwriting receives treatment in three sections of the Indian Evidence Act. They are Sections 45, 47 and 73. Handwriting may be proved on admission of the writer, by the evidence of some witness in whose presence he wrote. This is direct evidence and if it is available the evidence of any other kind is rendered unnecessary. The Evidence Act also makes relevant the opinion of a handwriting expert (S. 45) or of one who is familiar with the writing of a person who is said to have written a particular writing. Thus besides direct evidence which is of course the best method of proof, the law makes relevant two other modes. A writing may be proved to be in the handwriting of a particular individual by the evidence of a person familiar with the handwriting of that individual or by the testimony of an expert competent to the comparison of handwritings on a scientific basis. A third method (S. 73) is comparison by the Court with a writing made in the presence of the Court or admitted or proved to be the writing of the person.

11. Both under S. 45 and S. 47 the evidence is an opinion, in the former by a scientific comparison and in the latter on the basis of familiarity resulting from frequent observations and experience. In either case the Court must satisfy itself by such means as are open that the opinion may be acted upon. One such means open to the Court is to apply its own observation to the admitted or proved writings and to compare them with the disputed one, not to become an handwriting expert but to verify the premises of the expert in the one case and to appraise the value of the opinion in the other case. This comparison depends on an analysis of the characteristics in the admitted or proved writings and the finding of the same characteristics in large measure in the disputed writing. In this way the opinion of the deponent whether expert or other is subjected to scrutiny and although relevant to start with becomes probative. Where an expert's opinion is given, the Court must see

for itself and with the assistance of the expert come to its own conclusion whether it can safely be held that the two writings are by the same person. This is not to say that the Court must play the role of an expert but to say that the Court may accept that fact proved only when it has satisfied itself on its own observation that it is safe to accept the opinion whether of the expert or other witness."

16. In the matter of Ishwari Prasad Misra v. Mohammad

Isa³ the Supreme Court has held that evidence given by experts of handwriting can never be conclusive, because it is, after all, opinion evidence.

17. In the matter of Smt. Bhagwan Kaur v. Shri Maharaj

Krishnan Sharma and others⁴ the Supreme Court has held that evidence of a handwriting expert, unlike that of a fingerprint expert, is generally of a frail character and its fallibilities have been quite often noticed. It was further held by Their Lordships that the courts should, therefore, be wary to give too much weight to the evidence of handwriting expert.

18. In the matter of Alamgir v. State (NCT, Delhi)⁵

the Supreme Court has held that opinion of handwriting expert under Section 45 of the Evidence Act can be relied upon, but there is no rule of law, nor any rule of prudence which has crystallised into a rule of law that opinion-evidence of a handwriting expert must

3 AIR 1963 SC 1728

4 (1973) 4 SCC 46

5 (2003) 1 SCC 21

never be acted upon, unless substantially corroborated.

19. In the matter of Chennadi Jalapathi Reddy v. Baddam Pratapa Reddy (Dead) through legal representatives and another⁶ the Supreme Court relied upon the earlier judgments has held that court must be cautious while evaluating expert evidence, which is a weak type of evidence and it is not substantive in nature. It was further held that it may not be safe to solely rely upon such evidence, and court may seek independent and reliable corroboration in the facts of a given case, as a general rule of prudence. Generally, mere expert evidence as to a fact is not regarded as conclusive proof of it.

20. Reverting to the facts of the present case in the light of aforesaid legal proposition qua weight to the attached to the evidence of handwriting expert evidence, it is quite vivid that both the Courts below have barely relied upon sole testimony of handwriting expert Dr.Ku.Sunanda Dhenge (PW-2) to hold that sale deed dated 11.04.1990 (Ex.D-1) has not been signed by the plaintiff, which was executed in favour of the defendant and therefore, sale deed has not executed by the plaintiff in favour of the defendant ignoring

6 (2019) 14 SCC 220

other piece of evidence of substantive in nature available on record by excluding the testimony of Thakur Ram Soni (DW-4), who is witness to sale deed and came to the conclusion that sale deed dated 11.04.1990 (Ex.D-1) has not been executed by the plaintiff in favour of the defendant, which is registered sale deed. Both the Courts below ought to have taken into consideration the testimony of Thakur Ram Soni (DW-4) while evaluating and appreciating the opinion evidence of Dr.Ku.Sunanda Dhenge (DW-2) as handwriting expert evidence cannot be regarded as conclusive proof of it.

21. The registration of the sale deed reinforces valid execution of the sale deed. A registered document carries with it a presumption that it was validly executed. It is for the party challenging the genuineness of the transaction to show that the transaction is not valid in law. (See Jamila Begum (dead) through legal representatives v. Shami Mohd. (dead) through legal representatives and another⁷).

22. Thus, it is quite vivid that in order to discharge his burden the plaintiff did not examine any of witness to sale deed and only relied upon evidence of handwriting expert (Ex.-3) Dr.Ku.Sunanda Dhenge

7 (2019) 2 SCC 727

(PW-2), which is not conclusive evidence under Section 45 of the Indian Evidence Act, 1872, whereas substantive evidence of Thakur Ram Soni (DW-4), who is witness to sale deed, it is evidently clear that sale deed was executed by the plaintiff in favour of the defendant and that has not been controverted by the plaintiff by bringing legal evidence, as such, both the Courts below were absolutely unjustified in granting decree on the basis of report of handwriting expert (Ex.P-3) without further corroboration from evidence of witness to sale deed particularly when the sale deed is registered sale deed and taking into consideration of the statement of Thakur Ram Soni (DW-4), it is evidently clear that sale deed was duly executed by the plaintiff in favour of the defendant.

23. Not only this, the suit suffers from more defects. The sale deed is registered sale deed, but the plaintiff did not seek either declaration of said sale deed as null & void and even he being party to sale deed ought to have brought a suit for cancellation of sale deed, as such, the suit is also bad for not seeking either declaration of invalidity of sale deed under Section 34 of the Specific Relief Act, 1963 or cancellation of said sale deed under Section 31 of the Specific Relief Act, 1963.

24. In result, the judgment and decree passed by the trial Court and affirmed by the first appellate Court are contrary to the facts and law available on record, they are liable to be and are hereby set aside and the suit would stand dismissed.

25. The second appeal is allowed to the extent indicated hereinabove leaving the parties to bear their own cost(s).

26. A decree be drawn-up accordingly.

Sd/-

(Sanjay K.Agrawal)
Judge

B/-