

11-10-2023
ct no. 13
sl. no. 42
sp

S.A. No. 42 of 2023

With

CAN 4 of 2023

Surya Narayan Pal (deceased) represented by Ashoka Kumar
Paul & Ors.

-Versus-

Smt. Kanchalata Pal (deceased) represented by Santanu Pal
& Ors.

Mr. Aniruddha Chatterjee,
Mr. Kushal Chatterjee,
Ms. Oishik Chatterjee,
Mr. Noorul Islam

...for the appellants

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1. CAN 4 of 2023 has been filed seeking condonation of delay.
2. Sufficient grounds have been made out in the instant application explaining such delay. Hence, the delay is condoned.
3. Accordingly, CAN 4 of 2023 is allowed and disposed of.

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4. The second appeal has been filed against the judgment and decree dated April 22, 2014 passed in Title Appeal No. 165 of 2001 by the learned Additional District Judge, Hooghly.
5. By the impugned judgment, the lower Appellate Court has confirmed the judgment and decree dated May 24, 2001 passed by the learned Civil Judge (Senior Division), 2nd

Court at Srerampore in Title Suit No. 77 of 2001.

6. Mr. Aniruddha Chatterjee, learned counsel for the appellants assisted by Mr. Kushal Chatterjee has vehemently argued that the concurrent findings of the two Courts below in accepting the report of one handwriting expert, namely, Mr. H.C. Ganguly as opposed to the opinion of the second handwriting expert Mr. S.P. Sarkar, are perverse.
7. The learned counsel for the appellants has placed reliance upon paragraph 19.1 of the decision of the Supreme Court in the case of ***Safi Mohammed Vs. State of Rajasthan*** reported in ***(2013) 8 SCC 601***.
8. It is argued firstly that the opinion of S.P. Sarkar rejected by the two Courts below contains the theory and methodology to be adopted by a handwriting expert while rendering his opinion on the genuineness of a signature on a document. In the instant case, the document is a sale deed dated October 9, 1953 relied upon by the defendant and objected by the plaintiffs/appellants.
9. It appears to this Court as has been found and applied by the lower Appellate Court that the entire theory and principles to be followed by a handwriting expert, are available in the

report of Mr. S.P. Sarkar. The said principles have been extracted and applied by the Court below. However, the two Courts below have concurrently found that Mr. S.P. Sarkar, the other handwriting expert, could not be sustained in cross-examination.

10. On the other hand, the conclusion of the first expert Mr. H.C. Ganguly has been found to be most sustainable albeit without a detailed theory being recorded in the opinion.
11. Applying the test laid down in the **Safi Mohammed case (supra)**, it is seen that the role of an expert is to not only opine on the genuineness of a signature but also indicate the theory and methodology to be adopted for arriving at such conclusion.

“17. It is further contended by the learned counsel that since neither of the witnesses PW 27 and PW 32 are expert witnesses within the meaning of Section 45 of the Evidence Act to give their expert opinion on Ext. D-3 sketch map, reliance cannot be placed upon their opinion or evidence to convict the appellant. Therefore, the learned counsel for the appellant submits that their opinion being outside the sphere of the alleged expertise, the same is of no significance. Hence, the same could not have been relied upon by the court to convict the appellant. PW 27 cannot be held to be a competent person to give expert opinion on the seized document Ext. D-3.

18. Further, it is urged that both the witnesses were never posted and worked in that area. Therefore, they neither had the knowledge of the area nor did they visit the area as is evident from their statement of evidence on record. In this regard, he has placed reliance upon the evidence elicited in the cross-examination of PW 27 who has

categorically admitted the same. So also PW 32 with reference to Ext. P-4 and Ext. P-5 has stated as above. Therefore, the statement of evidence given by the said witnesses in the case could not have been placed reliance upon by both the trial court and the High Court to record a finding that the appellant is guilty of the offence punishable under Section 3(1)(c) of the Act and to convict and sentence him.”

12. The conclusion of the expert Mr. H.C. Ganguly was found acceptable and conclusive by the two Courts below, even without referring to the principles expounded by the other handwriting expert Mr. S.P. Sarkar.
13. The first expert Mr. H.C. Ganguly stood by his opinion, even after vigorous cross-examination. The opinion of Mr. Ganguly follows the methodology to be adopted by a handwriting expert. The Court below has discussed such theory and has rightly accepted the conclusions of Mr. Ganguly.
14. In the backdrop of the above, this Court is of the view that there is no perversity whatsoever in the findings of the two Courts below.
15. The next argument advanced by Mr. Chatterjee is that in the face of the two opinions which are contradictory, the Courts below should have ordinarily called for a third opinion.
16. This Court has carefully considered the judgement of the two Courts below and the

evidence of the two experts. When two Courts below have concurrently found the opinion of one expert acceptable and the other unacceptable, and sufficient reasons having been advanced for accepting the one opinion, this Court is of the clear and explicit view that the same did not warrant calling for a third expert.

17. In the backdrop of the above discussion, this Court does not find any substantial questions of law for admitting the second appeal under Section 100 of the C.P.C.
18. F.A. 42 of 2023 shall stand dismissed.
19. There shall be no order as to costs.
20. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Supratim Bhattacharya, J.)