IN THE HIGH COURT OF MADHYA PRADESH

AT INDORE

BEFORE

HON'BLE SHRI JUSTICE ANIL VERMA

SECOND APPEAL No. 535 of 2008

BETWEEN:-

1. **HARIMOHAN SAXENA S/O RAMCHARAN SAXENA (DECEASED) THROUGH LEGAL HEIRS:-**
(a) **SMT. KUSUM SAXENA W/O DINESH SAXENA, R/O – HOUSE NO.3, SHASTRI COLONY, UJJAIN (MADHYA PRADESH)**

(b) **ANAND SAXENA S/O LATE SHRI HARIMOHAN SAXENA, R/O – CHHOTI JIN DOR, HOUSE NO.10-11, AGAR (MADHYA PRADESH)**

(c) **NARENDRA SAXENA S/O LATE SHRI HARIMOHAN SAXENA, R/O – CHHOTI JIN DOR, HOUSE NO.10-11, AGAR (MADHYA PRADESH)**

2. **KAMLA BAI W/O HARIMOHAN SAXENA, AGED ABOUT 66 YEARS, OCCUPATION – AGRICULTURIST, R/O – JHINGAKHO, AGAR (MADHYA PRADESH)**

.....APPELLANTS

(BY SHRI BRAJESH PANDYA - ADVOCATE)

AND

RAVI KUMAR S/O BRIJKISHORDAS SAXENA
1. **(DECEASED) THROUGH LEGAL HEIRS:-**

SMT. JYOTIKA W/O LATE RAVIKUMAR SAXENA, AGED – ADULT, OCCUPATION – NIL, R/O –
(i) **DESHBANDHU, C.H.H. 4TH FLOOR, FLAT NO.23, SHREENGAR ESTATE ROAD NO.17, M.G. ROAD, GOREGAON WEST, MUMBAI-4 (MAHARASHTRA)**
(ii) **GIRIRAJ SAXENA S/O LATE RAVIKUMAR SAXENA, AGED ABOUT 12 YEARS, MINOR**

THROUGH NATURAL GUARDIAN MOTHER SMT. JYOTIKA W/O LATE RAVIKUMAR SAXENA, R/O – DESHBANDHU, C.H.H. 4TH FLOOR, FLAT NO.23, SHREENGAR ESTATE ROAD NO.17, M.G. ROAD, GOREGAON WEST, MUMBAI-4 (MAHARASHTRA)

2. **RASHMI SAXENA D/O BRIJKISHORE DAS SAXENA, AGED ABOUT 30 YEARS, R/O - BHAGWATI APARTMENT, MALAD WEST, MUMBAI (MAHARASHTRA) THROUGH POWER OF ATTORNEY – RAGHUNATH PRASAD SAXENA S/O RADHAKRISHNA DAS SAXEENA, R/O - BAKHTAWARRAM NAGAR, INDORE (MADHYA PRADESH)**

3. **STATE OF M.P. THROUGH COLLECTOR, SHAJAPUR (MADHYA PRADESH)**

...RESPONDENTS

(SHRI NILESH AGRAWAL – ADVOCATE FOR RESPONDENT NO.2)
(SHRI SHALABH SHARMA – GOVERNMENT ADVOCATE FOR RESPONDENT NO.3/STATE)

Reserved on : 09/01/2024

Pronounced on : 02/02/2024

This appeal having been heard and reserved for orders, coming on for pronouncement this day, the court pronounced the following:

JUDGMENT

1. This second appeal has been preferred by the appellant/defendants under Section 100 of the Code of Civil Procedure, 1908 (for short "CPC") being aggrieved by the judgment and decree dated 16.5.2008 passed by the Addl. Judge to Addl. District Judge, Agar in Civil Appeal No.19-A/2007, thereby affirming the judgment and decree dated

12.2.2007 passed by the 2nd Civil Judge Class-II, Agar in Civil Suit No.313-A/2004 filed by the respondent No.1/plaintiff for declaration of title, permanent injunction and compensation, which has been decreed by the trial Court.

2. Brief facts of the case are that Purushottam Das was earlier the owner of the suit land bearing Survey No.2439 having area 0.993 hectare and Survey No.2443/2 having area 0.178 hectare situated at Agar and after his death Brijkishore Saxena (father of the plaintiffs) became owner of the suit land and the plaintiffs are his legal heirs. Chaturbhuj Das, Purushottam Das and Sankarn Das were also the senior member of plaintiff's family. Deceased defendant was just a caretaker of the said property. In 1996 Brij Kishor Das has died and after his death, plaintiff No.1 Ravi Kumar used to visit Agar and he was managing the income derived from the suit land. In the month of September 2003, when the plaintiff Ravi came to Agar for the purpose of selling the suit land, at that time he came to know that allegedly through two different registered sale deeds dated 17.11.1980 suit land was sold out to the defendant No.1, but on the same day Brij Kishore Das was performing his official duty in the college situated at Mumbai and these sale deeds are forged documents, which were never executed by Brij Kishore Saxena and no consideration was ever paid to him by the defendant No.1. Apparently defendant No.1 has forged and fabricated those sale deeds. Therefore, the respondents No.1 & 2/plaintiffs have preferred a civil suit before the trial Court seeking decree for permanent injunction, declaration of title and compensation.

3. Defendants No.1 & 2/appellants denied all the allegations by filing their written statement, in which it has been contended that Chaturbhuj was the main Karta of the family and his decisions were always accepted by all the family members. Being a owner of the suit land Brij Kishore Das sold out the suit land to the defendant No.1 vide two different registered sale deeds and accordingly name of the defendants were duly mutated in revenue records. The suit filed by the plaintiffs is barred by law and is not tenable and deserves to be dismissed.

4. Learned trial court after recording the evidence and hearing both the parties, allowed the suit filed by the plaintiffs by the judgment and decree dated 12.2.2007. Being aggrieved by the said judgment and decree, the appellants/defendants No.1 & 2 have preferred first appeal before the appellate court and by the impugned judgment and decree dated 16.5.2008 the first appellate court has affirmed the judgment and decree passed by the trial Court. Before the first appellate court an alternate plea of adverse possession has been taken by the appellants, which has been also discarded. Hence, this second appeal has been preferred before this court by the appellants.

5. Learned counsel for the appellants contended that the judgment and decree passed by both the courts below are contrary to the law and facts. The trial court has erred in allowing the suit of the defendants No.1 & 2/plaintiffs. The first appellate court has also committed grave error in dismissing the application under Order 41 Rule 3 of CPC and

another application under Order 6 Rule 17 of CPC filed by the appellants. Both the courts below have failed to consider the oral and documentary evidence produced by the appellants. Signature of Brij Kishore Das was not examined by any handwriting expert and in absence of any handwriting expert's report, the trial court has committed error in holding that the said sale deeds were not executed by Brij Kishore Das Saxena. Thus, in view of the aforesaid, learned counsel for the appellants submits that the appeal deserves to be admitted on the substantial question of law proposed by the appellants.

6. Per contra, learned counsel for the respondents/plaintiffs opposed the prayer by submitting that the impugned judgment and decree passed by both the courts below are just and proper and not deserve for any interference.

7. This appeal has been admitted on the sole substantial question of law:-

> "Whether, the court below has committed error in passing a decree for declaration that sale deed dated 17.11.1980 is forged and does not bear signature of Brijkishore Das without appointing Handwriting Expert by rejecting an application filed by the present appellant under Section 45 of the Evidence Act?"

8. I have gone through the judgment and decree passed by both the courts below and also perused the entire record with due care.

9. First of all learned counsel for the appellants submitted that the lower appellate court has committed grave error in dismissing the application under Order 41 Rule 3 of CPC and another application under Order 6 Rule 17 of CPC filed by the appellants.

10. Both these interim applications filed before the first appellate court i.e. IA No.2 & IA No.3 perused, but the proposed amendments do not appears to be bonafide in nature and not necessary for proper adjudication of the first appeal. Appellants did not show any good and reasons for not pleading the same facts before the trial court. Therefore, on the basis of the above, the lower appellate court has rightly rejected both the interim applications – IA No.2 & IA No.3.

11. Appellant's second legal contention is that respondents/plaintiffs have filed the suit for declaration and injunction after lapse of about 25 years, therefore, the suit is time barred. But the defendants were not the party in the aforesaid registered sale deed. They have no knowledge regarding the execution of the aforesaid sale deeds. When they came to know about the execution of the sale deed, they have filed a suit within the limitation. Therefore, both the courts below have rightly held that the suit filed by the respondents/plaintiffs is not time barred.

12. Plaintiff/respondent Raghunath Saxena (PW-1) categorically stated in his statement that father of the plaintiff Brijkishore Das Saxena was the owner of the suit land and defendant No.1 Harimohan Saxena was only care taker of the suit land. Plaintiff No.1 Ravi Kumar used to visit Agar for managing the suit land and in the month of September

2003 he came to know that the suit land was sold out by two different registered sale deeds Ex.P/22 & P/23, but the same was not executed by the Brijmohan Das Saxena. At the time of execution of the sale deed, Brijkishore Das was doing job in a college situated at Mumbai. Ravi Kumar Saxena (PW-2), Brijmohan Das Saxena (PW-3) and Haridas (PW-5) also corroborated the statement of Raghunath Saxena (PW-1).

13. Appellant/defendant Harimohan Saxena (DW-1) categorically stated in his statement that he had purchased the suit land from Brijkishore Das in presence of the witnesses Haridas and Mohanlal on consideration of Rs.15,000/- through registered sale deeds, which were duly signed by the Brijkishore Das and attesting witnesses Haridas and Mohanlal. Then Brijkishore Das handed over the possession of the suit land to his wife Kamla Bai. Thereafter he along with Kamla Bai keeping continuous possession over the suit land as owner and doing agricultural work upon it. Mohanlal (DW-2) and Banshidhar Maheshwari (DW-3) also corroborated the statement of the defendant Harimohan Saxena.

14. Admittedly, respondents/plaintiffs did not examine any handwriting expert before the trial Court to establish that both the registered sale deeds did not bear any signature of Brijmohan Das. Although it is the settled position of law that as per Section 45 of the Indian Evidence Act, handwriting expert's opinion is not a conclusive form of evidence and it cannot be read in absence of other corroborative evidence. Therefore, it is quite clear that such type of evidence is a

week form of evidence. Appellants were having all rights and opportunities to get the report of handwriting expert to strengthen their case, but the same had not been done by them. Appellants cannot be allowed to take advantage of his own wrong. It is also true that the appellants have filed an application under Section 45 of the Evidence Act before the trial Court and same has been dismissed, but the appellants did not challenge the said order before the Hon'ble High Court, therefore, the said order has attained finality and same cannot be made a ground of this appeal.

15. Learned counsel for the appellants submits that it is settled law that registered sale deeds were presumed genuine document and without getting any handwriting expert's evidence, such presumption cannot be ignored and without the aid of an expert, Court cannot make any conclusion only upon his own comparison. Counsel for the appellants has placed reliance upon the judgment in the case of **K. Ahmed Alli Sab (deceased) and others Vs. Desai Abdul Gani Desai [AIR 2005 Andhra Pradesh 374]**, **The State (Delhi Administration) Vs. Pali Ram [1979 AIR(SC) 14]**, **Bhagwan Din Vs. Gouri Shankar and another [AIR 1957 Allahabad 119]**, **O. Bharathan Vs. K. Sudhakaran and another [AIR 1996 SC 1140]** and **Vimal Chand Ghevarchand Jain and others Vs. Ramakant Eknath Jajoo [2009(3) Supreme 460]**.

16. It is the settled position of law that Section 73 of the Indian Evidence Act empowers the Court to compare signature, writing or see

with other admitted or proved documents. The Hon'ble Apex Court in the case of **S. Gopal Reddy Vs. State of A.P. reported in 1996 SCC (Cri.) 792** has held that:-

> "28. Thus, the evidence of PW 3 is not definite and cannot be said to be of a clinching nature to connect the appellant with the disputed letters. The evidence of an expert is rather weak type of evidence and the courts do not generally consider it as offering 'conclusive' proof and therefore safe to rely upon the same without seeking independent and reliable corroboration. In *Magan Bihari Lal v. State of Punjab [(1977) 2 SCC 210]*, while dealing with the evidence of a handwriting expert, this Court opined: (SCC pp. 213-14, para 7)
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> "..... We think it would be extremely hazardous to candemn the appellant merely on the strength of opinion evidence of a handwriting expert. It is now well settled that expert opinion must always be received with great caution and perhaps none so with more caution than the opinion of a handwriting expert. There is a profusion of precendential authority which holds that it is unsafe to base a conviction solely on expert opinion without substantial corroboration. This rule has been universally acted upon and it has almost become a rule of law. It was held by this Court in Ram Chandra v. State of U.P. [AIR 1957 SC 381] that it is unsafe to treat expert handwriting opinion as sufficient basis for conviction, but it may be relied upon when supported by other items of internal and external evidence. This Court again pointed out in Ishwari Prasad Misra v. Mohd. Isa [AIR 1963 SC 1728] that expert evidence of handwriting can never be conclusive because it is, after all, opinion evidence, and this view was reiterated in Shashi Kumar Banerjee v. Subodh Kumar Banerjee [AIR 1964 SC 529] where it was pointed out by this Court that expert's evidence as to handwriting being opinion evidence can rarely, if ever, take the place of substantive evidence and before acting on such evidence, it would be desirable to consider whether it is corroborated either by clear direct evidence or by circumstantial evidence. This Court had again occasion to consider the evidentiary value of expert

> opinion in regard to handwriting in Fakhruddin v. State of M.P. [AIR 1967 SC 1326] and it uttered a note of caution pointing out that it would be risky to found a conviction solely on the evidence of a handwriting expert and before acting upon such evidence, the court must always try to see whether it is corroborated by other evidence, direct or circumstantial."

17. In the case of **Sunil Chowdhury vs. Arup Kumar Ghos reported in AIR 2006 Calcutta 109**, a Division Bench of the Calcutta High Court also held that:-

> "24. Section 73 of the Evidence Act on the other hand authorises the Court in order to ascertain whether a signature, writing etc. by the person by whom it purports to have been written or made, to compare the same with any signature, writing etc. admitted or proved to the satisfaction of the Court to have been written or made by that person although that signature, writing etc. has not been produced or proved for any other purpose.
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> 25. The aforesaid Section 73 further authorises the Court to direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person."

18. Same principle has been laid down by the Division Bench of the Delhi High Court in the case of **Rajinder Bajaj Vs. Indian Tanning Industries and others reported in AIR 2008 Delhi 62**, wherein it has been held that:-

> "6. Applying the principles laid down in the above noted judicial pronouncements, it would be seen that in the instant case no expert evidence, was available and the trial Court examined the signatures on the purported appointment letter

> and compared the same with the admitted signatures of Mr. Juneja in the written statement and the affidavit. The trial court was perfectly justified in doing so. The trial Court found glaring discrepancies which could be discerned by naked eye. It was, therefore, of the view that the purported appointment letter was a fabricated one. The expert evidence had not been led. In these circumstances, where the conclusion reached by the trial Court was a definite and categorical one not admitted to any doubt, non examination of the handwriting expert could not be said to be fatal."

19. It is trite law that there is no legal bar to prevent the Court from comparing signature or handwriting by using its own eye to compare the disputed writing with the admitted writing and applying its own observation to prove the said handwritings to be the same or different, as the case may be. Signature of Brijmohan Das on the admitted letter (Ex.P/26 to P/29), which has been written by Brijmohan Das, has been duly proved, which was not challenged during the cross-examination of the Ravi Kumar (PW-2). Therefore, these documents are unrebutted documents. Glaring discrepancies discernible with naked eye. Therefore, non examination of the handwriting expert is not fatal for the respondents/plaintiffs and the conclusion reached by both the courts below that the registered sale deeds (Ex.D/1 & D/2) are the fabricated one, deserves credence. Both the courts below were duly justified in examining and comparing the registered sale deeds with the admitted signature of Brijmohan Das. Therefore, contention made by the appellants cannot be accepted.

20. It is also noteworthy that during the cross-examination of the Raghunath Saxena (PW-1) and Ravi Kumar Saxena (PW-2) appellants/ defendants did not give any suggestion that consideration amount was paid by the defendant or in lieu of the consideration, sale deeds were executed. Appellant did not produce any relevant evidence that the amount of consideration paid by them was deposited in the account of the deceased Brijmohan Das. Therefore, the appellants have failed to prove that they have purchased the suit land after payment of proper consideration.

21. Mohanlal (DW-2) who happens to be witness of the alleged sale deeds, categorically stated in his statement that Haridas Saxena and Brijkishore Das had signed the alleged sale deed and he is not aware with rest of the facts. Therefore, on the basis of the statement of Mohanlal (DW-2) the execution of the alleged sale deed by Brijkishore Das appears to be doubtful. Banshidhar Maheshwari (DW-3) who happens to be an advocate and allegedly drafted the sale deeds (Ex.D/1 & D/2), but he has turned hostile and not supported the case of the defendant. He stated that he has just typed the alleged sale deeds and nothing more. Even he is not acquainted with the Brijkishore Das and further admits that he has typed the sale deeds on the instruction of the defendant. Appellants did not examine concerned Registrar of Registry Department before the trial Court. Therefore, the execution of the sale deeds also became more suspicious.

22. On the basis of the foregoing analysis and the law laid down by the Hon'ble Apex Court and different High Courts, this Court is of the considered opinion that the judgment and decree passed by both the courts below are based upon the proper appreciation of evidence. Therefore, this Court does not find any infirmity in the judgment and decree passed by both the courts below who have taken a plausible and reasonable view on the evidence on record. Hence, this second appeal is dismissed being devoid of merit. No order as to costs.

(ANIL VERMA)
JUDGE

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