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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **RSA 210/2017 & CM APPL. 29706/2017**

RAMESH GOYAL

.....Appellant

Through: Mr.Ajit Nair, Mr.Pankaj Sharma and
Ms.Ruchika Pathania, Advocates

versus

BRIJ MOHAN MITTAL

.....Respondent

Through: Mr.Shaiwal Srivastava, Advocate
(Through VC)

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER

04.03.2025

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1. The present regular second appeal has been filed under Section 100 of the Code of Civil Procedure, 1908 (*hereinafter as CPC*) challenging the judgment and decree dated 07.07.2017 passed by the learned ADJ, (Central)-10, Delhi passed in RCA No. 61829/2016 titled *Brij Mohan Mittal v. Ramesh Goyal*. The learned first Appellate Court set aside the judgment and decree dated 12.10.2015 passed by the learned Trial Court in CS No. 265/15 titled as *Ramesh Goyal vs Brij Mohan Mittal*.
2. The appellant/plaintiff had filed a suit for recovery of a sum of Rs.1,04,500/- against the respondent/defendant with interest @ 18% per annum. The said suit was initially decreed vide judgment dated 30.03.1998. Aggrieved of this, the respondent/defendant filed RFA 234/98. In RFA 234/98, vide order dated 13.10.2004, the case was remitted back to the Trial Court for fresh consideration with a



direction to give opportunity to parties to get CFSL report placed and proved on record in accordance with law. It was further directed that an opportunity be afforded to plaintiff to cross-examine the author of the said document and lead evidence in rebuttal.

3. Briefly stated facts of the case are that on 15.01.1995, the respondent/defendant agreed to sell House No. 243, Pocket-F-24, Sector-3, Rohini, Delhi, to the appellant/plaintiff for a total consideration of Rs.8,20,000/-. The appellant/plaintiff paid a sum of Rs.50,000/- and it was agreed that the balance consideration of Rs.7,70,000/- would be paid by the appellant/plaintiff to the respondent/defendant on or before 06.02.1995. The respondent/defendant undertook to produce all the original documents of title in respect of the said house before the appellant/plaintiff on or before 06.02.1995.
4. The appellant/plaintiff had stated that the respondent/defendant had executed a receipt on 15.01.1995 in favour of the appellant/plaintiff, acknowledging and confirming the receipt of Rs.50,000/- as advance money for the sale of respondent's/defendant's property. It was further agreed that the sale deed in respect of the said property shall be executed and registered on or before 06.02.1995 and in case of respondent's/defendant's failure to do so, the respondent/defendant agreed to pay double the advance money i.e. a sum of Rs.1,00,000/- to the appellant/plaintiff. The appellant/plaintiff alleged that the respondent/defendant subsequently, avoided the issue on one aspect or the other. Upon inquiry, it was revealed that the property was initially allotted to Sh. Rameshwar Dass Mittal in the year 1982, in



which the house was constructed in August/September 1992. Sh. Rameshwar Dass Mittal died leaving behind his widow, the respondent/defendant and other legal heirs. While the dispute was pending between the legal heirs, the respondent/defendant allegedly managed to get the said property mutated in the name of his mother, Smt. Kela Bai, W/o Late Sh. Rameshwar Dass Mittal, and thereafter, got the said property converted into a free hold property and the documents of title in respect of the said property was got executed by him in favour of his wife, Smt. Uma Mittal. The respondent/defendant admitted that his wife was the owner of the property. The appellant/plaintiff took a plea that the respondent/defendant was liable to pay a sum of Rs.1,04,500/-.

5. The defence taken by the respondent/defendant in the written statement was that the alleged receipt dated 15.01.1995 is based upon a forged agreement and there are no signatures on the same. The Court, after framing the issues, recorded the evidence of the parties. It is pertinent to mention here that the Court took into account the testimony of Sh. V.K. Khanna, Principal Scientific Officer and Head, Document Division, CFSL. However, it was, *inter alia* held that expert evidence as to handwriting is only opinion evidence and it can never be conclusive.
6. The learned Trial Court itself compared the signatures on the receipt with the admitted signatures and *inter alia*, held that upon comparison of the disputed and admitted signatures, it is found that the style of making the disputed signatures and of the admitted signatures of the respondent/defendant is matching and they appear to be made by one



and the same person. In these circumstances, the learned Trial Court found similarities between the admitted and disputed signatures of the respondent/defendant and *inter alia* held that the respondent/defendant was not able to prove that the signatures on the document Ex. PW1/1 is forged. In these circumstances, the suit of the respondent/defendant was decreed.

7. The respondent/defendant challenged the same before the learned first Appellate Court vide RFA No. 234/1998. It is pertinent to mention here that the appellant/plaintiff did not appear before the learned first Appellate Court. The learned first Appellate Court found the judgment of the learned Trial Court as not sustainable in the eyes of law on the ground that the learned Trial Court should not have gone on to compare the admitted and disputed signatures of the respondent/defendant as it did not possess special quality or qualification to make such comparison and secondly, the report of an independent agency like CFSL should not have been ignored without any credible reason.
8. This Court vide order dated 05.09.2019, framed the following Questions of Law:-
 - (i) Whether the Civil Court was bound in the facts and circumstances of the case by the opinion of the handwriting Expert?
 - (ii) Whether adverse inference would arise from the fact that the Appellant (Plaintiff of the Suit) had not instituted Criminal Proceedings?
9. The regular second appeal filed under Section 100 of the CPC can only be entertained if it involves a substantial question of law. In



order to recapitulate the basic facts, the appellant herein, had filed a suit for recovery which was initially decreed vide judgment dated 30.03.1998. The respondent/defendant challenged the aforesaid decree before the High Court vide RFA No. 234/1998. The record reveals that during the course of hearing of the aforesaid appeal, at the request of the respondent/defendant, the High Court obtained the admitted signatures of the respondent/defendant and sent the same alongwith Ex. PW1/1 to the CFSL for the opinion upon the signatures of the respondent/defendant. The report of CFSL dated 12.03.2004 was received by the High Court. After going through the same, which was in favour of the respondent/defendant, the High Court set aside the judgment dated 30.03.1998 vide judgment dated 13.10.2004 and remanded the matter back to the learned Trial Court for recording of evidence of the handwriting expert.

10. Pursuant to the remand, the learned Trial Court recorded the evidence of DW-2. DW-2 proved his report as Ex. DW-2/A and deposed that the questioned English signature with the date mark Q1 in the document Ex. PW1/1 at point A could not be connected with the standard English signatures marked S1 to S9. In the report, DW-2 had concluded that the differences observed between the two signatures are beyond the range of natural variations. The learned Trial Court noted that during his cross-examination, DW-2 had deposed that he had pointed out in the report the dissimilarities, though, he had seen similarities and dissimilarities both. The learned Trial Court, taking into account that DW-2 did not consider the similarities between the admitted and disputed signatures of the respondent/defendant and



therefore, ventured to compare the signatures of the respondent/defendant upon the receipt Ex. PW1/1, and reached to the conclusion that the same is not the forged one. The question is that whether a Court, in a case where the handwriting expert from the CFSL has given an opinion that differences were observed between the two signatures beyond the range of natural variations, can take upon itself to compare the signatures.

11. Before proceeding further, it is advantageous to produce Sections 45 and 73 of the Indian Evidence Act, 1872 (hereinafter the Act”), which are 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.

73. Comparison of signature, writing or seal with others admitted or proved.- In order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made, any signature, writing or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing or seal has not been produced or proved for any other purpose.

The Court may 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."

12. Bare perusal of Section 45 of the Act makes it clear that the Court



can call for evidence of experts to form an opinion regarding the genuineness of signatures and handwriting which is asserted by one party and denied by the another party. Section 73 of the Act confers power upon the Court to compare the signatures or handwriting.

13. In the case of State vs. Pali Ram, (1979) 2 SCC 158, the Apex Court, inter alia, held that prudence requires that a judge shall obtain expert opinion in the matters of comparison of handwriting, and *inter alia*, held as under:-

“30. 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...”

14. In Ajit Savant Majagvai vs. State of Karnataka, (1997) 7 SCC 110, the Apex Court, inter alia, held that where there is even slightest of doubt in the minds of the judge while comparing the admitted and disputed signatures, such signatures should be sent for expert opinion under Section 45 of the Act, 1872. It was, *inter alia*, held as under:-

“37. This section consists of two parts. While the first part provides for comparison of signature, finger impression, writing etc. allegedly written or made by a person with signature or writing etc. admitted or proved to the



satisfaction of the Court to have been written by the same person, the second part empowers the Court to direct any person including an accused, present in Court, to give his specimen writing or fingerprints for the purpose of enabling the Court to compare it with the writing or signature allegedly made by that person. The section does not specify by whom the comparison shall be made. However, looking to the other provisions of the Act, it is clear that such comparison may either be made by a handwriting expert under Section 45 or by anyone familiar with the handwriting of the person concerned as provided by Section 47 or by the Court itself.

38. As a matter of extreme caution and judicial sobriety, the Court should not normally take upon itself the responsibility of comparing the disputed signature with that of the admitted signature or handwriting and in the event of the slightest doubt, leave the matter to the wisdom of experts. But this does not mean that the KL, J Court has not the power to compare the disputed signature with the admitted signature as this power is clearly available under Section 73 of the Act."

15. In **Thiruvengadam Pillai vs. Navaneethammal**, (2008) 4 SCC 530, the Apex Court, inter alia, held that it is risky to arrive at a conclusion regarding signatures and handwriting without an expert opinion, and inter alia, held as under:-

"16. While there is no doubt that Court can compare the disputed handwriting/ signature/ finger impression with the admitted handwriting/signature/finger impression, such comparison by Court without the assistance of any expert, has always been considered to be hazardous and risky. When it is said that there is no bar to a Court to compare the disputed finger impression with the admitted finger impression, it goes without saying that it can record an opinion or finding on such comparison, only after an analysis



of the characteristics of the admitted finger impression and after verifying whether the same characteristics are found in the disputed finger impression. The comparison of the two . (2008) 4 SCC 530 KL, J thumb impressions cannot be casual or by a mere glance. Further, a finding in the judgment that there appeared to be no marked differences between the admitted thumb impression and disputed thumb impression, without anything more, cannot be accepted as a valid finding that the disputed signature is of the person who has put the admitted thumb impression. Where the Court finds that the disputed finger impression and admitted thumb impression are clear and where the Court is in a position to identify the characteristics of fingerprints, the Court may record a finding on comparison, even in the absence of an expert's opinion. But where the disputed thumb impression is smudgy, vague or very light, the Court should not hazard a guess by a casual perusal."

16. In **Ajay Kumar Parmar vs. State of Rajasthan**, (2012) 12 SCC 406, it was held that the Courts while dealing with handwriting or signatures cannot itself act as an Expert. It was, *inter alia*, held as under:-

"28. 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 (2012) 12 SCC 406 KL, J 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. However, where there is an opinion whether of an expert, or of any witness, the Court may then apply its own observation by comparing the signatures, or handwritings for providing a decisive weight or influence to its decision."

17. It is a settled proposition that the opinion of an expert is not binding on the Court. However, at the same time, the Court, as a rule of prudence and caution, must take into account, that it is not a handwriting expert and it can do the comparison only through its visual experience. Particularly, in a case, where there is a positive denial by the person who is said to have made the signatures, it is risky for the Court to venture into making the comparison. It becomes more particular when there is an expert opinion from the CFSL, on the record, expressing its doubt over the similarities between the signatures. In such an eventuality, rejecting the report of the expert without any credible basis, cannot be sustained in the eyes of law. Furthermore, the learned first Appellate Court has noted various contradictions in the case of the plaintiff, which are as under:-

“(a) A perusal of para 4 of the plaint reveals that prior to 06.02.1995 in the enquiry made by the plaintiff he came to know that the said property had been allotted to the father of defendant on a particular date for a sale consideration of particular amount and the particular date on which perpetual lease deed was executed in his favour, whereafter the family settlement, transfer of the said property in the name of the mother of defendant and finally the transfer in



favour of the wife of defendant. These facts goes on to show that the plaintiff had before hand knowledge of all the facts;
(b) That the plaintiff entered into Agreement Ex.PW1/1 without even going through the title documents, as has been stated by him in his evidence;
(c) Ex.PW1/1 does not contain the date on which the same was drawn. It further does not contain the place where it was entered into;
(d) When on 03.02.1995 the plaintiff had come to know of a fraud having been played upon him by the defendant, then he did not approach the police;
(e) There was an apparent contradiction in the evidence of PW-2 and PW-3. PW-2 in his examination-in-chief categorically stated that he had not signed on Ex.PW1/1, whereas in his cross-examination he emphatically stated that he had also signed thereupon whereas PW-3 categorically denied having signed Ex.PW1/1, but the plaintiff in his evidence stated that the property dealer (PW-3) had signed on Ex.PW1/1 at point C;
(f) The stand of plaintiff is that on 15.01.1995 he had gone to the office of PW-3 alongwith Shri Amarnath Goyal and Smt. Prem Goyal, but these persons were not examined by the plaintiff.”

18. In view of the foregoing discussions, I consider that the substantial questions of law as framed on 05.09.2009 are answered as follows:-

(i) Whether the Civil Court was bound in the facts and circumstances of the case by the opinion of the handwriting Expert?

Though, the civil Court is not bound by the opinion of the handwriting expert, however, in the circumstances, when there is a positive denial by the person alleged to have made the signature and the CFSL expert has found no similarity between the two, it was not prudent for the learned Trial Court to have discarded the report of the



CFSL expert.

(ii) Whether adverse inference would arise from the fact that the Appellant (Plaintiff of the Suit) had not instituted Criminal Proceedings?

The Court considers that in view of the finding of the Court on (i) substantial question of law, there is no requirement to given any finding on this issue.

19. This Court finds that there is no reason to upset the findings of the learned first Appellate Court. Accordingly, the present appeal stands dismissed along with pending applications, if any.

DINESH KUMAR SHARMA, J

MARCH 4, 2025

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