

IN THE HIGH COURT OF KARNATAKA, BENGALURU

THE HON'BLE MR.JUSTICE N.S.SANJAY GOWDA

R.S.A.No.1359/2016

C/W.

R.S.A.No.1135/2016

DATED: 16-03-2020

SRI. S. RAMAKRISHNA, /O LATE SUBBAIAH VS. SRI. S. APPAIAH, S/O
LATE SUBBAIAH AND OTHERS

JUDGMENT

1. The brothers, i.e., the plaintiff and the 3rd defendant who supported each other in a suit for partition are in second appeal, challenging the dismissal of their appeal by the Appellate Court.

2. Since both these appeals arise out of a common judgment and decree passed in O.S.No.640/2004 and RA No.64/2013, they are taken up together for disposal. One Subbaiah had four sons namely

- i) S.Narayanappa (defendant No.1),
- ii) S.Appaiah (plaintiff)
- iii) Venkasubaiah (defendant No.2) and
- iv) S. Ramakrishna (defendant No.3).

3. S.Appaiah had filed a suit seeking for partition and

separate possession of property bearing Sy.No.145/2P2 measuring 2 acres, situated at Kannamangala Village, Bidarahalli Hobli, Bengaluru East Taluk. It was his case that the suit property had been purchased in the name of his elder brother - S. Narayanappa (defendant No.1) out of joint family funds and it was, therefore, a joint family property. He further stated that since it was a joint family property, he was entitled to 1/4th share in it.

4. S. Narayanappa and Venkasubbaiah (defendants 1 and 2) contested the suit. They contended that there was a partition effected amongst the four brothers by way of a registered Partition Deed dated 06.05.1989 (Ex.D-1) under which there was a division of properties and each of the brothers were allotted properties. It was stated that under the said partition, the suit property had been allotted to defendant No.1 and therefore, the plaintiff and defendant No.3, being parties to the Partition Deed, could not contend that they were entitled to a share in the suit property.

5. S. Ramakrishna (defendant No.3) supported the claim of the plaintiff and also claimed a share.

6. The Trial Court, on consideration of the evidence, came to the conclusion that the registered Partition Deed (Ex.D1) was not proved since the execution of the Partition Deed was denied and the witnesses to the document were not examined to prove its execution. The Trial Court accordingly decreed the suit.

7. Defendants 1 and 2 (S.Narayanappa & Venkasubbaiah) challenged this decree of partition in appeal.

8. The Appellate Court, after re-appreciating the entire evidence, came to the conclusion that the properties of the family had been divided under the registered Partition Deed dated 06.01.1989 (Ex.D1) and in the said partition, the suit property had been allotted to S.Narayanappa (defendant No.1) and the same could not be subjected to a partition once again.

9. As far as the contention that the plaintiff and defendant No.3 had not executed the Partition Deed, the Appellate Court took note of the fact that the plaintiff and

defendant No.3 had sought for appointment of a Finger Print Expert and the same had been granted and a Finger Print Expert was appointed. It is noted that the Finger Print Expert's report disclosed that the signatures found on the Partition Deed (Ex.D-1) were indeed the signatures of the plaintiff and defendant No.3 and therefore, the Partition Deed had stood proved and as a consequence, the decree of the Trial Court could not be sustained. The Appellate Court accordingly proceeded to allow the appeal and dismiss the suit.

10. It is this decree of dismissal of the suit that is impugned in this second appeal.

11. The learned counsel for the appellants contended that the Appellate Court could not have dismissed the suit since the Finger Print Expert was not examined by the Trial Court and this had vitiated the judgment of the Appellate Court. He contended that the evidence of the expert by itself could not lead to the conclusion that the Partition Deed stood proved and he further contended that whenever the execution of document was denied, if there were attesting witnesses to the

document, the said witnesses were required to be examined and if they were not examined, then an inference would have to be drawn that the document had not been proved.

12. In this case, Appaiah filed a suit for partition contending that the suit property was a joint family property and the defence to this claim was that there was already a partition by way of registered document to which the plaintiff himself was a party and therefore, the suit could not be maintained.

13. In law, if a document is alleged to have been signed by any person, that signature has to be proved (Section 47 of the Indian Evidence Act, 1872).

14. The Court in order to ascertain whether the signature alleged is that of the person to whom it purports to be, may compare the disputed signature and the admitted signature to satisfy itself regarding the authenticity of the signature (Section 73 of the Indian Evidence Act, 1872).

15. One other mode of proving the signature is to

seek the opinion of a handwriting expert.

16. Under the provisions of Order XXVI Rule 10-A of the Code of Civil Procedure, the Court is empowered to issue a commission to conduct a scientific investigation by a Finger Print Expert and if such a course is adopted, the disputed signature and the admitted signature is sent for a scientific investigation and on such an investigation being conducted and a report being submitted by the expert, the Court can consider the report and proceed to adjudicate upon the genuineness of the signature.

17. It is to be stated here that under Order XXVI Rule 10 (2) of the Code of Civil Procedure, whenever a report is submitted by the expert, that report would become the evidence in the suit and shall form a part of the record.

18. However, that by itself will not make the report to be proof of the contents of the report and either the Court on its own or any of the parties to the suit, with the permission of the Court, may proceed to examine the expert personally in Court touching upon any of the matters referred to in the report or the manner in which he

conducted the investigation.

19. Thus, whenever a Finger Print Expert submits his report pursuant to a commission issued to him to investigate whether the signature is genuine or not, that report by itself becomes evidence in the suit and he may be examined personally touching upon any of the matters referred to in his report or in the manner in which he conducted the test, either by the Court on its own or by any of the parties to the suit, with the permission of the Court. Thus, if a party to the suit has any misgivings on the report, he may with the permission of the Court examine the expert and ask such questions as he deems proper regarding his report.

20. It thus follows that if a person, who has any misgivings about the report of the expert, fails to seek permission of the Court to examine the expert, he cannot thereafter contend that the report is required to be ignored or discarded.

21. A party, who has such misgivings of a Commissioner's report, cannot by merely filing

objections to the report wish away the effect of the report and contend that the report has to be ignored on the ground that the Commissioner was not examined personally.

22. It is to be stated here that the Commissioner may be examined at the behest of the Court or at the behest of any party to the suit. It does not, however, imply that every expert who has submitted a report is required to be mandatorily examined in person and it also does not thereby lead to an inference that if the Commissioner has not been examined, the evidentiary value of report would be lost.

23. In this case, it is not in dispute that at the instance of Appaiah and his brother, defendant No.3, who had supported him in the suit, a Finger Print Expert was appointed and he had collected the signatures of both the plaintiff and defendant No.3 and thereafter, rendered a report in which he rendered an opinion that the signatures found on Ex.D1 were indeed the signatures of plaintiff and defendant No.3. Thus, going by the report of the expert, it is clear that the plaintiff and defendant No.3 had signed

Ex.D1- Partition Deed and as a consequence, the implication was that that they had suppressed the factum of there being a partition.

24. The learned counsel for the appellant contended that the said opinion of expert cannot be accepted since he was not subjected to cross-examination and according to the learned counsel, unless this Finger Print Expert was summoned, the report could not be relied upon.

25. As stated earlier, since the Finger Print Expert was appointed at the instance of the plaintiff and defendant No.3, it was open for the plaintiff and defendant No.3 to examine or summon the Finger Print Expert and cross-examine the expert regarding finger prints. The plaintiff and defendant No.3, however, chose not to adopt this course of action and they having chosen not to exercise the option available to them in law, they cannot be permitted to contend that the opinion of the Finger Print Expert should be ignored.

26. The learned counsel for the appellant, relied upon the judgment of the Apex Court in the case of *RAMESH*

CHANDRA AGRAWAL Vs. REGENCY HOSPITAL LIMITED & OTHERS - AIR 2010 SC 806, to contend that the evidence tendered by an expert is only of an advisory character and hence the report of the Finger Print Expert was not conclusive. No doubt, it is true that the evidence of an expert is not conclusive but the accuracy of his conclusions based on scientific criteria would be a valuable tool for a Judge to arrive at a just and proper conclusion especially in the case of ascertaining the genuineness of a signature. This judgment is thus does not support the contention of the appellant that the Commissioner's report is to be ignored if he is not examined.

27. The learned counsel also relied upon the judgment of this Court in the case of *PARAPPA & OTHERS Vs. BHIMAPPA & ANOTHER - ILR 2008 KAR 1840* to contend that the Commissioner was required to be examined, failing which, the Commissioner's report would have to be discarded. In my view, this Court has not laid down such a proposition of law. In fact, this Court has held that either party to the lis can examine the Commissioner with the permission of the Court and it, therefore, follows that

a Commissioner is not required to be examined automatically whenever objections are filed to his report.

28. In my view, the fact as to whether the plaintiff and defendant No.3 had executed the Partition Deed - Ex.D1 was essentially a question of fact which has been determined by the Appellate Court and on re-appreciation of facts, it has arrived at a conclusion that the plaintiff and defendant No.3 had indeed signed the Partition Deed and therefore, there is no scope for interference under Section 100 of the Code of Civil Procedure.

29. As far as the contention that the witnesses to the Partition Deed were required to be examined to prove the execution of the Partition Deed, in the light of denial of the execution, it is to be stated here that a Partition Deed is a document which is not required to be attested by law and thus, the requirement of examining the witnesses is not mandatory to prove the execution.

30. Thus, there is no question of law, much less, a substantial question of law arising for consideration in this appeal. Accordingly, the appeal is dismissed.

