C.Doddanarayana Reddy(D) By Lrs. vs C.Jayarama Reddy (Dead) By Lr. on 14 February, 2020

Equivalent citations: AIR 2020 SUPREME COURT 1912, AIRONLINE 2020 SC 199, (2020) 4 SCALE 251

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Bench: Hemant Gupta, S. Abdul Nazeer

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2165 OF 2009

C. DODDANARAYANA REDDY (DEAD) BY LRS. & ORS. .....APPELLANT(S)

VERSUS

C. JAYARAMA REDDY (DEAD) BY LRS. & ORS. .....RESPONDENT(S)

JUDGMENT

HEMANT GUPTA, J.

1. The defendants are in appeal aggrieved against an order passed by the High Court of Karnataka on 14 th June, 2005 whereby the appeal filed by the plaintiff - C. Jayarama Reddy was allowed by setting aside the concurrent findings of facts recorded by two courts below. The High Court answered the following substantial question of law:

> "Whether the judgment and decree passed by the Courts below suffer from illegality on account of improper consideration of Ex.P1, i.e., school leaving certificate?"

2. The plaintiff filed a suit for partition and separate possession of 1/4th share in the Suit schedule property between himself and his three brothers who are defendant Nos. 1, 2 and 3. Defendant Nos. 4 to 17 are the persons who have purchased the property from the defendant Nos. 1 to 3, the brothers. The plaintiff claimed that he was minor at the time of death of his father in the year 1963 and that he continued as a member of the joint Hindu family in joint possession and enjoyment of

the property of joint Hindu family. The plaintiff asserted that his signatures were obtained on a few documents and that he was not aware of the contents of the same nor did he execute any document thereof and understood what they were. Para 6 of the plaint reads thus:

> "6. The plaintiff was kept in the dark about the family affairs and implicitly obeyed the dictates of the other defendants and did whatever he was asked to do. In fact, his signatures were taken on few documents and the plaintiff is not aware of the contents nor did he execute any document thereof or understands what they were."

> 3. In the written statement filed, it was asserted that the plaintiff and defendant Nos. 1 to 3 and their father were members of joint Hindu family till 15th June, 1963. The plaintiff demanded and wished to separate himself from the joint Hindu family and executed a release deed on 15th June, 1963 and severed all the connections from the joint Hindu family when he received consideration of Rs.5,000/- for his share and relinquished all his rights in the family.

The plaintiff went away from the family after execution of the release deed and lived at Kempapura village since 1963 in his father-in-law's house. It was denied that the plaintiff was minor at the time of death of his father. It was further pleaded that he married one Mamjamma d/o Nanjundappa of Kempapura on 29 th June, 1964.

4. On the basis of respective pleadings of the parties, the trial court framed as many as 16 issues. However, the relevant issues are Issue Nos. 1 and 2 at this stage, which read as under:

> "1. Whether the plaintiff was a minor in 1963?

> 2. Whether the plaintiff separated from the joint family and executed a release deed dated 15.06.1963? If so, is the same valid and is the plaintiff entitled to a share?"

5. The plaintiff in order to prove that he was minor produced School Leaving Certificate Ex. P/1 and also examined his brother PW.2 C. Ramaswamy Reddy. The brother did not depose about the age of the plaintiff at the time of death of his father. The plaintiff has not produced any official from the school to prove that such certificate was from the record of the school nor did he examine Head Master who has issued such certificate. The plaintiff has also not examined his mother who was available at the time when the evidence of the plaintiff was being recorded.

6. The learned trial court on Issue No. 1 found that the registered release deed (Ex.D/1) dated 15th June, 1963 mentions the age of the plaintiff as about 22 years and subsequent to the execution of the release deed the plaintiff married Nanjamma on 29 th June, 1964. The registered marriage deed Ex D-2, produced by the defendants, also proves that the age of the plaintiff was 24 years. The trial court did not rely on the date of birth of the plaintiff mentioned in the School Leaving Certificate (Ex.P/1) as the same was not put by the Head Master of the School and the plaintiff did not examine the Head Master of the School to prove the contents of the School Leaving Certificate. Thus, the learned trial court held that the plaintiff was not a minor at the time of execution of release deed in

favour of his brothers and his father.

7. Learned trial court further held that the plaintiff has stated that some of his signatures were taken by his father on few documents and he was not aware of the contents of those documents. The defendants have proved the execution of the release deed by the plaintiff. The plaintiff admitted that he executed a release deed on 15th June, 1963 and has been residing with his father-in-law in Kempapura because a dispute arose between his father and brothers and himself. He admitted that his father died on 30 th June, 1963 and that his brothers are residing separately since 1964. The trial court further held that the plaintiff has not pleaded any fraud or coercion in respect of release deed, thus, the Court came to the conclusion that the release deed is valid and the plaintiff is not entitled to any share in the suit schedule properties.

8. Aggrieved, plaintiff filed appeal before the learned First Appellate Court. The learned First Appellate Court examined the questions as to whether on the date of execution of the release deed, the plaintiff was a major or not and whether the release deed obtained by undue influence or coercion etc. The Court held that the plaintiff had not pleaded at any time that the release deed was obtained by fraud or coercion or that he had not received any consideration thereunder. After discussing the statements of witnesses and the documents produced by the parties, the First Appellate Court held that plaintiff was not a minor at the time of execution of release deed and, thus, dismissed the appeal of the plaintiff and that the order of dismissal of suit of the learned trial court was upheld.

9. In second appeal, the substantial question framed by the High Court was whether the judgment and decree passed by the courts below suffers from illegality on account of improper consideration of Ex.P/1, i.e., School Leaving Certificate. The High Court returned a finding that Ex.P/1 is a transfer certificate and, thus, the plaintiff was minor and such certificate is admissible as proof of age under Section 35 of the Evidence Act. It was held that since the plaintiff was minor on the date when the release deed was executed on 15 th June, 1963, therefore, such deed is null and void and incapable for raising a plea of estoppel. The reliance was placed upon Nawab Sadiq Ali Khan & Ors. v. Jai Kishori & Ors.1. After returning such finding, the High Court held that release deed is null and void and not binding, though the High Court returned finding that the plaintiff has received a consideration of Rs.5,000/- at that time.

10. Learned counsel for the plaintiff relied upon the judgment of this Court reported as Wali Singh v. Sohan Singh2 wherein the relinquishment by one Kirpal Singh as a guardian of Wali Singh was found to be infructuous in law.

1 AIR 1928 Privy Council 152 2 AIR 1954 SC 263

11. We do not find any merit in the argument raised by learned counsel for the plaintiff relying upon judgment in Wali Singh. In Wali Singh, the plaintiff challenged the mutation said to have been made during his minority. The argument was that he inherited property on the date of death of Kirpal Singh but before his adoption. The High Court dismissed the suit filed by Wali Singh, interalia, for the reason that it was incumbent upon Wali Singh to get the transfer set aside within three years of

attaining majority notwithstanding that the parties may have continued in joint possession. It was on the statement of Kirpal Singh, his adopted father, that the mutation was sanctioned that Wali Singh does not have any concern with the property of his natural father. It was found that the statement made by Kirpal Singh was not based upon any transfer or relinquishment as the guardian of Wali Singh whereas the release by minor Wali Singh was infructuous in law. Therefore, the suit cannot be said to be barred by virtue of Article 44 of the Limitation Act. The said judgment has no applicability to the facts of the present case as it does not deal with the question of admissibility of a School Leaving Certificate which would determine the date of birth.

12. The argument of learned counsel for the plaintiff-respondent is that transfer certificate is a public document which was prepared on the basis of a statement made by his father. Such document bears the signature of his father as well. It is also contended that such document is prepared in the course of official duty of the staff of the Government School, therefore, there is presumption of correctness in terms of Section 35 of the Indian Evidence Act, 1872. Learned counsel for the plaintiff has also referred to the judgment of this Court reported as Birad Mal Singhvi v. Anand Purohit3 wherein, the entry recording the Date of Birth in the School Register is said to have a probative value. Reference is also made to a judgment reported as Madan Mohan Singh & Ors. v. Rajni Kant & Anr.4 to contend that the entry in the School Register cannot be brushed aside.

13. Learned counsel for the plaintiff also relied upon the judgment of this Court reported as Madhegowda (Dead) by LRs v. Ankegowda (Dead) by LRs & Ors.5 that filing of a suit is sufficient to repudiate the alleged relinquishment deed, which is a void document.

14. We do not find any merit in the arguments raised. The public document in terms of Section 74 of the Indian Evidence Act, 1872 includes the documents forming records of official bodies or tribunals. Section 76 of the said Act gives a right to any person to demand a copy of a public document on payment of a fee together with the certificate written at the foot of such copy that it is a true copy of such document. Certified copies may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies. The plaintiff has produced photocopy of the Certificate (Ex.P/1) on the records of 3 1988 (Supp.) SCC 604 4 (2010) 9 SCC 209 5 (2002) 1 SCC 178 this appeal. Such Certificate does not show that it is said to be a certified copy of a public document as contemplated by Section 76 of the said Act.

15. School Leaving Certificate has been produced by the plaintiff and said to be signed by his father. The person who has recorded the date of birth in the School Register or the person who proves the signature of his father in the School Transfer Certificate has not been examined. No official from the School nor any person has proved the signatures of his father on such certificate. Apart from the self-serving statement, there is no evidence to show that the entry of the date of birth was made by the official in-charge, which alone would make it admissible as evidence under Section 35 of the Indian Evidence Act, 1872. However, the High Court has not found any other evidence to prove the truthfulness of the Certificate (Ex.P/1).

16. The reliance of the plaintiff on Madhegowda is again not relevant to the issues arising in the present case. In the aforesaid case, the property of admittedly a minor was sold by sister of the

minor purportedly acting as a guardian. There was no dispute about the age of the seller who was minor. The dispute in the present appeal revolves around the fact whether the plaintiff was a minor on the date the release deed was executed. The entire case is based upon School Transfer Certificate (Ex.P/1) which does not prove the date of birth, recorded therein, as reliable and trustworthy.

17. In Birad Mal Singhvi, the Date of Birth was sought to be proved by the Principal of the School. Though, the Principal could not produce the admission form in original or its copy. It was held therein that the entries contained in the school's register are relevant and admissible but have no evidentiary value for the purpose of proof of date of birth of the candidates. A vital piece of evidence was missing as no evidence was placed before the court to show on whose information the date of birth was recorded in the aforesaid document. It was held as under:

> "14. .....No doubt, Exs. 8. 9, 10, 11 and 12 are relevant and admissible but these documents have no evidentiary value for purpose of proof of date of birth of Hukmi Chand and Suraj Prakash Joshi as the vital piece of evidence is missing, because no evidence was placed before the court to show on whose information the date of birth of Hukmi Chand and the date of birth of Suraj Prakash Joshi were recorded in the aforesaid document. As already stated neither of the parents of the two candidates nor any other person having special knowledge about their date of birth was examined by the respondent to prove the date of birth as mentioned in the aforesaid documents. Parents or near relations having special knowledge are the best persons to depose about the date of birth of a person. If entry regarding date of birth in the scholar's register is made on the information given by parents or someone having special knowledge of the fact, the same would have probative value. The testimony of Anantram Sharma and Kailash Chandra Taparia merely prove the documents but the contents of those documents were not proved. The date of birth mentioned in the scholars' register has no evidentiary value unless the person who made the entry or who gave the date of birth is examined. The entry contained in the admission form or in the scholar's register must be shown to be made on the basis of information given by the parents or a person having special knowledge about the date of birth of the person concerned...."

18. In Madan Mohan Singh, this Court held that the entries made in the official record may be admissible under Section 35 of the Indian Evidence Act, 1872 but the Court has a right to examine their probative value. The authenticity of the entries would depend on whose information such entries stood recorded. The Court held as under:

> "20. So far as the entries made in the official record by an official or person authorised in performance of official duties are concerned, they may be admissible under Section 35 of the Evidence Act but the court has a right to examine their probative value. The authenticity of the entries would depend on whose information such entries stood recorded and what was his source of information. The entries in school register/school leaving certificate require to be proved in accordance with law and the standard of proof required in such cases remained the same as in any other

civil or criminal cases.

21. For determining the age of a person, the best evidence is of his/her parents, if it is supported by unimpeachable documents. In case the date of birth depicted in the school register/certificate stands belied by the unimpeachable evidence of reliable persons and contemporaneous documents like the date of birth register of the Municipal Corporation, government hospital/nursing home, etc., the entry in the school register is to be discarded. (Vide Brij Mohan Singh v. Priya Brat Narain Sinha [AIR 1965 SC 282] , Birad Mal Singhvi v. Anand Purohit [1988 Supp SCC 604 : AIR 1988 SC 1796] , Vishnu v. State of Maharashtra [(2006) 1 SCC 283 : (2006) 1 SCC (Cri) 217] and Satpal Singh v. State of Haryana [(2010) 8 SCC 714 : JT (2010) 7 SC 500] .)

22. If a person wants to rely on a particular date of birth and wants to press a document in service, he has to prove its authenticity in terms of Section 32(5) or Sections 50, 51, 59, 60 and 61, etc. of the Evidence Act by examining the person having special means of knowledge, authenticity of date, time, etc. mentioned therein. (Vide Updesh Kumar v. Prithvi Singh [(2001) 2 SCC 524 : 2001 SCC (Cri) 1300 : 2001 SCC (L&S) 1063] and State of Punjab v. Mohinder Singh [(2005) 3 SCC 702 : AIR 2005 SC 1868].)"

19. In a judgment reported as Ram Suresh Singh v. Prabhat Singh & Anr.6, it has been held that entry in the School Register may not be a public document and, thus, must be proved in accordance with law. The Court held as under:

"12. The condition laid down in Section 35 of the Evidence Act for proving an entry pertaining to the age of a student in a school admission register is to be considered for the purpose of determining the relevance thereof. But in this case, the said condition must be held to have been satisfied. An entry in a school register may not be a public document and, thus, must be proved in accordance with law, as has been held by this Court in Birad Mal Singhvi but in this case the said entry has been proved."

20. We find that the High Court gravely erred in law in interfering in the findings of fact recorded by the First Appellate Court. The plaintiff has not challenged the release deed dated 15 th June, 1963 in the plaint on the ground that he was minor on the date of execution nor has he challenged on the ground of fraud, coercion or undue influence in execution of the said document. He has not pleaded so as is required to be pleaded in terms of Order VI Rule 4 Code of Civil Procedure, 1908 7. The only pleading raised by the plaintiff is that he was a minor at the time of death of his father in 1963. He has not disclosed the date of death of his father in the plaint. The averment in the plaint is that his signatures have been obtained on certain documents but he does not know the contents thereof.

21. There is a categorical plea in the written statement that the 6 (2009) 6 SCC 681 7 for short, 'the Code' release deed was voluntarily executed and he walked away from the family and stayed in the

village of his father-in-law. The fact that he left village and stayed in the house of his father-in-law is admitted by him when he appeared as PW-1. The High Court has also not disputed that a sum of Rs.5,000/- was received by him when the release deed was executed on 15th June, 1963.

22. The plaintiff has taken benefit of consideration of Rs.5,000/- in pursuance of the release deed executed on 15 th June, 1963. He has not challenged such release deed in the suit filed but asserted to be member of joint Hindu family though as per his own evidence, he left joint family and started living in the Village of his father-in-law. Thereafter, on the basis of the release deed, the other members of the family have transferred some of the property in favour of the other defendants; therefore, the suit could not have been decreed when the two registered documents (Ex.D/1 and Ex.D/2) are not disputed by the plaintiff when confronted with such document in the cross-examination.

23. We find that the onus was on the plaintiff to prove that he was a minor at the time of execution of release deed. He failed to prove his date of birth as 8 th April 1946, therefore, his suit is to be dismissed and was rightly dismissed by the learned trial court and the First Appellate Court. The High Court in Second Appeal could not reappreciate the evidence to take a different view that such document is proved. The illegality on account of alleged improper consideration does not give rise to a substantial question of law.

24. The plaintiff has admitted the release deed and the marriage deed dated 15th June, 1963 and 29th June, 1964 respectively having been executed by him when confronted with in his cross examination. Both the documents are registered documents. On the basis of admission, both courts have returned a finding of fact that the plaintiff has not been able to prove date of birth as 8 th April, 1946. We find that the High Court committed a grave error in interfering in the second appeal by merely taking a different view on the basis of same evidence on the basis of which both the trial court as well as First Appellate Court held the plaintiff has failed to prove his date of birth as 8th April 1946.

25. The question as to whether a substantial question of law arises, has been a subject matter of interpretation by this Court. In the judgment reported as Karnataka Board of Wakf v. Anjuman-E-Ismail Madris-Un-Niswan8, it was held that findings of the fact could not have been interfered within the second appeal. This Court held as under:

> “12. This Court had repeatedly held that the power of the High Court to interfere in second appeal under Section 100 CPC is limited solely to decide a substantial question of law, if at all the same arises in the case. It has deprecated the practice of the High Court routinely interfering in pure findings of fact reached by the courts below without coming to the conclusion that the said finding of fact is either perverse or not based on material on record.
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> 13. In Ramanuja Naidu v. V. Kanniah Naidu (1996 3 SCC
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> 392), this Court held:

> "It is now well settled that concurrent findings of fact of trial court and first appellate court cannot be interfered with by the High Court in exercise of its 8 (1999) 6 SCC 343 jurisdiction under Section 100 of Civil Procedure Code. The Single Judge of the High Court totally misconceived his jurisdiction in deciding the second appeal under Section 100 of the Code in the way he did."

14. In Navaneethammal v. Arjuna Chetty (1996 6 SCC

166), this Court held :

> "Interference with the concurrent findings of the courts below by the High Court under Section 100 CPC must be avoided unless warranted by com- pelling reasons. In any case, the High Court is not expected to reappreciate the evidence just to re- place the findings of the lower courts. ... Even as- suming that another view is possible on a reappreci- ation of the same evidence, that should not have been done by the High Court as it cannot be said that the view taken by the first appellate court was based on no material."

15. And again in Secy., Taliparamba Education Soci- ety v. Moothedath Mallisseri Illath M.N. (1997 4 SCC 484), this Court held: (SCC p. 486, para 5) "The High Court was grossly in error in trenching upon the appreciation of evidence under Section 100 CPC and recording reverse finding of fact which is impermissible."

26. In a judgment reported as Kondiba Dagadu Kadam v.

Savitkibai Sopan Gujar & Ors.9, this Court held that from a given set of circumstances if two inferences are possible then the one drawn by the lower appellate court is binding on the High Court. In the said case, the First Appellate Court set aside the judgment of the trial court. It was held that the High Court can interfere if the conclusion drawn by the lower court was erroneous being contrary to mandatory provisions of law applicable or if it is a settled position on the basis of a pronouncement made by the 9 (1999) 3 SCC 722 court or based upon inadmissible evidence or arrived at without evidence. This Court held as under:

> “5. It is not within the domain of the High Court to investigate the grounds on which findings were arrived at, by the last court of fact, being the first appellate court. It is true that the lower appellate court should not ordinarily reject witnesses accepted by the trial court in respect of credibility but even where it has rejected the witnesses accepted by the trial court, the same is no ground for interference in second appeal when it is found that the appellate court had given satisfactory reasons for doing so. In a case where from a given set of circumstances two inferences are possible, one drawn by the lower appellate court is binding on the High Court in second appeal. Adopting any other approach is not permissible. The High Court cannot substitute its opinion for the opinion of the first appellate court unless it is found that the conclusions drawn by the tower appellate court were erroneous being contrary to the

> mandatory provisions of law applicable of its settled position on the basis of pronouncements made by the apex Court, or was based upon in inadmissible evidence or arrived at without evidence."

27. In another judgment reported as Santosh Hazari v.

Purushottam Tiwari10, this Court held as under:

> "14. A point of law which admits of no two opinions may be a proposition of law but cannot be a substantial question of law. To be substantial, a question of law must be debatable, not previously settled by law of the land or a binding precedent, and must have a material bearing on the decision of the case, if answered either way, in so far as the rights of the parties before it are concerned. To be a question of law involving in the case there must be first a foundation for it laid in the pleadings and the question should emerge from the sustainable findings of fact arrived at by court of facts and it must be necessary to decide that question of law for a just and proper decision of the case. An entirely new point raised for the first time before the High Court is not a question involved in the case unless it goes to the root of the matter. It will, therefore, depend on the facts and circumstance of each case whether a question

10 (2001) 3SCC 179 of law is a substantial one and involved in the case, or not; the paramount overall consideration being the need for striking a judicious balance between the indispensable obligation to do justice at all stages and impelling necessity of avoiding prolongation in the life of any lis."

28. Recently in another judgment reported as State of Rajasthan v.

Shiv Dayal11, it was held that a concurrent finding of the fact is binding, unless it is pointed out that it was recorded de hors the pleadings or it was based on no evidence or based on misreading of the material on records and documents. The Court held as under:

> "When any concurrent finding of fact is assailed in second appeal, the appellant is entitled to point out that it is bad in law because it was recorded de hors the pleadings or it was based on no evidence or it was based on misreading of material documentary evidence or it was recorded against any provision of law and lastly, the decision is one which no Judge acting judicially could reasonably have reached. (see observation made by learned Judge Vivian Bose,J. as His Lordship then was a Judge of the Nagpur High Court in Rajeshwar Vishwanath Mamidwar & Ors. vs. Dashrath Narayan Chilwelkar & Ors., AIR 1943 Nagpur 117 Para
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> 43)."

29. The learned High Court has not satisfied the tests laid down in the aforesaid judgements. Both the courts, the trial court and the learned First Appellate Court, have examined the School Leaving

Certificate and returned a finding that the date of birth does not stand proved from such certificate. May be the High Court could have taken a different view acting as a trial court but once, two 11 (2019) 8 SCC 637 courts have returned a finding which is not based upon any misreading of material documents, nor is recorded against any provision of law, and neither can it be said that any judge acting judicially and reasonably could not have reached such a finding, then, the High Court cannot be said to have erred. Resultantly, no substantial question of law arose for consideration before the High Court.

30. Thus, we find that the High Court erred in law in interfering with the finding of fact recorded by the trial court as affirmed by the First Appellate Court. The findings of fact cannot be interfered with in a second appeal unless, the findings are perverse. The High Court could not have interfered with the findings of the fact.

31. In view of the aforesaid enunciation of law and the facts of the present case, we find that the High Court committed grave error in law in setting aside the concurrent findings of facts recorded by the First Appellate Court and the Trial Court. Consequently, the appeal is allowed and the suit is dismissed with no order as to cost.

.....J. (S. ABDUL NAZEER) .....J. (HEMANT GUPTA) NEW DELHI;

FEBRUARY 14, 2020.