Supreme Court of India
Ishwari Prasad Mishra vs Mohammad Isa on 27 August, 1962
Equivalent citations: 1963 AIR 1728, 1963 SCR (3) 722
Author: P Gajendragadkar
Bench: Gajendragadkar, P.B.

PETITIONER:
ISHWARI PRASAD MISHRA

Vs.

RESPONDENT:
MOHAMMAD ISA

DATE OF JUDGMENT:
27/08/1962

BENCH:
GAJENDRAGADKAR, P.B.
BENCH:
GAJENDRAGADKAR, P.B.
GUPTA, K.C. DAS
DAYAL, RAGHUBAR

CITATION:
1963 AIR 1728 1963 SCR (3) 722
CITATOR INFO :
C 1967 SC1326 (8)
R 1973 SC2200 (3)
F 1977 SC1091 (7)
F 1980 SC 531 (7,10)

ACT:
Appellate Court-Duty of the appellate Judges in dealing with the judgment of the lower court- Criticism of the trial Judge or the witnesses-Extravagant language to be avoided.

HEADNOTE:
In a suit instituted by the appellant for the specific performance of an agreement of sale executed by the respondent, the latter disputed the genuineness and validity of the agreement and its consideration. The trial court decreed the suit but on appeal the High Court reversed the findings of the trial court and dismissed the suit. In the appeal filed by the appellant, the Supreme Court went into the evidence in the case elaborately and came to the conclusion that the decision of the trial court that the suit agreement was genuine and valid and was supported by consideration, was right and that the High Court erred in reversing that decision. In the judgement delivered by it,

the High Court had passed severe strictures against the trial court suggesting that the decision of the trial court was based on extraneous considerations.
(1958) S.C.R. 825.

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Similarly, the High Court made some observations criticizing some of the witnesses examined in the case suggesting that they had consipired to give false evidence. The Supreme Court after carefully considering the matter fully was satisfied that the amputations made by the High Court against the impartiality and the objectivity of the approach adopted by the trial Judge were wholly unjustified.
Held, that the High Court erred in using extravagant language in criticizing the trial court; that the use of strong language and imputation of corrupt motives should not be made light-heartedly because the judge against whom the imputations are made has no remedy in law to vindicate his position.
Held, further, that the High Court was, similarly, in error in its criticism of some the witnesses examined in the case as showing a tendency to regard every witness whose evidence the High Court did not feel inclined to accept, as a perjuror and a conspirator.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 630 of 1960. Appeal by special leave from the judgment and decree dated September 29, 1959, of the Patna High Court in Appeal from Original Decree No. 290 of 1953.

C. K. Dapthary, Solicitor-General of India, L. K. Jha. Subodh Kumar Jha and B. C. Prasad for the appellant. A. V. Viswanatha Sastri. D. P. Singh, M. K. Ramamurthi, B. K. Garg and S. C. Agarwal for the respondent. 1962. August 27. The Judgment of the Court was delivered by GAJENDRAGADKAR, J.-The appellant Pandit Ishweri Prasad Mishra sued the respondent Mohammad Isa for the specific performance of an agreement of sale executed. by him on the 18th May., 1950,in the Court of the 1st Additional Sub- Judge, Muzeffarpur. By the said agreement, the respondent had promised to execute a sale-deed in favour of the appellant in respects of his house situated at Sitamarhi Bazar, Sitamarhi. The appellant's claim was decreed by the trial 'Court which ordered the respondent to execute a sale-deed, within a month from the date of the decree on receipt of Rs. 4,000/which is the balance of consideration remainig to be paid to him.' The respondent challenged this decree by an appeal before the Patna High Court, and his challenge has succeeded. In the result, the decree passed by the trial Court was reversed and the appellants suit dismissed with costs throughout. It is against this decree that the appellant has come to Court with a certificate issued by the Patna High Court; and so, the principal question which arises in the present appeal is whether the agreement on which the appellants suit is based is genuine, valid and for consideration.

The subject-matter of the agreement of sale is a house belonging to the respondent. According to the appellant, at the time when the agreement was executed, the consideration for the transfer was settled at Rs. 14,000/- out of which Rs. 10,900/were paid as earnest money. The agreement had stipulated that the sale-deed had to be executed within three months from its date; in other words, under the agreement, the respondent was bound to execute the sale-deed on or before the 18th August., 1950. The appellant called upon the'respondent to carry out the terms of the agreement and offered to pay the balance of Rs. 4,000/-, but since the respondent did not comply with the demand' made, by the appellant but attempted to dispute the genuineness and validity. of the agreement itself, the present suit was filed on 27th August, 1950, for specific performance of the said agreement, The appellant's case is that negotiations for the sale of the respondents house had commenced on the 3rd May, 1950, between the father 'of the Appellant and the respondent at the instance of Bihari Lal Singh who acted as a negotiator, The respondent then claimed Rs. 20,000/- as the price of the house and the appellant's father was prepared to pay only Rs. 10,000/-. On the 8th of May,1950 the parties met again when the appellant raised his offer to Rs. 13,000/-, but the respondent refused to below Rs, 15,000/-. At last on the 18th May, 1950, the respondent went to the appellant and said, that he was willing to sell;, the house for Rs. 14,000/-. The appellant was then told by the respondent that he was anxious to purchase an Icecream machine which was likely to cost Rs 12 000/and so, he wanted the agreement to be made that very day. Both of them then went to Babu Amar Choudhary, a senior,lawyer of the place at about 9 A.M., but he had then gone to the court which was holding morning sittings, and so, the parties met him at his office at 2 P.M. along with the scribe Khakhan Singh and the necessary stamp paper.. Thereafter, the parties went to the house of Mr. Choudhary and he dictated the draft of the agreement in the presence of his son who was also a lawyer. The draft was taken down by Khakhan Singh. After the draft was thus completed, the appellant, the respondent and the scribe went to the house of the appellant. At this place Khakhan Singh (P.W.11) scribe copied the draft fair on a stamp paper which had already been purchased in the morning that day. After the draft was thus copied on a stamp paper, the appellant paid to the respondent Rs. 10,000/- and the respondent executed the document admitting in his own handwriting the receipt of the earnest money of Rs.10,000/-. The document was then attested by Ganesh Thakur (P.W.5), Jamuna Singh (P.W. 8) and Bihari Lal Saraogi (P.W.9). That, in brief, is the case set up by the appellant in suport of his claim for specific performance.

The respondent, however, denied the appellant's claim in toto. He suggested that the agreement of sale bore his thumb marks,he had not entered into any agreement of sale at all. He had entrusted the appellant with stamp papers be &- ring his thumb marks in order that he may act as an arbitrator in his dispute with Ramzan Ali. The respondent thus alleged that the appellant had made fraudulent use of the stamp paper entrusted to him by the respondent for a different purpose and had brought into existence a forged document on which the present suit was based. The respondent also denied that he had received Rs. 10,000/-or that be wanted to purchase an Ice-cream machine. He urged, that the value of the house which was the subject-matter of the alleged agreement was worth Rs. 60,000/-. In other words, the respondent disputed the genuineness of the agreement and so, resisted the appellant's claim for specific performance.

On these pleadings, the trial Court framed four issues, the principal issue being in regard to the genuineness and validity of the suit agreement and its consideration. In support of his ease, the

appellant examined the stamp-vendor Harikant Jha (P.W.3) to prove the purchase of the stamp paper for the purpose of drafting the agreement. He examined Mr. Choudhary (P.W. IO), the young lawyer whose father had dictated the draft to prove the fact that a draft had been prepared with the help of the senior lawyer. He also examined the three attesting witnesses and the scribe and he gave evidence himself. Besides, Mr. Bennott (P.W.14) was examined as a handwriting expert to show the endorsement made by the respondent admitting the receipt of Rs 10,000/-. On the other hand, the respondent examined five witnesses to support his versions about the appointment of the appellant as an arbitrator in connection with which a stamp paper bearing his thumb marks had been entrusted to the appellant. He also examined Karim Bux (D.W.6) to prove that the value of the property was Rs. 60,000/-, and he examined Nasrat Hussain (D.W.7) a handwriting expert to show that the impugned engrossment was not in his handwriting. The learned trial Judge rejected the defence theory about the appointment of the appellant as an arbitrator. He also held that the evidence about the value ..of the property given by the Karim Bux was unreliable and that the house in question was not worth more than Rs. 14,000/-. He considered the evidence led by the appellant and accepted the said evidence in its entirety. In the result, he found that the agreement of sale on which the suit was based had been executed by the respondent, that it was valid and was supported by consideration. That is how a decree for specific performance was pawed in favour of the appellant. The High Court has reversed all the findings recorded by the trial Court. It has held that the story about the appointment of the appellant as an arbitrator cannot be said to be altogether improbable and that when comparatively weighed, it appeared to be more probable than that of the appellant. It has held that the value of the property including the land can in no way be less than Rs. 30,000/-, and on examining the evidence adduced by the appellant, it came to the conclusion that the said evidence was not reliable and really showed a conspiracy between the witnesses and the appellant to bring into existence a false and forged document. The evidence adduced by the respondent to support his theory of an attempted arbitration between himself and Ramzan Ali has no doubt been considered by the High Court to be unworthy, of credence ; but on the probabilities, the High Court was prepared to prefer that story to the story of the appellant. That, in brief,, is the result of the findings made by the High Court. In consequence the trial Court's decree was reversed and be seen that the question which we have to decide in the present appeal is a question of fact and its decision lies within a very narrow compass did the respondent execute the agreement of sale and has he received Re. 10,000/- as earnest money under it ? Incidentally, what can be said to be the proper value of the house which is the subject-matter-of the agreement ? These are the main points which fall to be decided. Before considering the evidence adduced by the parties in the present proceedings, it would be necessary to examine some broad and general features of the case on which both the parties have relied before us. Mr. Sastri for the respondent have urged that there are certain unusual features of the case which lend support to the final decision of the High Court. The first circumstance on which Mr. Sastri relies is that the plaint does not refer to the making of the draft by a Senior lawyer as it should have. Mr. Choudhary, the senior lawyer, it is conceded, was a lawyer of status in Sitamarhi and the argument is that if his services had been requestioned in making a draft before the agreement was finalised on a stamp paper, that fact would have been mentioned in the plaint; and since it is not so mentioned the story about the draft should be rejected. We are not impressed by this argument. Strictly speaking we de not see how it was necessary for the appellant to refer to the draft in his pleadings at all. Besides, the story about the draft is supported by all the witnesses examined on the side of the appellant, including Mr. Choudhary's sons and unless we are

inclined to disbelieve the whole of that evidence, it would be impossible to accede to the argument that the story about the draft is untrue. No doubt, the High Court has come to the conclusion that there has been a conspiracy between all the witnesses, and if that conclusion is right, then the draft would, of course, have to be treated as a false document. But for the moment, dealing with the argument about the failure of the appellant to mention the 'draft in the plaint by itself, we do not think there is any substance in it.

Then it is urged that there are certain recitals in the draft which are so unusual that it is very unlikely that a senior lawyer could have dictated it. The agreement (Exbt.6) describes the property by its boundaries, sets out the details as to the circumstances under which the document came to be executed, recites the payment of Rs. 10,000/- as earnest money, provides, that Rs. 14,000/- is the price agreed to be paid, prescribes the period within which the saledeed has to be executed, and contains two clauses which would come into operation on default of the respondent to execute the sale-deed. It is on these two clauses that the argument is based. The first out of these two clauses provide that "'if the respondent does not execution the sale-deed within the due date, the appellant would be competent to take necessary steps for getting the deed of sale executed in respect of the aforesaid property, otherwise this deed of the contract shall be deemed to be the deed of sale." It is true that if the last recital "that the deed of contract shall be deemed to be the deed of sale" is literally construed, it would be unusual. But in the context, all that it seems to mean is that the sale-deed would be executed in the same terms as the agreement of sale. It seems to us. unreasonable, to suggest that because this particular part of the clause is somewhat unusually worded, the court should draw the inference that the senior Mr. Choudhary could not have dictated it and, the whole story about the draft is false. The same comment has to be made in respect of the other clause on which the argument is based. This clause provides that "if the claiment does not get the saledeed executed by me, the executant, within the due date or he does not pay the remaining consideration money at proper time, 1, the executant, shall be competent to realise the remaining consideration money in proper manner from the claiment and shall forfeit the earnest money". This again is an unusual provision. But it cannot sustain the argument that the story about the draft having been directed by Mr. Choudhary'is untrue. That fact will have to be decided in the light of the oral evidence adduced by the appellant to show that the draft was in fact dictated by the senior Mr. Choudhary. Therefore, we do not think that the two clauses on which Mr. Sastri relies can justify the exclusion that the story about the draft is a fiction.

Mr. Sastri then contends it is very unusual that Re. 10,000/- should have been paid as earnest money when the total price for the property was Rs. 14,000/-. But this circumstance is explained if the recital in document is true that the respondent wanted Rs. 12,000/- urgently for purchasing an ice-cream machine. That is the representation which the respondent made to the appellant and since the parties knew each other very well and had confidence in each other, the appellant agreed to pay Rs. 10,000/- to the respondent. That by itself cannot be said to be a suspicious circumstance at all. Then, it is urged that it is very difficult to believe that the appellant should have been in possesion of Rs. 10,000/- in cash. The argument is that such a large amount would normally be kept in the bank: In our opinion, this contention is inconclusive. It depends on the habits of the person concerned and the fact that the appellant kept Re. 10.000/- in his house cannot by itself, be treated as a suspicious circumstance. Similarly-, the failure of the appellant to examine the document of title

of the respondent is of no consequence because the appellant know that the respondent was staying in that house for several years and his father used to stay in that house and so, there could have been no difficulty about assuming that the respondent hads title to the house. It has also been urged that if the story about the negotiations and the draft was true, the appellant should have examined his father and his Manager. There is no substance in this argument. On the day when the agreement was entered into the appellant's father had gone to Lucknow and if appellant is taking the oath in support of his case and he knows all the relevant facts which have to be proved in this case, there is no reason why his father should have stopped into the box or his manager.

The last contention which is seriously passed before us by Mr. Sastri is in regard to the value of the property. Mr. Sastri argues that if the value of the property is not less than Rs. 30,000/- as has been found by the High Court, that would be a very significant fact to bear in mind in dealing with the question about the genuineness of the agreement of sale. It may be conceded that if the value of the property is found to be as much as Rs. 30,000/that no doubt, would be a factor in favour of the respondents theory that he could not have agreed and, in fact, did agree to sell his house to the appellant as alleged by him. The respondent sought to prove value of his house by examining Karim Bux. This witness who has not read in any school or college, claims to have worked as an estimator in the P. W. D. He has now retired from service. He produced a statement showing the value of the property. The statement estimated the cost of construction of the house at Rs. 29,358/- and the value of the land on which the house stands at Rs. 33,900/-. It appears that this witness prepared his report two days before he was examined and he was summoned on the day on which he gave his evidence. He admitted that he did not examine any witness or consult sale deeds of any contiguous properties, nor did he examine the foundation of the pliinth of the house or see whether the plinth was underground. The number of bricks and their quality has not been considered by him. The value of the wood works has been specifically mentioned by him. He has not given the value of cement, mortar and lime separately. He did not even enquire for how. much the house. had been purchased by the respondent and how much he had spent on its improvements. It is true that on this evidence, the High Court has made a fiding that the value of the property cannot be less than Rs.30,000/-. We are unable to see how any finding can be reasonably made about the value of the property on the evidence given by Karim Bux. Having regard to the extent of the land on which the house stands, and hearing in mind that the land, and the house are situated in the Tehsil place of Sitamarhi, the value of the. land estimated at Rs.33,900/- is completely fantastic, and it is impossible to consider the evidence of this witness with any seriousness. One has merely to read the, answers given by him in his cross-examination to be satisfied that this witness knows very little about the job of valuing properties and has taken so steps to do that job carefully at all. Therefore, we do not think that the evidence ,of Karim Bux can be used for the purpose of deter. mining the value of the property.

In this connection, it is relevant to refer to the evidence given by the respondent himself. It is admitted that the house was purchased by the respondent's father for Rs. 300/-. He however, urged that he began to improve the house in 1939 and that the front portion was completed about 9 year before 1953 and inner portion about 3 years before. He stated that he had spent about Rs. 30,000/- in all and so, he claimed that if the house had been sold in 1950, it would have fetched more than R, 60,000/-. Since he claimed to have made substantial improvements, he was cross-examined at length about these improvements. It appears from his evidence that in 1942 he had to borrow Rs.

500/and for that purpose he had to mortgage the land belonging to him. He is a book-binder by profession and from his evidence, it does not appear that he could have such large resources at his disposal. Though the construction work went on for several years, he maintained no accounts about the construction, nor was he able to produce any paper to show that Rs. 30,000/- were with him and had been spent by him for the work of construction. He did not take any permit for cement, because he said that he had purchased the cement before the permit system was introduced from several shops. Realising that it was a tall claim, he modified his answer by saying that he did not purchase any cement but his mason did. Mortar was purchased by him from the shop of one Meghu Mal. He did not know much how amount he spent in purchasing it. Bricks he purchased from several persons and paid them the price, but no receipts were with him. Then he added that he did not himself purchase the bricks, and suggested that about Rs. 9,000/- may have been paid as the price of the bricks. It would thus be seen that the statements made by this witness do not appear to be credible and the claim made by him that the construction work of the house spread over several years and that he spent Rs. 30,000/- for the improvements, cannot, therefore, be accepted as true. In- our opinion, on the material as it stands, there was no justification for the High Court to have reversed the finding of the trial Court about the value of the property, Therefore, the arguments that the value of the property was Rs. 30,000/- and that negatives the version about the agreement of sale, must be rejected.

On the other hand, there are some other broad features of the case which support the appellant's version. It appears that the appellant's father holds a position or status and reputation in sitamarhi. He was the Chairman of the sitamarhi Municipality for some years and the respondent has admitted that his father who was a doctor and the appellant's father who its Vaidya were friends and that between the families, good relations subsisted. In fact, according to the respondent, the apellant's father was looking after his case which was started between him and his father Muzaffaruddin. Now, it seems difficult to believe that if the relations between the parties were cordial and they stayed in houses opposite to each other, the appellant should have suddenly thought of bringing into existence a forged document for the purpose of purchasing the respondent's house. Prima facie, the suggestion that the appellant has succeeded in obtaining the help of several persons to carry out the purpose of this conspiracy does not sound reasonable or proper. If the evidence adduced by the appellant turns out to be extremely unsatisfactory,, and on a fair appreciation it seems to justify the conclusion that the witnesses have perjured themselves, then, of course, it would be open to a court to hold that the witnesses have entered into a conspiracy. But such a conclusion must be reached only where the character of the evidence given by the witnesses appears to be so completely unsatisfactory as to lead to the conclusion that it is false and has been given to serve the object of the conspiracy. As we will presently point out, the evidence adduced by the appellant does not appear to us to justify any such conclusion. Therefore, if the theory of conspiracy is rejected and we reject it Without any hesitation, then the fact that three attesting witnesses and the scribe have supported the appellant's case and tile young lawyer Mr. Choudhary has proved the draft, goes very much in favour of the appellant. That is the view taken by the trial Court and in our opinion, the trial Court was right.

There is another factor on which the appellant is entitled to rely and that is the intrinsic evidence of the document itself. We have looked at the document ourselves and we are satisfied that there is no

trace of any attempt to squeeze the contents of the document on the stamp paper. The writing of the document appears to be natural and the endorsement made by the respondent acknowledging receipt of Rs. 10,000/- shows no suspicious features at all. Therefore, the appearance of the document and the intrinsic evidence supplied by the manner in which it is written, are factors which are in favour of the appellant. There is one more circumstance on which the Solicitor General for the appellant has very strongly relied. He contends that if he can demonstrate that the arbitration story set up by the respondent in support of his version that a stamp paper was given to the appellant with his thumb marks for the purpose of endorsing the arbitration agreement and it has been fraudulently used by him for the purpose of the suit agreement is false, then the conclusion is inescapable that the agreement is genuine and has been duly executed by the respondent. It would be recalled that the respondent's version in this matter is that at the relevant time, two suits were pending between him and Ramzan Ali. Ramzan Ali was his tenant and he had sued Ramzan Ali for rent and Ramzan Ali 'had sued in the Rent Controller's Court for the fixation of standard rent. According to him, the dispute between him and Ramzan Ali was referred to the appellant for his arbitration and in that connection stamps were purchased on the 15th of May. Three days thereafter, the appellant told him that the said stamps had been lost and so, stamp were purchased again on the 18th May. Thus, the purchase of the stamps on the 18th May is admitted by the respondent, but it is explained on the ground that he purchased the said stamps because he was told by the appellant that the stamps earlier purchased had been lost. It would thus be seen that the purchase of the stamps on the 15th May plays an important part in proving the version of the respondent. According to him, these stamps were purchased from Raghubir Prasad at Dumra Katchery. It would have been very easy for the respondent to examine Raghubir Prasad to prove the said fact of purchase on the 15th May. He was asked whether he was going to examine Raghubir Prasad and he stated "1 cannot say if I would examine Raghubir Prasad, Stamp-vendor". Thus, the failure of the respondent to examine Raghubir Prasad to prove the alleged purchase of stamps from him cannot be ignored in deciding the question as to whether the story about the arbitration agreement is true or not. Incidentally, it may be added that the respondent was asked whether he was in the habit of taking the plea that he had put his thumb marks on a blank paper which had been fraudulently used for another purpose against him. He indignantly denied the suggestion. But a document was produced which shows that in a Money Suit No. 129 of 1947 brought by Sahdeo against the respondent, he had taken a similar plea and had urged that the thumb put by him on the blank paper had been fraudulently used by Sahdeo. Thus, this is not the first time that the respondent is taking such a plea in litigation.

There are two other circumstances which must be considered in dealing with this matter. The Rent Suit filed by the respondent against Ramzan Ali (No. 103 of 1950) was dismissed on 15th May. No doubt, the respondent says that he got the suit dismissed on the advice of the appellant. But if the suit was got dismissed because Ramzan Ali and the respondent,has agreed to refer their dispute to the appellant for his arbitration, one would expect that fact to be mentioned to the court and Ramzan Ali would, have endorsed at fact. Nothing of the kind was, however, done and it appears to be a clear case of dismissal of the suit for default.

What has happened in Ramzan Ali's suit (No. 9 of 1950) 'is still more Significant. In that suit, the respondent appled on May 31, 1950, that he wanted' to adduce oral and documentary evidence and

that the case may be adjourned to some other date. This prayer was granted and time was allowed till the 23rd June, 1950. Now if the dispute was referred to arbitration, it was hardly necessary 'for the respondent to lead any evidence in that suit. All that the parties had to do was to tell, the court that the suit need not be proceeded with because the matter in dispute was being adjudicated upon by the arbitrator of their choice. This conduct of the respondent on May 31, 1960, is wholly inconsistent with his theory that the appellant had been asked to arbitrate on the dispute between him and Ramzan Ali.

Besides, if the story about the arbitration had been true, the respondent could have easily examined Ramzan Ali to support his version. When he was asked whether Ramzan Ali had put his thumb mark on the at-amp paper which is-alleged to have been given to the appellant to engross an agreement, the respondent said that he did not know and by way of explanation, he added that he could not know because he was not on speaking terms with him at that Time. He also stated that he was not on speaking terms with him on the day when he gave evidence and so, he had not enquired if. he had put his thumb mark on the stamp paper or not. Later on, under stress of cross-examination, he admitted that he was on talking terms with Ramzan Ali since 1951, that he was not his tenant any longer but. his brother was, and yet, Ramzan Ali had not been examined by the respondent to prove his case about arbitration. Therefore,, it seems to us that the solicitor-General is justified in contending that the relevant evidence bearing on the point clealy shows that the story about the arbitration agreement is untrue, and if that is so, it follows that the stamp papers which were purchased on the 18th May were not purchased because the appellant told the respondent that the earlier stamp papers had been lost, but they were' purchased for a purpose other than the alleged purpose of arbitration. On the record. there is no suggestion that there could have been any purpose for the purchase of these stamps other than the one set out by the appellant. Therefore, considering the broad features of the case on which the learned Counsel for the respective parties relied before us, it appears that these features are not inconsistent with the appellants case, but are inconsistent with the version set out by the respondent.

We will now examine the evidence on which the appellant relies. First is the Stamp-vendor Harikant Jha. He has deposed to the purchase of two stamps on the 18th May, one for Rs. 1/8/- and the other for As./12/-. There is an endorsement made by him showing the sale of these stamps. It is true that the respondent has not signed in the register or on the back of the stamp, but that makes no difference because the purchase of the stamps from the witness is admitted by the respondent and is no longer in dispute. Since we have held that the story about the arbitration is untrue, it is unnecessary to consider whether the word '"Mahadnama" which means an agreement, meant an agreement of arbitration or an agreement. of sale. The arbitration agreement being out of the way, the only agreement for which the stamps were purchased must be the agreement of sale.

Ganesh Thakur attested the execution of the document. He resides in Mauza Riga which is at a distance of about 6 miles from Sitamarhi. He has deposed to the fact that he used to go to the appellant's father's shop for purchasing medicines and on that occasion he purchased Raspipri. It is not disputed that the appellant's father runs a shop where Ayurvedic medicines are sold. He admitted that Raspipris are available in grocer's shop but they are not reliable and he preferred to purchase them from a big medicine shop, such as that of the appellant's father. When he went to

purchase the medicine, he found that the document was being executed. So, he stayed on, attested the document, purchased the medicine and left the place. This witness is not related to the appellant and is not shown to be hostile to the respon- dent either. He is a disinterested person who went to the appellant's father's shop to purchase the medicine in the ordinary course, and he swears that he attested the document. He has also referred to the writing of the document by Khakhan Singh and its attestation by two other witnesses. The criticism against this witness which has been accepted by the High Court is that he walked six miles to purchase the medicine which is not likely and that he waited for some time until the document was completed which is improbable We are not impressed by this criticism. In considering the question as to whether evidence given by the witness should be accepted or not the court has, Up doubt, to examine whether the witness is an interested witness and to enquire whether the story deposed to by him is probable and whether it has been shaken in cross- examination. Now, a person in the position of Ganesh Thakur who stated that he used to go to the shop of the appellant's father to purchase the medicine because it was a big store, cannot be blamed for having walked a distance of six miles to purchase Raspipri on that day. Therefore, we see no reason to treat this witness as unreliable. The next attesting witness is Jamuna Singh. He stays at Mauza Manora and works as a teacher. He had given a book to the respondent for binding and on that day, he had gone to the respondent's shop to take the book back. The respondent was not in his shop and so, he waited in the shop for some time. On seeing the respondent at the shop of the appellant, he walked over there. He saw the execution of the document, attested it and then went back to the respondent's shop and took the book from him before he left for his peace, This witness has been cross-examined about his qualifications as a teacher. But having considered all the answers given by him in cross-examination, we do not set- any reason why he should be treated as unreliable. No doubt, it was suggested to him that he may have been appointed as a teacher during the time when the, appellant's father was elected as Chairman of the Municipalty, but he denied it, and yet, the High Court appeare to have assumed that the suggestion was proved and has treated as one reason for disbelieving him. It is hardly necessary to add that it would he unsafe to discard the evidence of a witness which appears otherwise to be reasonable and probable, merely because some suggestions were made to him, without those suggestions being proved to be true, That takes us to the evidence of Bihari Lal Saraogi. This witness has attested the document and has stated that he went to attest the document because the respondent asked him to do go. it appears that this witness had a pharmacy and stationery shop to the west of the house in question at the relevant time. Since then$ however, he has shifted to Sursand. He was carrying on his business at Sitamarhi for about three years. According to this witness, the respondent had requested him to negotiate.the sale of his 'house with the appellant's father and accordingly, in the first stage of the negotiations, this witness helped the parties. Now, this witness was asked whether he paid any income-tax or sales-tax for his dealings in the shop and when he answered in the,nageative, that has been used against him for the purpose of showing that he never stayed in Sitamarhi. Like the two other attesting witnesses, Bihari Lal also does not appear to be interested and We see 'no reason to disbelieve his evidence.

The scribe, Khakhan Singh, has supported the appellant's case both in regard to the making of the draft and engrossing the draft as a fair copy on the stamp paper. The main point which is made against him is that he did not remember who drew the four lines in the execution portion of the document over the head of the writing showing that the respondent had received Rs. 16,000/- We see no substance in the criticism made against this witness as a result of this statement. We have

seen the four lines ourselves and we see nothing auspicious about those lines. Some persons draw lines before they write and some do not, and when lines are drawn, one line may be longer than the other, These are all matters of individual mannerism' and no serious, point can be made on the statement of the soribe because, having looked at the'lines in relation to the thumb marks made by the respondent, they do not appear to be suspicious at all.

The appellant has examined himself and he has supported his case. He was also asked whether he and his father kept any books of account or diaries, or whether there was any documentary evidence to show that he had Rs. 10,000/- in hand and that he had paid them to the respondent. The witness admitted that no diary was kept, nor was any account-book kept. This is the type of answer given by most of the witnesses in. this case when they were examined about their books of account. But the failure to keep an account book, or produce it if one is kept, cannot necessarily lead to the inference that the whole of the story deposed to by the witness is for that reason alone untrustworthy. In the present case, we have seen that the stamp paper bearing the thumb marks of the respondent was purchased by the respondent, and as we have already emphasised the respondent has not been able to show why it was purchased if it was not for the agreement of sale. He set out an alternative theory about the arbitration which we have rejected. It is in the light of this important circumstance that the oral evidence has to be appreciated. Thus considered, we see no reason why the High Court should have interfered with the conclusions reached by the trial court after appreciating the oral evidence led by the appellant before it. That leaves the evidence of the young lawyer Choudhary to be considered. Mr. Choudhary has deposed to the fact that the draft was dictated by his father, was taken down by Khakhan Singb and the said draft has been produced by him. The draft and the suit agreement tally. It appears that Mr. Choudhary went to the house of the respondent alongwith the appellant to serve notice on him and that has been very severely criticised by the High Court. Mr. Choudhary stated that he did not keep any diary or any account book, and that again has been adversely commented upon by the High Court. But the main point about the evidence of Mr. Choudhary is that he had nu reason to take the false oath, and the story deposed to by him as to the making of the draft sounds natural and probable. The High Court has even suggested that this young lawyer has perjured himself ",because of the glamour of the Ex-Chairman of the Sitamarhi Municipality and perhaps also the prospects of his support in future proved so alluring to him that he had no sense of balance left and laid himself open to any statement which may have been thought necessary to be got through his mouth for the success of the appellant and that without any scruple either for the ethics of the profession or for the sanctity of truth." We have carefully considered the evidence of this young lawyer and we agree with the trial Court that the story deposed to by him is true and straight- forward. Thus, the position is that the evidence led by the appellant satisfactorily proves the purchase of the stamps which bore the thumb marks of the respondent, the preparation of the draft and the engrossment of the draft on a stamp paper by the scribe Khakhan Singh, and its attestation by the three attesting witnesses. That is why we feel no difficulty in holding that the trial Court was right in coming to the conclusion that the suit agreement was genuine and valid and is supported by consideration. In our opinion, the High Court was not justified in interfering with this conclusion in appeal.

We have so far not considered the evidence of the experts. Mr. Bennett examined by the appellant supports the appellant's case, whereas Nasrat Hussain examined by the respondent supports his

case. Evidence given by experts of handwriting can . never be conclusive, because it is, after all, opinion evidence. Since we have come to the conclusion that the evidence given by the attesting witnesses and the scribe and the appellant is wholly satisfactory, that evidence proves the execution of the document by the respondent and the said evidence does not really need to be corroborated by the opinion of experts, Even so, Mr. Bennett does support the appellant's case, and though Mr. Nasrat Hussain supports the respondent's case, it is significant that he has categorically admitted that what purports to be the writing of the respondent is simulated forgery. The writing in question purports to acknowledge the receipt of Rs. 10,000/- ; the appellant says that it is the writing of the respondent, whereas the respondent contends that it is forgery. The respondent's expert calls it simulated forgery. After the respondent's expert described the writing as, simulated forgery, he was asked a specific question as to whether it would be possible to have simulated forgery where there was no model before the forger of the respondent's writing, and the expert definitely stated that it would not be possible to bring out simulated forgery without the model of the respondent's writing. This answer clearly, means that the appellant or any of his alleged accomplices should have been in possession of a model writing of the respondent, and on this point, not even a suggestion has been made to the appellant that he was in possession of any writing of the respondent. That only shows that the expert evidence given by Mr. Nasrat Hussain does not really help the respondent's case. Before we part with this appeal, it is necessary that we should make some observations, about the approach adopted' by the High Court in dealing with the judgment of the trial court which was in ,appeal before it. In several places the High Court, has passed severe strictures against the trial Court and has, in substance, suggested that the decision of the trial Court was not only perverse but was based on extraneous considerations. It has observed that the mind of the learned Subordinate Judge was already loaded with bias in favour of the plaintiff and that the plaintiff had calculated that each of the evidence an he would produce ,,along 'with the pull and weight that would be harnessed from behind would be sufficient to carry him through." Similarly, in criticising the trial Court for accepting the evidence of Jamans Singh, the High Court has observed that the presumption made by the trial Court that teacher, as a rule, In a respectable person, ,is not any legal appreciation of the evidence but a way found to suit the convenience of the court for holding in favour of the plai- ntiff". It would thus be seen that in reversing the decision of the trial Court the High Court has suggested that the trial Court was persuaded by ,extraneous considerations and that some pull and weight had been used in favour of the appellant from behind. We are constrained to observe that the High Court was not justified in passing these strictures against the trial Judge in dealing with the present, case. Judicial experience shows that in adjudicating upon the rival claims brought before the courts it is not always easy to decide where truth lies. Evidence is adduced by the respective parties in support of their conflicting contentions and circumstances are similarly pressed into service. In such a case, it is, no doubt, the duty of the Judge to cover the evidence objectively and dispassionately, examine it in the light of probabilities and decide which way the truth lies. The impression formed by the Judge about the character of the evidence will ultimately determine the conclusion which he reaches. But it would be unsafe to overlook the fact that all judicial minds may not react in the same way to the said evidence and it is not unusual that evidence which appears to be respectable and trustworthy to one Judge may not appear to be respectable and trustworthy to another Judge. That explains why in some cases courts of appeal reverse conclusions of facts recorded by the trial Court on its appreciation of oral evidence. The knowledge that another view is possible on the evidence adduced in a case, acts as a sobering factor and leads to the use of temperate language in recording

judicial conclusions. Judicial approach in such cases whould always be based on the consciousness that one may make a mistake; that is why the use of unduly strong words in,expressing conclusions, or the adoption of unduly strong intemperate, or extravagant criticism against the contrary views which are often founded on a sense of infallibility should always be avoided. In the present case, the High Court has used intemperate language and has even gone to the length of suggesting a corrupt motive against the Judge who decided the suit in favour of the appellant. In our opinion, the use of such intemperate language may, in some cases, tend to show either a look of experience in Judicial matters or an absence of judicial poise and balance. We have carefully considered all the evidence to which our attention was drawn by the learned counsel on both the sides and we are satisfied that the amputations made by the High Court against the impartiality and the objectivity of the approach adopted by the trial judge are wholly unjustified. It is very much to be regretted that the High Court should have persuaded itself to use such extravagant language in criticising the trial Court,, particularly when our conclusion in the present apeal shows that the trial Court. was right and the High Court was, wrong. But even if we had not upheld the findings of the trial Court, we would not have approved of the unbalanced criticism made by the High Court against the: trial Court. No doubt, if it is shown that, the decision of the trial Court in a given case is a result of a corrupt motive, the High Court must condemn it and must take due further steps in the matter. But the use of strong language and imputation of corrupt motives should not be made lightheartedly because the Judge against whom the imputations are made has no remedy in law to, indicate his position.

What we have said about the extravagant criticism made by the High Court against the trial Judge needs to: be repeated in respect of similar criticism made by the High Court against some of the witnesses examined in the case. There is no doubt that judicial administration should be fearless; judges must have full freedom to express their conclusions in respect of the evidence given by the witnesses before them without any favour or fear; and so, judicial power to express its appreciation about oral evidence is very wide. But the very width of the said power must inevitably impose some healthy restraints upon its exercise. Take, for instance, the criticism made by the High Court against the young lawyer Mr. Choudhary. In our opinion, that criticism is wholly unjustified. It is conceivable that in a given case, a court of facts may come to the conclusion that all the witnesses who have supported one party have conspired to give false evidence, and in such a case, the court must unhesitatingly record it a conclusion to that effect. But, before such a conclusion is reached, all the pros and cons must be carefully and scrupulously examined and a conscientious effort must always be made not to regard evidence which appears to be unreasonable or improbable as being false and prejured. We have noticed that the judgment of the High Court showed a tendency to regard every witness whose evidence the High Court did not feel inclined to accept as a perjuror and conspirator. This approach again may tend to show, with respect, either lack of experience or absence of judicial poise and balance. It is became the judgment of the High Court showed these glaring infirmities that Mr. Bastri told us at the very outset that in the present appeal, all that he proposed to do was to defend the respondent but not the judgment of the High Court what has been pronounced in his favour.

The result is, the appeal is allowed, the decree passed by the High Court is set aside and that of the trial Court restored with costs throughout.

Appeal Allowed.