

IN THE HIGH COURT OF ORISSA AT CUTTACK

S.A.No.251 of 1991

(From the judgment and decree dated 12th July, 1991 passed by the learned District Judge, Baripada in T.A. No. 27 of 1987 reversing the judgment and decree dated 23rd December, 1986 passed by the learned Sub-Judge, Rairangpur in T.S. No. 8 of 1982)

Basi Bewa & Ors.

.....

Appellants

Versus

Raimani Majhiani

.....

Respondent

Advocate(s) appeared in this case:-

For Appellants : Mr.D.P.Mohanty, Advocate

For Respondent : Mr.S.D.Das, Senior Advocate

CORAM : JUSTICE B.P. ROUTRAY

JUDGMENT

4th May, 2023

B.P.Routray, J.

1. Heard Mr. Mohanty, learned counsel for the Appellants and Mr. Das, learned Senior Counsel for the Respondent.

2. The Appellants are the defendants. The original plaintiffs were two wives of Langa Majhi. Present Respondent being the daughter of Langa Majhi was substituted upon death of both the plaintiffs. Suit Scheduled- 'B' lands were originally belonging to Langa Majhi. Plaintiff's case is

that, the father of original defendant and after him the defendants are in forcible possession of suit Schedule-B lands and they accordingly prayed for declaration of their right, title, interest and possession over the suit Scheduled-'B' lands along with mesne profit.

3. The case of the defendants is that the suit land was purchased by Madhu Majhi, the father of original defendant on 8th February 1947 on payment of consideration amount of Rs.3,500/-. The concerned 'Chukti-Patra' (conditional sale deed) has been produced under Ext.A.

4. Learned Trial Court dismissed the suit against the plaintiff confirming the sale under Ext.A in favour of the father of original defendant by Langa Majhi. Plaintiff carried the same in appeal before the District Judge, Baripada in Title Appeal No.27 of 1987. The First Appellant Court by judgment and decree dated 12th July 1991 allowed the appeal and decreed the suit in favour of the plaintiff by holding that Ext.A is a forged document. It is held by the District Judge that on comparison of signature on Ext.A with Ext.3 in exercise of power under Section 73 of the Indian Evidence Act, the signature of the scribe Harihar Majhi on Ext.A is not found genuine.

5. On the backdrop of such factual aspects, the substantial question falls for determination is as follows:-

Whether comparison of signature between two documents under Section 73 of the Indian Evidence Act would be complete and satisfactory without admission of parties in respect of specimen document? In other words, unless the signature on specimen document is admitted, can any such comparison made under Section 73 of the Indian Evidence Act be held as valid ?

6. The crux of dispute lies in Ext.A, the conditional sale deed. Ext.3 is a purported document of one proceeding of villagers unrelated to the present case, where the scribe of Ext.A namely, Harihar Majhi had put his signature. Here it needs to be mentioned that Langa Majhi is complete illiterate, who put his LTI in Ext.A which was scribed by Harihar Majhi. P.W.3 is the son of Harihar Majhi who was examined on behalf of the plaintiff and Ext.3 was the document produced by P.W.3 to prove the signature of Harihar Majhi.

7. Admittedly, the signature of Harihar Majhi under Ext.3 is not admitted by the defendant. At the time of marking Ext.3 this was objected by the defendants and Ext.3 was marked by the Trial Court with note of objection by the defendant.

8. Section 73 of the Indian Evidence Act empowers the court to compare writings with specimen or admitted documents. The phrase '*admitted or proved to the satisfaction of the court*' used in section 73 contemplates that the specimen document taken for comparison of writing or signature in the purported document must be undisputed one and all parties to the dispute must admit the specimen signature or writing in the base document. In case one party refuses to admit, or disputes the specimen document, it is incumbent on the court to first satisfy that the signature or writing on the specimen document is proved to be of the concerned person and only then proceed for comparison with the purported document. Nonetheless, prudence demands that the judge should be slow in venturing an opinion based on comparison of signatures made by him.

9. In the instant case, learned First Appellate Court before comparing the signature on Ext.A with Ext.3 has forgotten to take note of this basic requirement under Section 73. The learned judge proceeded to compare the signature on Ext.A with Ext.3 violating this basic rule despite the signature under Ext.3 is disputed and objected by the defendant. Therefore, the entire finding of First Appellate Court, which is based on the opinion of learned District Judge on comparison of signature of Harihar Majhi, to hold Ext.A as forged one, only for the reason that according to him the signature of Harihar Majhi on Ext.A is different from the signature on Ext.3, is liable to be set aside. The impugned judgment of First Appellate Court is accordingly set aside. It is needless to observe here that, Ext.3 does not satisfy the basic criteria to be compared as specimen document.

10. In the result, the appeal is allowed and the impugned judgment and decree of First Appellate Court is set aside. The original judgment and decree of the Trial Court dated 23rd December, 1986 passed by learned Sub-Judge, Rairangpur in T.S. No.8 of 1982 is restored.

(B.P. Routray)
Judge