

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

C.R.P.No.4819 of 2014

ORDER:

The plaintiff in O.S.No.210 of 2006 is the petitioner in this Revision. He filed I.A.No.119 of 2013 seeking a direction to send the original written statement in O.S.No.31 of 1986 on the file of the Junior Civil Judge's Court, Pithapuram, available with the Central Record Room, District Court Complex, East Godavari at Rajahmundry, to the hand-writing expert for comparison of the signatures affixed by the petitioner-plaintiff on the aforementioned written statement and compare the same with the signatures found on Ex.B-1 Possessory Agreement of Sale.

O.S.No.210 of 2006 is filed for recovery of the plaint schedule property from the defendants. The defendants in their written statement have set up the plea that the plaintiff has executed a Possessory Agreement of Sale on 10-09-1983 and in furtherance thereof, Item No.1 of the plaint schedule property has been delivered to them and therefore, they are entitled to continue in possession of the said Item No.1 of the plaint schedule property. The specific case of the petitioner-plaintiff is that the said agreement of sale dated 10-09-1983 is a fabricated one and his signature appearing thereon is a rank forgery. During the course of cross-examination of DW-1, the Possessory Agreement of Sale, dated 10-09-1983 was got marked as Ex.B-1. At that stage, I.A.No.119 of 2013 has been preferred by the petitioner-plaintiff praying the Court to send the written statement filed earlier to compare his signature in O.S.No.31 of 1986, which suit was disposed of on 13-07-1989 and since the record is available in the Central Record Room at the District Court, East Godavari, Rajahmundry, for the opinion of the hand-writing expert. That Application has been dismissed by the learned Junior Civil Judge, Pithapuram, by order dated 10-12-2014 assigning the principal reason for dismissal that the Application was moved at a belated stage and when the matter is about to be disposed of.

Sri B.V. Rama Rao, learned counsel appearing on behalf of the respondents - defendants would submit that earlier this Court has given a direction to the trial Court to dispose of O.S.No.210 of 2006 as expeditiously as possible. The plaintiff is somehow dragging the proceedings and instead of allowing the suit to be decided, he hit upon this idea of seeking Ex.B-1 to be sent to a hand-writing expert at a very

belated stage. Therefore, there are no *bona fides* behind the Application and the trial Court has rightly rejected the said Application.

I have given my consideration to the rival submissions. It is true that an expert's opinion secured under Section 45 of the Indian Evidence Act, is not binding upon the Court, but however, where there is a genuine doubt persisting in the mind of the Court, the expert's opinion will supplement the necessary inputs, which will enable the Court to firm up its opinion.

Sri V.V.L.N.Sarma, learned counsel for the petitioner, has pointed out one distinct feature in this case; that is, earlier suit O.S.No.31 of 1986 on the file of the Junior Civil Judge's Court, Pithapuram, was between the brothers of the present plaintiff and himself. The brothers of the present plaintiff have sought for recovering the possession of the land, including the plaint schedule property. The defendants to the present suit were also the defendants to the said suit along with the plaintiff. Therefore, all of them, i.e., the present plaintiff and the defendants together have filed a written statement and consequently, the signatures were affixed on the said written statement by all the parties. That was somewhere in the year 1987. If the suit document dated 10-09-1983 is true and correct, an appropriate reference would have been made to that feature in the written statement that was filed in O.S.No.31 of 1986, inasmuch as the written statement is filed in the year 1987. I find that a reference would have normally been made to any such development. Therefore, a doubt has been left in my mind as to whether the plea of the petitioner-plaintiff herein as to the genuineness of Ex.B-1, deserves a closer examination.

I, therefore, consider it appropriate to direct the learned Junior Civil Judge, Pithapuram to secure the written statement filed in O.S.No.31 of 1986, which is preserved and available in the Central Record Room, District Court Complex, East Godavari at Rajahmundry, and mark the signature of the present plaintiff on the said written statement and also forward Ex.B-1 marked in O.S.No.210 of 2006 on the file of the Junior Civil Judge's Court, Pithapuram, to a hand-writing expert with a request to deliver his opinion as expeditiously as possible, preferably within a maximum period of forty five days and the entire exercise shall be at the expense of the plaintiff-petitioner herein. Further, the plaintiff-petitioner shall also deposit additionally a sum of Rs.1,000/- (Rupees one thousand only) representing costs in this Revision to the credit of O.S.No.210 of 1986 and depending upon the result in the said suit, the costs may be transmitted to the successful party in addition to any

costs that might be awarded.

With this, the Revision stands allowed at the admission stage, but however, without costs.

Consequently, the miscellaneous petitions, if any, stand allowed.

NOOTY RAMAMOHANA RAO, J.

mrk

02.04.2015.