

THE HONOURABLE MR JUSTICE M.S.RAMACHANDRA RAO

C.R.P.No.5207 of 2012

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ORDER

This Revision is filed challenging the order dt. 10.07.2012 in I.A.No.1289 of 2012 in O.S.No.277 of 2005 of the II Additional District Judge, Ranga Reddy District, Hyderabad.

2. The petitioner herein is the plaintiff in the above suit. He filed the suit for specific performance of an agreement of sale-receipt

dt 04.04.2004. The signatures on the said document were denied by the respondents.

3. Issues were framed. Evidence of the plaintiff was closed and the matter was coming up for examination of D.W.1. At that stage, the petitioner/plaintiff filed I.A.No.1289 of 2012 under Section 45 of the Indian Evidence Act, 1872 (for short 'the Act') to send the said document to an expert in handwriting to compare the signatures thereon with the admitted signatures of respondents 1 and 2 on Exs.B1 to B4, the plaint and vakalat.

4. In the affidavit filed in support of the said application, it was contended by the petitioner that in order to establish that the document in question was executed by the respondents since D.W.1 had denied his signature as well the signature of other defendant thereon with a

malafide intention, it is just and necessary to send the said document to an expert in handwriting to secure an opinion as to whether the signatures thereon are that of respondents or not, after comparing the same with their admitted signatures on Exs.B1 to B4 etc.

5. This application was opposed by the respondents. They contended that this application has been filed belatedly after they were cross-examined and the matter was posted for arguments and the sole intention of the petitioner is to drag on the matter. They contended that there is enough evidence let in by them to enable the Court to come to a conclusion with regard to the execution of the said document. They also pleaded that the expert opinion is not binding on the Court and the Court itself can compare the signatures under Section 73 of the Act.

6. By order dt 10.07.2012, the Court below dismissed the said application on two grounds. It observed that there is ample oral evidence before the Court to consider the genuineness and validity of the document and the application filed at the stage of arguments by the petitioner cannot be allowed since the petitioner had already examined concerned persons to prove his case. It also pointed out that the respondents had taken the contention of forgery long back and that soon after framing of issues or before the evidence of the plaintiff was concluded, no steps were taken. It further observed that the evidence of the expert, even if taken, would not override the other

evidence placed on record.

7. Challenging the same, this Revision is filed.

8. Heard Sri A. Pulla Reddy, learned counsel for the petitioner and Sri K. Pradeep Reddy, learned counsel for respondents 1 and 2.

9. Learned counsel for the petitioner contended that the observation of the Court below that the application to send the disputed document to an expert was filed at a belated stage is not correct since the Division Bench of this Court in **JANACHAITANYA HOUSING LIMITED v. DIVYA FINANCIERS**^[1] had opined that no hard and fast rule can be laid down in that regard. As regards the other observation by the Court below that the Court can itself compare and come to a conclusion under Section 73 of the Act is concerned, learned counsel relied on the judgment of this Court in **VELAGA SIVARAMA KRISHNA v. VELAGA VEERABHADRA RAO**^[2], wherein a learned Judge had held that an expert's opinion of handwriting is not excluded from the purview of examination and it would help the Court in exercising power of comparison under Section 73 of the Evidence Act. Learned counsel also contended that the Court below is not correct in expressing a view that there is ample oral evidence before the Court to consider the genuineness and validity of the document and such opinion might amount to prejudging the suit itself.

10. Learned counsel for the respondents, on the other hand, contended that in **T. VENKATSWAMY v. AGIRU PULLAIAH**^[3], this Court had held that the delay in filing an application to send a document to an expert for comparison is a good ground for rejection of the same. He also contended that when the evidence on record is sufficient, the Court below is justified in exercising its discretion in declining to send the document for expert's opinion. He relied upon **CHIDARA UMA MAHESHWAR RAO v. METHUKU JANARDHAN**^[4] in this regard.

11. Admittedly, the suit has been filed for specific performance in receipt of land, which is covered by the disputed document. The signature on it is alleged to be forged by the respondents. Therefore, the entire suit rests on the question as to whether the disputed document was executed by the respondents or not. The application seeking to refer the document to an expert was filed in April, 2012. It came to be decided in July, 2012. According to the petitioner, it was filed at the stage when D.W.1's cross-examination was done, but the Court below held that the application was filed after the matter was posted for arguments. Since the Division Bench of this Court in **JANACHAITANYA's** case (1 supra) had held that no hard and fast rule controlling the discretion of the Court to send a disputed document or writing for opinion of the expert. I am of the view that the Court below cannot

reject it on mere ground that it was filed at that stage. When the entire case rests upon the question whether the disputed document was executed by the respondents or not, in my considered opinion, the Court below is not right, in not referring the said document to an expert.

12. Coming to the question whether the evidence on record is sufficient to come to the said conclusion or not, in my considered opinion, at the stage of deciding whether or not to refer a document to an expert, it is not proper for the Court to express an opinion as to whether the other evidence on record, is sufficient or not. If such opinion is expressed at this stage, it might amount to prejudging the suit.

13. Coming to the question whether the Court itself ought to compare the signatures or writings on the document, reference may be made to Section 45 of the Act as well as Section 73 of the Act. Section 45 of the Act which states as under;

45. Opinions of experts-When the Court has to form an opinion upon a point of foreign law or of science or art, or as to identity of handwriting or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, science or art, or in questions as to identity of handwriting or finger impressions are relevant facts. Such persons are called experts.

Section 73 of the Act which states as under;

73. Comparison of signature, writing or seal with others admitted or proved- In order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made, any

signature, writing, or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing, or seal has not been produced or proved for any other purpose.

The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person.

This section applies also, with any necessary modifications, to finger impressions’.

14. In **A. NEELALOHITHADASAN NADAR v.**

GEORGE MASCRENE^[5] the Supreme Court has observed that handwriting may be proved on admission of the writer or by the evidence of some witness in whose presence it was written and that this is to be termed as direct evidence. In the absence of such direct evidence, opinion of handwriting expert or of some one who is familiar with the writing of the person is relevant and that besides direct evidence which is of course the best method of proof, the law makes two other modes also as relevant i.e., a writing may be proved to be the handwriting of a particular individual by the evidence of a person familiar with the handwriting of that individual or by the testimony of an expert competent to compare the handwritings on a scientific basis. It also observed that the third method is provided by Section 73 of Evidence Act and that comparison by the Court with the writing made in the presence of the Court or admitted or proved

to be the writing of the person may also be done. The Court observed that the expert's opinion is not the final word and the Court must see whether it can safely be held that the two writings are of the same person. To this extent, Court may play the role of an expert. It also observed that although Courts should be slow in resorting to this method, it need not always be found fault with.

15. In **STATE v. PALI RAM**^[6] the Supreme Court held that although there is no legal bar to the Judge using his own eyes to compare the disputed writing with the admitted writing, even without the aid of the evidence of any handwriting expert, the Judge should, as a matter of prudence and caution, hesitate to base his finding with regard to the identity of a handwriting, which forms the sheet anchor of the prosecution case against a person accused of an offence, solely on comparison made by himself. It also observed that it is not advisable that a Judge should take upon himself the task of comparing the admitted writing with the disputed one to find out whether the two agree with each other; and the prudent course is to obtain the opinion and assistance of an expert.

16. After considering these decisions and also the decisions in **MURALI LAL v. STATE OF MADHYA PRADESH**^[7]; **SHASHI KUMAR v. SUBODH KUMAR**^[8]; **MAGAN BIHARI LAL v. STATE OF PUNJAB**^[9]; **VADREVVU ANNAPURNAMMA v. VADREVVU BHIMA**

SANKARA RAO^[10], this Court in **VELAGA SIVARAMA KRISHNA's** case (2) supra, held that expert's opinion is not excluded from the purview of examination and it would help the Court in exercising power of comparison under Section 73 of the Evidence Act. It also held in paragraphs 7 and 8 as under;

“Whenever a party disputes the signature on a particular document, two remedies are open to him, either to request the Court to compare the signatures or to file an application to send the document to the expert for comparison. When the petitioner opted to file an application to send the document to the handwriting expert, no prejudice will be caused to either party. When he is asserting that the signature is that of the said party, even though there is a gap between the disputed signatures and admitted signatures, a science has been developed to compare such signatures also by taking into consideration the direction of the strokes, the speed of writing, the pattern of writing etc., therefore, it cannot be said that no useful purpose will be served by sending the document to the expert. After comparison, if the similarities of the disputed signature and the admitted signatures are very negligible, then the Court can formulate its opinion with the assistance of the expert's report and by comparing the signatures whether the report has to be accepted or not. But, if the opportunity is denied to the defendant and if the matter is carried to the appellate Court, there is every likelihood of commenting that he did not avail the opportunity of filing an application for sending the document for handwriting expert's opinion, if he is so sure that the disputed signature does not belong to him.

In view of the circumstances, I am of the view that it is essential to send the document to the expert for comparison at the request of the party in the interests of justice, which cannot cause any amount of prejudice to the plaintiffs in the present suit, therefore, the order of the lower Court is liable to be set aside”.

17. In **T. VENKATSWAMY's** case (3) supra, no doubt a learned single Judge of this Court held that the delay in filing an application for expert is a good ground for rejection of the same. But in that decision, the Division Bench judgment of this Court in **JANACHAITANYA's** case (1 supra) was not noticed. Therefore, the said decision cannot be said to represent the correct position of law and therefore it is not being followed.

18. In **CHIDARA UMA MAHESHWAR RAO's** case (4) supra, this Court upheld the order passed by the trial Court in refusing to refer the signature on a disputed document to an expert on the ground that the trial Court had observed that the oral evidence of P.W.s 1 to 4 was already available on record is sufficient; that this Court had concluded that there was no jurisdictional error in the order of the Court below warranting interference with the same.

19. I am of the considered opinion that having regard to the decisions of the Supreme Court referred to above, which are in tune with the decision reported in **VELAGA SIVARAMA KRISHNA's** case (2) supra, since the entire case in the present case rests on the disputed document, the Court below ought not to have rejected the application filed by the petitioner to refer the same to an expert in handwriting.

20. Therefore, the Civil Revision Petition is allowed and the order dt 10.07.2012 in I.A.No.1289 of 2012 in

O.S.No.277 of 2005 of the II Additional District Judge, Ranga Reddy District, is set aside and the said I.A. is allowed. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this Civil Revision Petition shall stand closed.

M.S.RAMACHANDRA RAO, J

18th August, 2015

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- [\[1\]](#) 2008(3) ALT 409
 - [\[2\]](#) 2009(1) ALT 379
 - [\[3\]](#) 2012(6) ALD 520
 - [\[4\]](#) 2013(6) ALT 806
 - [\[5\]](#) 1994 Supp.(2) SCC 619
 - [\[6\]](#) (1979) 2 SCC 158
 - [\[7\]](#) (1980)1 SCC 704
 - [\[8\]](#) AIR 1964 SC 529
 - [\[9\]](#) AIR 1977 SC 1091
 - [\[10\]](#) AIR 1960 AP 359