

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.4865 of 2014

ORDER :

This Revision is filed under Section 115 C.P.C. challenging the order dt.20.10.2014 in I.A.No.633 of 2014 in A.S.No.03 of 2002 on the file of Senior Civil Judge, at Peddapalli.

2. The petitioner herein is the 1st defendant in O.S.No.170 of 1995 on the file of Junior Civil Judge, at Sulthanabad. The 1st respondent herein filed the said suit against the petitioner and 2nd respondent for declaration of his title and for a perpetual injunction in respect of the suit schedule property. The said suit was dismissed on 14.12.2001 by the Junior Civil Judge, at Sulthanabad.

3. Challenging the same, A.S.No.3 of 2002 was filed by 1st respondent before the Senior Civil Judge, at Peddapalli. By judgment dt.26.08.2004, the said appeal was allowed and the matter was remanded back to the Court of the Junior Civil Judge, Sulthanabad for fresh adjudication, directed the said Court to give opportunity to both parties to adduce evidence.

4. Challenging the order in A.S.No.3 of 2002, the petitioner and 2nd respondent filed C.M.A.No.16 of 2005

before the III Additional District Judge, Karimnagar. The said Court allowed the C.M.A. and confirmed the judgment of the trial court.

5. Challenging the order in C.M.A.No.16 of 2005, the 1st respondent filed C.R.P.No.5625 of 2006. This Court allowed the Revision, set aside the order dt.23.08.2006 in C.M.A.No.16 of 2005, and declared that A.S.No.3 of 2002 is not liable to be dismissed.

6. Be that as it may, the order dt.26.08.2014 in A.S.No.3 of 2002 was also challenged in this Court by way of C.M.A.No.798 of 2008. The said CMA was allowed on 20.10.2009 and the judgment and decree dt.26.08.2014 in A.S.No.3 of 2002 on the file of Senior Civil Judge, Peddapalli was set aside, and the lower appellate court was directed to decide the matter on merits.

7. It appears that two applications, viz., I.A.Nos.1193 and 1194 of 2004 were filed during the pendency of the appeal A.S.No.3 of 2002 to direct the Sub-Registrar, Peddapalli to produce relevant Registers in relation to a sale deed dt.10.07.1978 and to receive the same as additional evidence under Rule 27 of Order XLI C.P.C. These applications had been allowed by the lower appellate court before it rendered the judgment on 26.08.2004.

8. This Court while allowing the C.M.A.No.798 of 2008 on 20.10.2009 observed that the said applications were irrelevant at that stage and the necessity to seek such a relief would have arisen, if only a case is made out for sending the document to a hand-writing expert at the appellate stage; and that almost pre-supposing that such a necessity has arisen, I.A.No.1193 of 2004 had been allowed. It set aside the said orders also and observed that in case the 1st respondent intends to press them, they should be considered on their own merits, and the lower appellate court shall not consider the feasibility of remanding the matter under any circumstances.

9. It is also pertinent to note that the orders dt.27.07.2011 in I.A.Nos.1193 and 1194 of 2004 in A.S.No.3 of 2002 were separately challenged by the petitioner and 2nd respondent in CRP.Nos.3748 and 3625 of 2011, and the orders passed therein were confirmed by this Court.

10. Consequent thereto, an application in I.A.No.801 of 2012, which was filed for comparison of thumb impressions contained in Ex.A.1 – Simple Sale Deed, with the Thumb Impression Register, Volume No.51 of Sub-Registrar Office, Peddapalli, Karimnagar District, was allowed and opinion of a print expert in the Finger Print Bureau of C.I.D. in the Office of the Deputy General of Police complex at Hyderabad was called for. The report

of the expert, after comparison, was sent to the Court of the Senior Civil Judge, Peddapalli vide proceedings C.No.151/U4/FPB-CID/2013 dt.05.09.2013.

11. In this view of the matter, the 1st respondent filed I.A.No.633 of 2014 under Order 26 Rule 9 C.P.C. praying the Court to appoint an Advocate-Commissioner to record the evidence of the Finger Print Expert of the said Office, contending that the said officer is not able to come to the Court at Peddapalli to give evidence as he was suffering from heart disease and an Advocate-Commissioner may be appointed to record his evidence.

12. This application was opposed by petitioner stating that the Register summoned from the Sub-Registrar's Office, Peddapalli in respect of the registered document bearing No.1377 of 1978 was not admitted by petitioner and 2nd respondent and they have denied that both Ex.A.1 and the said registered document were executed by the person who is alleged to have affixed thumb impressions on both. It was contended that appointing an Advocate-Commissioner for examining the expert is not warranted and the application should be dismissed; that the 1st respondent had failed to number Ex.A.1 Simple Sale Deed in the trial court and no steps were taken in the trial court to send Ex.A.1 to an expert for comparison; that in the memorandum of Appeal, the 1st respondent in

ground no.2 stated that he did not press the relief of declaration either in the suit and only sought for the relief of decree of perpetual injunction; that it was futile therefore to send Ex.A.1 to an expert or to examine the expert; that examination of expert amounts to collection of evidence which is not permitted in law; and that the opinion furnished by the expert is a managed one and not genuine.

13. By order dt.20.10.2014, the Court below allowed the said application. It held that the finger print expert's opinion came to the court and the petitioner took steps for examining the finger print expert by depositing the process in the court and necessary fee for examining him; that the finger print expert addressed a letter asking the 1st respondent to get an Advocate-Commissioner appointed; that merits of the evidence cannot be discussed in the present application; objections raised by petitioner to the evidence of the expert cannot be considered in the present petition; the examination of expert is essential for disposal of the matter; and no prejudice would be caused to petitioner.

14. Challenging the same, the present Revision is filed.

15. Heard Sri V. Ramchandrarao, counsel for petitioner; and Sri P.V. Vidyasagar, counsel for

respondents.

16. It is the contention of the counsel for petitioner that the order impugned cannot be sustained in view of the observations made by this court in C.M.A.No.798 of 2008; that this Court had set aside the orders in I.A.Nos.1193 and 1194 of 2004 also therein while allowing the said appeal and had also set aside the judgment dt.26.08.2004 in A.S.No.3 of 2002 on the file of the Senior Civil Judge, Peddapalli.

17. It is pertinent to note that in the said order itself, this Court observed that in case the 1st respondent intends to press the said IAs they shall be considered on their own merits. It is not disputed that those applications were pressed before the Senior Civil Judge, Peddapalli by 1st respondent after remand and they were allowed on 27.07.2011 by the said court. The said order also came to be confirmed on 21.12.2011 in CRP.Nos.3748 and 3625 of 2011 by this Court. Therefore, the contention of counsel for petitioner that the 1st respondent cannot be allowed to examine the expert as a witness in A.S.No.3 of 2002 on the ground that this Court had made observations while allowing C.M.A.No.798 of 2008 prohibiting taking of any additional evidence, cannot be accepted. Once this Court had confirmed on 21.12.2011 in CRP.Nos.3748 and 3625 of 2011 the order passed by the lower appellate court allowing I.A.Nos.1193 and 1194

of 2004 on 27.07.2011, the said order is binding on petitioner as well as 2nd respondent.

18. It is also not disputed that the report of expert was sought in I.A.No.801 of 2012 in A.S.No.3 of 2002, and the said report was already forwarded on 05.09.2013 to the Senior Civil Judge, Peddapalli by the Director, Finger Print Bureau, C.I.D., D.G.P. Office Complex, Hyderabad. Once the report is on record, the 1st respondent is entitled to examine the expert as a witness to prove the said report. On account of inability of the expert to come to the Court at Peddapalli, and on account of the fact that he was suffering from a heart disease, and since the expert himself had addressed a letter requesting the 1st respondent to get an Advocate-Commissioner appointed to record his evidence, the 1st respondent was constrained to file I.A.No.633 of 2014. The objections raised by petitioner and 2nd respondent to the said course of action are totally unsustainable and once the expert's report has come on record at the first appellate stage, the 1st respondent cannot be deprived of an opportunity to examine the said expert at the stage of the appeal. It is not permissible for the petitioner to raise any contentions on the merits of the evidence at this stage.

19. I am therefore of the opinion that the Court below did not commit any error in allowing I.A.No.633 of 2014 in

A.S.No.3 of 2002. Therefore, the Civil Revision Petition is dismissed with costs of Rs.1000/-, payable by petitioner to the 1st respondent within a period of four (04) weeks from to-day.

20. As a sequel, miscellaneous petitions pending, if any, in this Revision shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 20.08.2015

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