

***THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO**

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+C.R.P.No.4989 OF 2014

%Dated 10.04.2015

Koya Lalitha Kumari and two others

..... PETITIONERS

VERSUS

\$ 1. Polina Nageswara Rao (Died) and others.

...RESPONDENTS

! Counsel for Petitioners : Mr. G. Krishna Murthy

^ Counsel for Respondents : Mr. S.Subba Reddy

< GIST:

> HEAD NOTE:

? Cases referred:

2004 (6) ALT 813 AIR

1961 SC 1808

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J U D G M E N T:

The defendants are the petitioners in this Revision. They are aggrieved by the orders passed by the learned Principal District & Sessions Judge, Rajahmundry, dismissing I.A.No.3147 of 2014 moved in O.S.No.140 of 2012. I.A.No.3147 of 2014

has been moved under Section 45 of the Indian Evidence Act, to refer Exs.A-1 and A-2. The disputed suit promissory notes for rendering the opinion of a hand-writing expert.

The suit was instituted on the foot of the promissory notes, which were marked as Exs.A-1 and A-2. It will be relevant to notice that the 1st petitioner herein Smt. Koya Lalitha Kumari and her husband Sri Koya Govardan Rao, who has since died, are alleged to have executed the suit promissory notes Exs.A-1 and A-2. The case of the petitioners herein was that both the two suit promissory notes are fabricated and forged ones and that the 1st petitioner herein and, for that matter, her deceased husband have not signed and executed the suit promissory notes. When the 1st petitioner herein was examined as DW-1, she was cross-examined as to whether the Vakalatnama and the Written Statement in the suit have been filed into the Court after perusing the plaint averments and the suit documents or not and the 1st petitioner DW-1 did admit that the Written Statement was filed after examining the suit promissory notes in the Court. It is, therefore, contended on behalf of the plaintiff respondents herein that purposefully the 1st petitioner has now changed the style in which she normally used to sign with a view to mislead the Court by creating a doubt in its mind about the genuineness of Exs.A-1 and A-2. Therefore, the signatures appended by the 1st petitioner herein on the Written Statement cannot be taken as admitted signature or the one normally affixed by her in day-to-day transactions. Therefore, no useful purpose would be served by a hand-writing expert examining and comparing the signature appearing on the suit promissory note with that of the signature of the 1st petitioner herein appearing on the Written Statement. It was also further contended that the 1st petitioner herein has executed the Vakalatnama by signing as 'K.Lalitha', whereas her name is 'K.Lalitha Kumari' and strangely on the Written Statement, she affixed her signature as 'K.Lalitha Kumari'. It is, therefore, apparent that the 1st petitioner is purposefully and deliberately adopting different methods for affixing her signatures now, which can be quite different from those that are affixed by her during the normal course of events. Hence, no useful purpose would be served in examining them by any hand-writing expert. Precisely, for this very reason, the interlocutory application has been dismissed.

However, Sri G. Krishna Murthy, learned counsel for the petitioners, who has placed reliance upon the Judgment rendered by this Court in BUDUMURU

VIJAYANAND v. POTNURU BHAGYALAKSHMI, would contend that it is the discretion of the Court to forward the suit documents and seek for the opinion of the handwriting expert, but however, for the purpose of comparison, the trial Court is bound to obtain the specimen signatures of the person, who disputes the signature appearing on the suit document, in the Court and treat it as an admitted signature of the party and then call for the opinion of the hand-writing expert.

It is true that in BUDUMURU VIJAYANAND's case cited (1) supra, Justice V.V.S. Rao of this Court has taken the view as propounded by the learned counsel for the petitioner, but however, it needs to be clarified that in para 8 of the said Judgment the following statement is found:

“ 8. Therefore, for the purpose of comparison, the trial Court is bound to obtain the specimen signatures of the person who disputes his/her signature. Such obtaining of specimen signatures must be in the open Court. If the same is not done, it is well settled that the same would not amount to compelling such person to give evidence adverse to him. If there are already documents on record, which are proved to have been written or signed by the person disputing signature or handwriting, it is always open to the Court to send the specimen signatures, disputed signatures or handwriting on documents, which are proved to have been written or signed by such person for comparison.
.....”

(Emphasis is brought out by me)

With all humility, I think this statement has not been worded correctly or properly. The learned Judge has used two negatives: “If the same is not done, it is well settled that the same would not amount to compelling such person to give evidence adverse to him.” Normally, if two negatives are used in the same sentence, the negative effect intended gets neutralized in such a statement. With the result, the opposite of the result would emerge therefrom. If this principle is applied, it would be doing great violence to a settled principle that, obtaining signatures of a party, which is disputing the signatures found in the disputed document, does not amount to compelling him to give evidence against one's own interest. (See **STATE OF BOMBAY VS. KATHI KALU OGHAD**). Therefore, the statement occurring in

BUDUMURU VIJAYANAND's case cited (1) supra, requires to be understood in a proper sense, inasmuch as the learned Judge, perhaps, could never have gone to propound that obtaining signatures of a party disputing a particular signature found on any document as compelling him/her to depose against himself/herself, if such signatures are otherwise obtained in the Court.

The further statement, found in VIJAYANAND's case, that if there are already documents on record, which are proved to have been written or signed by the person disputing signature of handwriting, it is always open to the Court to send specimen signatures to a handwriting expert, I am afraid, is not framed correctly. When once a document is already proved in the Court to have been executed by a particular party or a signature appended thereon is held proved to have been truly signed as such by the party concerned, then perhaps nothing remains for a handwriting expert to further render his opinion in such cases. This apart, the opinion of a handwriting expert is not binding on the Court. It is only intended to enable the Court to firm-up its opinion. It must not be lost sight of that experts merely tender evidence and do not decide the issue. Hence, it is the responsibility of the experts to furnish to the Court necessary scientific criteria for testing the accuracy of their conclusions, so as to enable the Court to form its own independent judgment by application of such criteria to the facts proved in the case, after giving appropriate weight to the opinion of expert.

The object of every judicial enquiry is to produce in the mind of the Judge a belief as to the existence or non-existence of certain facts on which rights or liabilities of the parties and the decision of the case depends. Hence, no court should mechanically surrender its will and independence of judging properly the fact in issue, to the judgment of an expert. The facts and circumstances of each case call for an appropriate application of mind by the Court, as to whether the advice of an expert is called for or not.

In the present case, when the first petitioner is now accused of purposefully changing the way of affixing her signature, no purpose would be achieved by securing her signature by the Court now for purposes of comparing with the ones found on Exs.A-1 & A-2. When once she started signing in a different manner from those appearing on Exs.A-1 & A-2, such signature(s) are bound to be different from those found in Exs.A-1 & A-2. Further, the second signature on Exs.A-1 & A-2 is that of the husband of the first petitioner herein, who is no more. Hence, his signature on

EXs.A-1 & A-2 cannot be examined or compared by the expert.

I do not find any infirmity in the exercise of jurisdiction while dismissing I.A.No.3147 of 2014 by the learned Principal District & Sessions Judge, Rajahmundry, for me to exercise the Revisional Jurisdiction.

Accordingly, the Civil Revision Petition stands dismissed at the admission stage, but however, without costs.

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

NOOTY RAMAMOHANA RAO, J.

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10.04.2015.

Note: LR copy to be marked