

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH

CIVIL REVISION PETITION NO.1990 OF 2015

Between:

Konatam Vishnu Murthy
... Petitioner

and

Unnamatla Lakshmi Tulasi (died) and another
... Respondents

SUBMITTED FOR APPROVAL:

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DATE OF JUDGMENT PRONOUNCEMENT : 11th AUGUST,
2015

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THE HON'BLE SRI JUSTICE SANJAY KUMAR

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| 1. | Whether Reporters of Local newspapers may be allowed to see the judgment? | Yes/No |
| 2. | Whether the copies of judgment may be marked to Law Reporters/Journals | Yes/No |
| 3. | Whether His Lordship wishes to see the fair copy of the judgment? | Yes/No |

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION NO.1990 OF 2015

ORDER

This Civil Revision Petition under Article 227 of the Constitution arises out of the order dated 06.04.2015 passed by the learned Senior Civil Judge, Tadepalligudem, West Godavari District, in I.A.No.1185 of 2014 in O.S.NO.120 of 2011. The said IA was filed by the defendant in the suit under Section 45 of the Indian Evidence Act, 1872 (for brevity, 'the Act of 1872') to send the disputed promissory notes to a handwriting expert for verification. By the order under revision, the trial Court dismissed the IA. Aggrieved thereby, the defendant is before this Court.

Despite service of notice, the respondent/plaintiff did not choose to enter appearance before this Court either in person or through learned counsel. Taking note of the same and also the fact that photocopies of the suit promissory notes, Exs.A.1 and A.3, indicated overwriting and erasure, this Court granted interim stay of further proceedings in the suit on 26.06.2015, as it was stated to be at an advanced stage.

The suit, O.S.No.120 of 2011, was filed for recovery of money based on the two promissory notes, Exs.A.1 and A.3. The deceased first plaintiff was none other than the sister of the defendant. Upon her demise, her son came on record as the second plaintiff, being her legal representative.

The claim of the petitioner/defendant was that the suit promissory

notes were materially altered as the amounts in words on both the promissory notes had been written by a different hand, thereby rendering the promissory notes void. He therefore asserted that it was necessary to send the suit promissory notes to a handwriting expert for comparison and expert opinion. The second plaintiff contested the IA asserting that the defendant had never denied his signature on the suit promissory notes and on the other hand, claimed that full payment had been made by him towards the dues to his sister, the deceased first plaintiff.

On the aforestated pleadings, the trial Court found that the petitioner/defendant had never raised the issue earlier that the promissory notes were materially altered. The trial Court perused Exs.A.1 and A.3 suit promissory notes and did not find any variation in the writing in words and opined that even if there was such variation, the Court had ample power to compare the same under Section 73 of the Act of 1872. The trial Court also took note of the defendant's case that he remitted the amounts due to the deceased first plaintiff but did not obtain any receipt or acknowledgement owing to their near relationship and that, in the event such payments are adjusted towards the debt claimed in the suit, nothing remained due from him, and held that the question of sending Exs.A.1 and A.3 to a handwriting expert on the ground of material alterations did not arise. The trial Court accordingly dismissed the IA.

Photocopies of Exs.A.1 and A.3 suit promissory notes were produced before this Court. Perusal thereof reflects that in so far as the promissory note for Rs.1.00 lakh is concerned, there appears to be overwriting in the figure portion mentioning the amount and the amount mentioned in English is in a different handwriting when compared with the rest of the promissory note. There also appears to be some overwriting. As regards the other promissory note which is for Rs.1,50,000/-, the handwritten words in English mentioning the amount are in the same handwriting as in the other promissory note and this

writing does not tally with the rest of the document. There is however no overwriting or erasure in this promissory note.

No doubt, Section 73 of the Act of 1872 empowers the Court to undertake comparison of writing in suit documents with writing admitted or proved to the satisfaction of the Court to have been written or made by that person. However, as pointed out by the Supreme Court in ***AJIT SAVANT MAJAGARI V/s. STATE OF KARNATAKA***^[1], the Court should normally not take upon itself the responsibility of comparing disputed handwriting or signatures and in the event of even the slightest doubt, leave such matters to the wisdom of experts. The Supreme Court however added the caveat that this did not mean that the Court had no power to compare disputed signatures or writing under Section 73 of the Act of 1872.

In the case on hand, given the close relationship between the parties, the trial Court ought to have been more liberal in its approach while dealing with the subject IA. The scribe of Exs.A.1 and A.3 suit promissory notes had already been examined and his admitted handwriting was obtained by the Court during his cross-examination. As stated *supra*, it is evident to the naked eye that the handwritten English portion in the suit promissory notes is in a different handwriting as compared to the rest of the documents. There is also some overwriting/erasure as regards the amount in figures in one of the suit promissory notes. Material alternation of the suit promissory notes would have a vital impact on their validity and would therefore be of utmost relevance. Once the defendant raised this allegation, though he did not choose to frame an issue in that regard at the time of settlement of issues, it was proper for the Court to take recourse to expert evidence instead of undertaking an examination on its own under Section 73 of the Act of 1872. All the more so, in the light of what has been stated by the Supreme Court in ***AJIT SAVANT MAJAGARI***¹. The order passed by the trial Court refusing to do so is therefore unsustainable and is accordingly set aside.

The Civil Revision Petition is allowed. The trial Court shall refer Exs.A.1 and A.3 suit promissory notes to a handwriting expert for comparison of the handwriting therein, in so far as the English portion is concerned, with the admitted handwriting of the scribe obtained by the Court, and also upon the overwriting and/or erasure therein for expert opinion. Pending miscellaneous petitions shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

11th AUGUST, 2015

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[\[1\]](#) AIR 1975 SC 3255