

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

Civil Revision Petition No.4849 of 2013

ORDER:

This Civil Revision Petition is filed challenging the order dt.30.10.2013 in EA.No.170 of 2013 in EA.No.143 of 2009 in EA.No.22 of 2008 in EP.No.16 of 2010 in O.S.No.396 of 1996 of the Principal Senior Civil Judge, Ranga Reddy District.

2. The 1st respondent herein filed the above suit against the 2nd respondent and others for specific performance of an Agreement of Sale dt.02.08.1994.

3. Written statement was filed by the 2nd respondent denying the execution of suit Agreement of Sale.

4. The 1st respondent examined PWs.1 to 5 and 2nd respondent examined DW1. The 1st respondent also got summoned one K.Gnanasunder and examined him as CW1 and the hand writing expert, C.Suresh, was examined as CW2 and Exs.X1 and X2 documents were marked. Ex.X2 is the expert opinion given by CW2, the hand writing expert.

5. The trial Court rejected the relief of specific performance and granted the alternative relief of refund of advance sale consideration.

6. Challenging the same, AS.No.108 of 2004 was filed by the 1st respondent and the said appeal was allowed and the 2nd respondent was directed to execute a registered sale deed in favour of 1st

respondent in two months.

7. Challenging the same, the 2nd respondent filed Second Appeal No.295 of 2007 before this Court but the same was dismissed.

8. An SLP preferred before the Supreme Court against the said judgment and decree was also dismissed.

9. Subsequently, the 1st respondent filed EP.No.16 of 2010 for execution of the decree.

10. Thereafter, the petitioners herein filed claim petition EA.No.22 of 2008 and EA.No.143 of 2009 in respect of part 1 and 2 of the schedule properties. Evidence was adduced by both sides and the matter was then posted for hearing of the arguments.

11. At that stage, petitioners herein filed EA.No.170 of 2013 under Order XVI Rule 2(1)(2) CPC to issue summons to Sri C.Suresh, the Assistant Director, Office of Andhra Pradesh Forensic Science Laboratories, Red Hills, Hyderabad to appear and give evidence in respect of report submitted in file No.DCV/209/2003, dt.17.11.2003.

12. In the affidavit filed in support of this application, it is stated that the said expert had given a report which had been marked as Ex.A12 during the cross-examination of PW1 and therefore the expert needs to be summoned in support of the petitioners' case.

13. The 1st respondent opposed this application. He contended that the expert had already been examined as CW2 in the suit; his

opinion was marked as Ex.X2; and since the evidence of the expert as well as his opinion were considered in AS.No.108 of 2004, which was confirmed in Second Appeal No.295 of 2007 and by the Supreme Court in an SLP, there was no necessity to summon the expert.

14. By order dt.30.10.2013, the Court below dismissed EA.No.170 of 2013. It held that the person sought to be summoned by the petitioner, by name Sri C.Suresh, had already been examined in the suit as CW2 and his evidence and report Ex.X2 were both considered in the suit O.S.No.396 of 1996 as well as in AS.No.108 of 2004; that in AS.No.108 of 2004 it was held that the said expert opinion cannot be taken into consideration because the expert compared the signatures of the 2nd respondent on Vakalat and written statement with those contained on the agreement of sale, and they are not contemporaneous documents; and therefore in the claim petition there was no necessity to summon the said expert, since the petitioners, as claim petitioners, are not claiming through the judgment debtor and are claiming independent right and title over the EP schedule property. It held that the petitioners need to prove their claim over the EP schedule property and they are not entitled to disprove the claim of the respondent, which has already been decreed and confirmed up to Supreme court.

15. Challenging the same, this Revision is filed.

16. Heard Sri B.P.Raju, counsel for the petitioners and Sri Karri Murali Krishna, Counsel for the 1st respondent.

17. Although, counsel for the petitioners sought to contend that the evidence of the expert is required to establish the case of the claim

petitioners and therefore summons need to be issued to him to give evidence, I am of the opinion that the Court below had rightly rejected the said application having regard to the fact that in AS.No.108 of 2004 the evidence of the said expert as well as his report had not been relied upon.

18. The question, whether the 2nd respondent executed the agreement of sale in question in favour of the 1st respondent, had already been decided in favour of 1st respondent and has also attained finality since the decree in AS.No.108 of 2004 has been confirmed by the Supreme Court also. In the circumstances, it is not proper for the petitioners to seek to reopen the question of execution of agreement of sale by the 2nd respondent in favour of 1st respondent by examining the expert who gave opinion with regard to the signatures on Ex.A1 agreement of sale, pending the suit.

19. I therefore do not find any merit in this Civil Revision Petition and it is accordingly dismissed. There shall be no order as to costs.

20. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

M.S.RAMACHANDRA RAO, J

21st September, 2015

gra

