

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

C.R.P.No.1652 OF 2015

ORDER

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This CRP is filed against the order dated 10.04.2015 in I.A.No.10/2015 in O.S.No.746 of 2009 on the file of Special Judicial Magistrate of First Class, Special Mobile Court-cum-Junior Civil Judge, Kurnool where in the Court below dismissed the application filed by the petitioner/plaintiff under Section 45 and 73 of Indian Evidence Act read with Section 151 of Civil Procedure Code praying to send Ex.B1-sale deed to an expert by taking 3rd plaintiffs finger prints and signatures in open Court for comparison.

The case of the petitioners/plaintiffs is that the mother of the plaintiffs filed O.S.No.746/2009 for eviction of plaint schedule land by the defendant due to non-payment of lease amount and also filed O.S.No.172 of 2010 claiming arrears of lease amount. Subsequently, the mother of plaintiffs executed Ex.A5-WILL on 02.08.2010 in favour of the 1st plaintiff-Varalakshmi. After the death of the plaintiffs' mother, her legal heirs i.e., plaintiffs 1 to 6 were impleaded in the suit.

The respondent/defendant filed written statement contending that the 3rd plaintiff sold away the plaint schedule land to him under Ex.B1-sale deed whereas the 3rd plaintiff filed affidavit stating that himself and his brother as alleged by the respondent never executed any sale deed much less in favour of the respondent. Hence, the petitioners/plaintiffs filed this petition seeking to send Ex.B1 sale deed to the Expert by taking the original finger prints and signatures of 3rd plaintiff in open court.

The same was opposed by the respondent stating that Ex.B1 registered sale deed is the document executed more than 30 years back, for which, the statutory presumption is there under Section 90 of Evidence Act. He further contended that the suit is not a

comprehensive suit for declaration of title and it is only a suit for eviction. It is also contended that the signatures available in Ex.B1 sale deed cannot be compared with the present signatures of the petitioners as there is a gap of more than 34 years and sought for dismissal of the petition.

The Court below after considering all the contentions, dismissed the petition on the ground that the petition is filed belatedly only to drag on the proceedings. It also held that the opinion of the expert is not binding on the Court and that the Court can compare signatures on its own observation. It has further stated that since there are no admitted signatures available, no purpose would be achieved in sending the documents to the experts.

In the present case, it is stated that Ex.B1 is filed in the month of January, 2015 along with the application and the said application was received and marked. Immediately, the present application for sending the documents to experts was filed. As such there is no delay. Therefore, the observation of the Court below that the application is filed belatedly, is erroneous. Though there is a statutory presumption under section 90 of Indian Evidence Act, the same cannot be rebutted by seeking expert opinion. The signature executed by the 3rd plaintiff is about 30 years back and it cannot be compared with the present signatures because of non-availability of contemporaneous signatures to that extent as per the decision reported in ***M.Narsi Reedy vs. V.Raghu Ram Naidu.***^[1]

In view of the above facts and circumstances, the order of the Court below is set aside and I.A.No.10/2015 is allowed to the extent of sending the fingerprints on Ex.B1, said to have been made by the 3rd plaintiff, to the hand writing experts for comparison with his admitted finger prints.

Accordingly, the CRP is allowed to the extent indicated above. No costs. As a sequel, miscellaneous petitions pending if any, shall

stand closed.

Date: 17.07.2015
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A.RAJASHEKER REDDY,J

2015 (2) ALT 529