

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION Nos.4520, 4547 & 4680 of 2015

COMMON ORDER :

These civil revision petitions are filed by the petitioners under Article 227 of the Constitution of India impugning the individual dismissal orders in I.A. Nos.463, 806 and 958 of 2015 in O.S. No.46 of 2010 dated 01.08.2015 on the file of learned Principal District Judge, Kadapa.

2) The main suit is filed for the relief of specific performance of the contract for sale. As can be seen from the record, there is Crime No.135 of 2012, Chandini Chowk Police Station. The suit in O.S. No.46 of 2010 is pending before the IV Additional District Judge for the specific performance with other consequential reliefs, if any and while so pending; in the so called Crime No.135 of 2012, F.I.R filed before II Additional Judicial Magistrate of the First Class, Kadapa, the police called for the original suit sale agreement to send the same to the expert opinion for the investigation purpose of said crime. It appears the accused were not heard on the application filed if any under Section 311-A Cr.P.C in sending the suit sale agreement with any signatures of so called Hanumantha Naidu, no other than the husband of the defacto-complainant Sarojamma as can be seen from the record. It is in the crime stage said opinion is obtained and at post-cognizance there is no law contemplating summoning of proposed accused for having any objections and of hearing of proposed accused before calling for expert opinion by investigating officer, through Magistrate Court concerned.

3) It is premature to decide herein but for in the criminal case as to where Section 311-A Cr.P.C. which is if it all an enabling provision, for the learned Magistrate during investigation at the request of the investigating officer required for the purpose of investigation, subject to the satisfaction of the learned Magistrate, to direct any accused to give specimen signatures or hand writings where applies herein for the taking of the specimen signatures of the accused can be extended to obtain some signatures of deceased so called executant who is neither defacto-complainant nor accused of the crime. But for that, if at all there is any other provision to the Court is under Sections 73 read

with 45 of the Indian Evidence Act and the law is fairly settled that under Section 73 of the Indian Evidence Act, unless any enquiry or trial commenced at post-cognizance stage, the Magistrate has no right at the sake of mere asking by investigating officer to secure and forward for opinion of expert any signatures with comparison of the signatures under dispute. The law is settled that even any opinion obtained it is invalid and cannot be made use. In that context, the expressions of the Apex Court speak that Section 45 of the Indian Evidence Act is to be read with Section 73 of the Indian Evidence Act. Leave as it is, there is an expert opinion in the course of investigation with the intervention of the Court obtained by the investigating officer.

4) It is said document now the defendants want to rely in the suit and as part of their pleadings referred in the written statement and filed in Court in the suit O.S. No.46 of 2010. The document is undisputedly not tendered to exhibit. It is received as document filed with the written statement as contemplated by order VIII Rule 1A of C.P.C to file with written statement whatever the document the defendants want to rely.

5) It is the said document filed with the written statement by the defendants, the plaintiffs sought to quash/expunge. Expunging is only to the pleadings as contemplated by Order VI Rule 16 C.P.C. It is not the case even invoking that provision to expunge the part of the written statement pleading. At best if it is being tendered for evidence, if it is not within the purview of the admissibility under Section 73 read with 45 of the Indian Evidence Act as referred supra at the time of marking for admission or confronted in cross-examination, the plaintiff can oppose the same either to exhibit from any objection of admissibility relevancy and probative value of the document also, more particularly from the reason even if it is relevant once not admissible from the provisions supra and regarding probative value for not in the presence of accused who is the plaintiff in the suit obtained as to the binding nature, besides not sustainable with reasons as contemplated by Section 51 of the Indian Evidence Act.

6) In fact a perusal of the order of the learned District Judge in I.A. No.463 of 2015 impugned in C.R.P. No.4547 of 2015 at para No.14 of the said order is clear that the plaintiff is entitled to canvass the correctness when the document is tendered before the Court that is to say if chosen to exhibit. It is

needless to say even as per Order XVIII Rule 4 C.P.C affidavit can be filed in chief-examination and even the document referred to rely in taking the affidavit as chief-examination also, such an objection of the plaintiff from such affidavit of the defendants side if any, left open to raise and also by virtue of this order for the Court to eschew that part of pleading and the document from consideration before taking of the affidavit with the document as part of chief-examination under Order XVIII Rule 4 C.P.C. But for that which is left open so far as that order concerned, there is nothing more to interfere.

7) Coming to C.R.P.No.4520 of 2015 against I.A. No.806 of 2015 the petition was ended in dismissal, where the prayer is to summon the 1st defendant Hanumantha Naidu, so called executant of the agreement and the alleged attestors to the agreement or endorsement as the case may be. In fact trial is pending and the plaintiffs, according to the submission across the bar, six witnesses were examined on behalf of the plaintiff and it is coming for further evidence of the plaintiff. If the plaintiff wants to examine any person as a witness in proof of the suit claim, it is left open to file application to summon as witness/witnesses, if chooses and under Order XVI C.P.C, if not to secure by himself directly or through hand summons to summon the 1st defendant Hanumantha Naidu or Ramappa or Rammohan Naidu, the so called executants and attestors. Other remedy left open is to seek for summoning as Court witness for the trial Court to consider, with right of cross-examination to plaintiff and defendants. If once the plaintiff wants to rely on the document, it is for him to establish as per proof required by law, the transaction covered by the document by its exhibiting and if necessary he can seek examining of witnesses as referred supra. Subject to that clarification the order requires no more interference.

8) Coming to the other application in I.A. No.958 of 2015, impugning the same in C.R.P. No.4680 of 2015, it is for stay of criminal proceedings of the Crime supra. The relief is unsustainable on the face of bar Section 41 of the Specific Relief Act; as a criminal proceeding is independent. If it is not sustainable, it is left open to seek for quashing before the appropriate forum and subject to that the petition is to be disposed of.

9) Accordingly and subject to the above observations, all the three civil

revision petitions are disposed of. There shall be no order as to costs.
Consequently pending miscellaneous petitions, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

20.11.2015

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