

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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CIVIL REVISION PETITION NO.4025 OF 2014

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ORDER:

This Civil Revision Petition is filed against the order, dated 14-07-2014 in I.A.No.501 of 2012 in O.S.No.994of 2010 on the file of the Principal Senior Civil Judge, Visakhapatnam.

2. Petitioner herein (defendant) filed the above interlocutory application under Section 45 of the Indian Evidence Act, 1872 to send the suit promissory note, dated 16-11-2007 and memorandum of title deeds to the handwriting expert with the help of admitted signatures of the petitioner to be taken in the public Court for comparison and opinion. The trial Court after considering the material on record, dismissed the application. Challenging the said order, the present revision is filed.

3. The petitioner herein (defendant) stated in the affidavit filed in support of the interlocutory application that he had taken specific stand in the written statement to the effect that the suit documents were fabricated with the help scribe and attestor and in those circumstances, it was necessary for him to send the suit promissory note and memorandum of title deeds to the handwriting expert for comparison and opinion.

4. Respondent herein (plaintiff) filed counter stating that the petitioner took a routine plea of forgery in his written statement and sending the document to the handwriting expert is not mandatory. The suit documents, Exs.A1 and A2 were marked and supported with the evidence of P.Ws. 2 and 3.

5. The trial Court after hearing both the counsel, dismissed the application holding as follows:

“ In **PULAPARTH SANKUNTALA BAI V MYGAPULA RAMANJANEYULU (2006 (3) ALD 146)** his lordship held that the stage at which and application under Section 45 of

the Act must be filed, as its own significance. His Lordship further held that the Court need not consider sending of document to the Expert till the completion of evidence since sending of document to the expert is not a right and it is only a piece of evidence like any other evidence. There is no dispute about the fact P.V.Ravi Kumar (D.W.2) is the scribe of Ex.A2. The evidence of P.Ws.1 to 3 is that Exs.A1 and A2 were executed in the presence of P.Srinu, N.Apparao and P.V.Ravi Kumar (P>Ws. 2,3 & D.W.2). The petitioner suggested that Exs.A1 and A2 are created. Coming to the petitioner's evidence who was examined as P.W.1 admits the deposit of title deed but denied the execution of Exs.A1 and A2. The petitioner examined D.W.2 and he states in his evidence that he is the scribe of Exs.A1 and A2 and that the attestors did not sign on Ex.A1 in his presence. Being the scribe of Exs.A1 and A2, he did not speak as to signing of petitioner on Exs.A1 and A2. Considering these circumstances, there is no need to send Exs.A1 and A2 to the Expert for comparison and the questions whether Exs.A1 and A2 were executed in the manner spoken by plaintiff and the circumstances under which Exs.A1 and A2 were executed will be appreciated by the Court by examining the evidence of witnesses."

6. It is no doubt true that the evidence of Expert is only a piece of evidence like any other evidence. It appears that the witnesses on the side of the defendant also deposed. In order to give an opportunity to the defendant to substantiate his case, the trial Court ought to have allowed the application instead of stating that the genuineness of Exs.A1 and A2 would be appreciated by the Court by examining the witnesses. In the circumstances, the impugned order, dated 14-07-2014 is set aside and I.A.No.501 of 2012 in O.S.No.994 of 2010 on the file of the Principal Senior Civil Judge, Visakhapatnam is allowed. The lower Court is directed to send the suit promissory note, dated 16-11-2007 and memorandum of title deeds to the handwriting expert for comparison and opinion along with the admitted signatures of the petitioner to be taken in the open Court within a period of one month from the date of receipt of a copy of this order on payment of expenses. The expert shall be asked to send his report as expeditiously as possible and the suit shall be disposed of on or before 30-04-2016.

7. Accordingly, the Civil Revision Petition is allowed. No order as to costs. Miscellaneous petitions, if any pending in this revision shall stand closed.

A.RAMALINGESWARA RAO, J

DATED: 23-11-2015

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