

THE HONOURABLE MR JUSTICE M.S.RAMACHANDRA RAO

C.R.P.Nos.2615 and 2686 of 2014

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COMMON ORDER

Heard Sri T. Durga Prasad Rao, learned counsel for the petitioner in both the revisions and Sri G. Sudheer, learned counsel for the first respondent in C.R.P.No.2615 of 2014.

2. Even though the names of Smt E. Annapurna and Smt G. Padmavathi, learned counsels for 4th respondent, are printed in the cause list, they did not appear when the matter was listed on 17.08.2015 or on today. Therefore, the matter is being disposed of *ex parte* after hearing the arguments of Sri T. Durga Prasad Rao, learned counsel for the petitioner and Sri G. Sudheer, learned counsel for the first respondent.

3. The petitioner in both these Revisions is the plaintiff in O.S.No.57 of 2004 on the file of the Principal Junior Civil Judge, Tadepalligudem. The said suit was filed by him against the respondents for perpetual injunction restraining them from interfering with his alleged possession and enjoyment of AGFEDB plaint schedule property, for a mandatory injunction to remove certain portions illegally constructed in the above property, and for vacant possession thereon.

4. The respondents filed written statement opposing the suit claim. Issues were framed and the trial commenced.

5. On 03.04.2013, the petitioner filed I.A.No.773 of 2013 stating that his father died intestate and did not execute any will in favour of the first respondent either on 21.07.1968 or at any date; that the said will set up by the first respondent is a fabricated and concocted document; that the attestors and scribe of the said will also died three years back; that his father had executed a registered lease deed in favour of one Pasumarthi Venkatadri s/o. Venkata Narasayya as Managing Trustee of Sri Ganapathi Subrahmanyeswaraswamyvari Temple, Kadiyadda Village in 1960 under registered document No.1910/1960 dt. 10.06.1960; and so, it is just and necessary to send the said will dt. 21.07.1968 for comparison of the signatures thereon with the signatures available in Sub-Registrar's Office, Tadepalligudem in connection with execution of the document No.1910/1960 dt. 10.06.1960, to the handwriting expert, Forensic Science Laboratory, Hyderabad (A.P), for his opinion.

6. A separate application I.A.No.2399 of 2013 was also filed by the petitioner quoting Order 13 Rule 10 CPC to summon the original register from the Office of the Sub-Registrar, Tadepalligudem, where the original signatures and the thumb marks of his deceased father were

available since they were taken at the time of execution of the registered lease deed document No.1910/1960 dt. 10.06.1960, so that it can be sent to the Government Handwriting Expert, Hyderabad for comparison of the signatures purporting to be of his father in the unregistered will dt. 21.07.1968 set up by the first respondent.

7. Counter affidavit was filed in both these applications by the first respondent opposing the same and contending that these two applications are frivolous and ought not to be entertained. It was contended that the original lease deed will not be available in the Sub-Registrar's Office and would be with the temple authorities and that the said document is not contemporaneous with the will of 1968 set up by him. It was alleged that it is quite natural that the signature of a person would differ after a long gap of 8 years and any opinion secured from a handwriting expert, would not be useful.

8. By separate orders dt. 22.03.2014 and 02.06.2014, both I.A.Nos.773 and 2399 of 2013 were dismissed. The Court below held that the findings of handwriting expert are not accurate and there is a possibility of change of signatures due to circumstances when a person signs and the gap of period between the signatures on both documents, cannot be ignored. It further held that as the document now sought to be compared and the document

sought to be summoned are having a gap of period of 8 years, it would not be possible to compare the signatures on them and no purpose would be served by sending the signatures to the expert for his opinion.

9. Challenging the same, these Revisions are filed.

10. Learned counsel for the petitioner contended that the orders passed by the Court below are not correct and that the Court below ought to have seen that the signatures of the petitioner's father on the will set up by the first respondent are forged, that it is a concocted document, and the only means available to the petitioner to establish the same, is to summon the signatures and thumb impressions in the register contained in the Office of the Sub-Registrar, Tadepalligudem, which were taken at the time when the registered lease deed document No.1910/1960 dt. 10.06.1960 was executed by the petitioner's father, for comparison with the signatures on the disputed will executed allegedly on 21.07.1968. He also contended that even if the signatures are not comparable, it is for the expert to say and not for the Court to come to such a conclusion. He pointed out that the applications had been filed during the course of trial and it cannot be said that they are filed at a belated stage having regard to the decision of the Division Bench of this Court in **JANACHAITANYA HOUSING LIMITED v. DIVYA FINANCIERS**^[1].

11. Learned counsel for the first respondent on the other hand contended that the applications had been filed at a belated stage, that the matter is now posted for arguments, and therefore, this Court should dismiss the Civil Revision Petitions *in limini* in view of the fact that the applications had been filed at a belated stage. He also contended that the petitioner should first establish whether such a document, as pleaded by him, is available in the Office of the Sub-Registrar, Tadepalligudem and since the petitioner has not placed on record any material to show that it is available with the Sub-Registrar's office, the applications ought to be rejected.

12. I have noted the submissions of both sides.

13. It is not disputed that the applications in question had been filed one in March, 2013 and the other in December, 2013. At that time, the trial was not concluded and it was in progress. Mere fact that as on today the trial has been concluded cannot be put against the petitioner.

14. In **JANACHAITANYA's** case (1) *supra*, a Division Bench of this Court had held that no hard and fast rule controlling the discretion of the Court to send disputed documents/writings for opinion of an expert can be laid down. It observed that procedure is designed to facilitate justice and further it ends and CPC is not a penal enactment for punishment and penalties and also not a thing designed to trip people up.

15. Having regard to the said decision of the Division Bench, it cannot be said that the applications filed by the petitioner while the trial was in progress to send the disputed will to an expert or to summon the register from the Office of the Sub-Registrar, Tadepalligudem, cannot be said to be not maintainable and that they are filed in a belated stage.

16. It is also the specific case of the petitioner that the will in question is a fabricated one and the comparable document is a registered lease deed executed by his father on 10.06.1960 being document No.1910/1960, which was registered by the Sub-Registrar, Tadepalligudem. No doubt, the disputed will is of the year 1960. According to the learned counsel for the petitioner, at the time of execution of the alleged will, the father of the petitioner was very young and at that age, there would not be any great difference in the signatures even if there is a gap of 8 years. This is no doubt disputed by the counsel for the first respondent. However, this Court is not expressing any opinion on the said issue and holds that it is for the expert to come to a conclusion on this aspect and that the Court below was not correct in expressing any opinion thereon.

17. I am of the opinion that the Court below was not right in rejecting the applications to send the disputed will

to handwriting expert on the ground that the opinion of the handwriting expert is not an accurate science. If that be the law, there would be no provision in the nature of Section 45 of the Indian Evidence Act, 1872, on the statute book. So this observation of the Court below is perverse. The expert's opinion rendered under Section 45 of the Indian Evidence Act, 1872, is also an aspect to be considered by the Court in coming to a conclusion whether the document in question is a forged one or not.

18. Merely because the suit is now coming up for arguments, that would not be a ground for dismissal of the petitions, for the reason that the Civil Revision Petitions, which have been filed in the year 2014, challenging the orders passed by the Court, have only come up for hearing now. The petitioner cannot be punished for the delay in listing of the CRPs.

19. I also do not agree with the contention of the first respondent that the original of the lease deed is with the temple and not with the Sub-Registrar's office. At the time of registration of a document, signatures of the executant are taken in a register maintained in the Sub-Registrar's office and that record is a permanent record and will normally be available in the office of the Sub-Registrar. So the fact that the temple has custody of the original lease deed, is irrelevant.

20. There is also no necessity for the petitioner to first

establish the existence of such a register in the Office of the Sub-Registrar, Tadepalligudem, as a condition precedent for filing an application to summon the register from the Office of the Sub-Registrar relating to the execution of the lease deed document No.1910/1960 dt. 10.06.1960. In this view of the matter I am of the opinion that the orders passed by the Court below cannot be sustained.

21. Accordingly, the Civil Revision Petitions are allowed and the order dt. 22.03.2014 in I.A.No.773 of 2013 and the order

dt. 02.06.2014 in I.A.No.2399 of 2013 in O.S.No.57 of 2004 are set aside and both the applications are allowed.

22. Since the suit is an old one, the Court below shall endeavor to dispose it of as early as possible, preferably within a period of four months from the date of receipt of a copy of this order.

23. There shall be no order as to costs. Miscellaneous petitions, if any, pending in these Civil Revision Petitions shall stand closed.

M.S.RAMACHANDRA RAO, J

18th August, 2015

sj

[\[1\]](#) 2008(3) ALT 409