

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH**

CIVIL REVISION PETITION NO.4425 OF 2015

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DATED 17th NOVEMBER, 2015

Between:

Pattapagalu Satyavathi

.. Petitioner

and

Gudapati Rama Rao and another

.. Respondents

THE HON'BLE SRI JUSTICE SANJAY KUMAR

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CIVIL REVISION PETITION NO.4425 OF 2015

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ORDER

This Civil Revision Petition under Article 227 of the Constitution arises out of the order dated 21.09.2015 passed by the learned I Additional Junior Civil Judge, Kovvur, in I.A.No.338 of 2015 in O.S.No.126 of 2014.

The petitioner herein, being the second defendant in the suit, filed the said IA

along with the second respondent herein, her husband, who was the first defendant in the suit. The IA was filed under Section 45 of the Indian Evidence Act, 1872 (for brevity, 'the Act of 1872') seeking expert opinion upon the alleged suit agreement of sale and more specifically, as to whether the signature and thumb impression of the first defendant and the second defendant respectively in the said document were genuine. The petitioner/second defendant also asked for comparison of the colours of the inks used for the thumb impressions found in the suit agreement of sale.

By the order under revision, the Court below dismissed the IA on the short ground that it was filed only to drag on the matter as the cross-examination of P.W.1 had already commenced.

Despite service of notice, the first respondent herein, the plaintiff in the suit, did not choose to put in his appearance before this Court.

Perusal of the written statement filed by the petitioner/second defendant in the suit reflects that the plea as to the forgery of the first defendant's signature and her thumb print was specifically taken therein. It is a settled position of law that an application under Section 45 of the Act of 1872 can be moved at any stage of the suit proceedings and it cannot be shut out on that ground. Merely because the cross-examination of P.W.1 had commenced, it was not reason enough for the Court below to dismiss the subject IA. As an expert opinion on this crucial aspect would be useful to the Court in dealing with the matter and saving precious Court time, the Court below ought to have entertained this application.

The Civil Revision Petition is accordingly allowed. The order under revision is set aside and the Court below is directed to refer the suit agreement of sale for expert opinion on the aspects sought by the petitioner/second defendant. Pending miscellaneous petitions shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

17th NOVEMBER, 2015

Note: Issue C.C. in three days.

B/o. Svv