

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION No.29 of 2016

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, by the defendant in O.S.No.316 of 2010, is directed against the docket order dated 22.09.2015 of the learned Senior Civil Judge, Khammam passed on a memorandum filed by the petitioner/defendant on 31.08.2015 in the said suit.

2. I have heard the submissions of the learned counsel for the petitioner/defendant ('defendant', for brevity) and the learned counsel for the respondent/plaintiff ('plaintiff', for brevity). I have perused the material record.

3. The relevant facts of the case, as per the submissions made at the hearing, in brief, are as follows:-

The present plaintiff-S.Yadagiri Reddy brought the present suit against the present defendant for recovery of money on the foot of a promissory note. Another plaintiff brought the other suit in O.S.No.315 of 2010, for recovery of money on the foot of a promissory note, against one K.Siva Gopal, who is said to be the brother of the present defendant. Both the defendants, being brothers, are resisting the said two suits by filing written statements *inter alia* contending that the two promissory notes in the said two suits are forged and that one person is behind the two suits separately filed against the brothers by the plaintiff herein and the other plaintiff. While so, in both the suits, the respective defendants had filed separate interlocutory applications requesting the trial court to send the disputed promissory note in each case containing the disputed signatures to an expert for comparison of signatures thereon with the admitted signatures of the respective defendants and to furnish reports. The said two interlocutory applications were allowed by the trial Court by separate orders and the reports of the expert are called for in both the suits. While so, the present defendant, in the present suit viz., O.S.No.316 of 2010, filed a memorandum requesting the Court below to

direct the expert, who is already called upon to furnish his reports in the two suits, to also compare the respective signatures allegedly of the defendants on the respective promissory notes in the two suits and furnish his opinion as to whether the signatures on the said two promissory notes in the two suits are made/forged by one and the same person.

4. In support of the said request in the said memorandum, the defendant herein pleaded that the defendants in both the suits are natural brothers and that the evidence is already recorded in both the suits and that the evidence brought on record discloses that the two brothers came to Palvoncha town and obtained loans under different suit promissory notes in the two suits from the two plaintiffs and that the defence that was taken, which is one and the same, is to the effect that the litigation was started at the instance of one Arigela Veera Venkata Satyanaidu and Batchu Prabhakar Rao, who is the maternal uncle of the defendants, and that therefore, it is necessary to direct the expert to make a comparison of the respective signatures said to be of the respective defendants on the respective promissory notes in the two suits as prayed for in the memo. The plaintiff in the present suit, having filed objections to the said memo, *inter alia* contended that the memorandum is not maintainable and that not only the plaintiffs as well as the defendants in the two suits but also the suit documents in the two suits are different and that the present request was not made by the defendant herein when the two interlocutory applications were earlier filed in the two suits requesting to send the respective suit documents to the expert, and that therefore, the memorandum is motivated and intended to drag on the proceedings and is liable for rejection.

5. The Court below, by the impugned orders, rejected the memo of the defendant herein accepting the contentions of the plaintiff *inter alia* observing that the issue involved in both the suits is to the effect that 'whether the signatures of the respective defendants on the respective suit promissory notes in the respective suits are forged or not'; and that, therefore, the request in the memo need not be granted.

6. At the hearing, the learned counsel for both the sides made submissions in line with their respective contentions, which are extracted *supra* while narrating the facts.

7. I have bestowed my attention to the facts and I have given earnest consideration to the submissions.

8. The defendant in the two suits, who are brothers, are disputing their respective signatures on the respective suit promissory notes in the two suits filed by different plaintiffs. Their respective requests for sending the two promissory notes in the two suits to an expert for comparison of the respective disputed signatures on the respective promissory notes in the two suits with their respective admitted signatures are also considered by the Court below and separate directions were already given in the two suits to an expert to furnish his reports with opinions. Now the defendant in one of the suits, i.e., the defendant in the present suit wants criss-cross comparison of the signatures said to be of the respective defendants on the respective promissory notes in the two suits and wants the Court to direct the expert to furnish a report as to whether the signatures on the respective disputed promissory notes said to be of the respective defendants in the two suits were forged by one and the same person. Since the present memorandum is filed by the defendant in the present suit, the plaintiff in the other suit had no opportunity to state his objections in reply to the memorandum filed by the defendant in this instant suit. Be that as it may.

9. The earlier request of the defendant herein to direct the expert to furnish his opinion as to whether the signatures of the defendant herein on the instant suit promissory note are forged or not was already considered by the Court below. The opinion that may be furnished by the expert in that regard, in the well-considered view of this Court, would be sufficient to arrive at a conclusion in the matter and adjudicate the *lis* after taking into consideration not only the opinion of the expert, if any furnished, but also the evidence that would be brought on record before the trial Court. What is to be noted is that the defendant in one suit is the brother of the defendant in the other suit, and,

the two suits are brought by different plaintiffs. Each suit is based on the promissory note said to have been executed by the defendant in that suit. Merely because, the defendant in one suit is the brother of the defendant in the other suit and they are disputing their respective signatures on the respective promissory notes filed in the two different suits, there is no need, in the well considered view of this Court, to direct the expert to make a criss-cross comparison of the disputed signatures of the respective defendants on the respective promissory notes said to have been executed by them separately, to arrive at a conclusion by the expert as to whether the person, who had allegedly made/forged the signatures on the two distinct promissory notes, is one and the same person. The said intended evidence in the form of an opinion from the expert would only be superfluous and unessential as the expert was already called upon to furnish an opinion in each of the suits as to the genuineness or otherwise of the respective suit promissory notes in the two suits. Hence, directing the expert to indulge in such further exercise as now sought for by the defendant and calling upon him to furnish a report as desired by the defendant herein would be quite inappropriate and inapt in the facts and circumstances of the case. Viewed thus, this Court finds that there is no infirmity in the order of the Court below calling for interference and that there is no merit in the Civil Revision Petition.

10. In the result, the Civil Revision Petition is dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this Civil Revision Petition shall stand closed.

M. Seetharama Murthi, J

02nd March, 2016
Bvv