

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 2818 of 2016

ORDER:

1) Assailing the order dated 03.06.2016 passed in I.A.No.10 of 2016 in O.S.No.33 of 2013 on the file of the XI Additional District Judge, Piler, the petitioner, who is second defendant, filed the present Civil Revision Petition under Article 227 of the Constitution of India.

2) First respondent herein is the plaintiff and the petitioner and second respondent herein are the defendants in O.S.No.33 of 2013. For the sake of convenience, the parties will hereinafter be referred to as arrayed before the trial Court.

3) The facts in issue are as under:

The plaintiff filed the above suit for specific performance of contract basing on an agreement of sale dated 25.08.2008 executed by the defendants. A common written statement came to be filed by both the defendants. In the said suit plaintiff's evidence was closed on 30.10.2012 and since then the case was posted from time to time for defendants' evidence. After completion of defendants' evidence, and when the suit was posted for arguments, the

1st defendant filed I.A.No.10 of 2016 to send Ex.A2 endorsement to the Hand Writing Expert for comparison of the dispute signature made by the 1st defendant with the admitted signature on Ex.A1, for an opinion, on the ground that she never signed on the endorsement and the alleged Ex.A2 endorsement is forged and fabricated one.

4) The plaintiff filed counter opposing the same contending that defendants 1 and 2 are husband and wife and they executed an agreement of sale-Ex.A1 in her favour. She further stated that before filing the suit, defendants 1 and 2 got issued legal notice, which was marked as Ex.A3, wherein the defendants pleaded on 25.08.2008 that both of them received a sum of Rs.1,50,000/-; requested them to extend the time for payment of the remaining balance sale consideration; and they agreed for the same and made an endorsement to that effect on the back of the agreement of sale dated 25.08.2008. It is also stated that the 1st defendant, who was examined as DW.1 in his cross examination admitted that himself and his wife made an endorsement on Ex.A2 by receiving Rs.1,50,000/- and the same is mentioned in the notice. Hence, the question of denial of her signature by the 2nd defendant on Ex.A2 and filing of this petition at a belated stage is nothing but to drag on the proceedings, hence, prayed to dismiss the petition.

5) After considering the rival arguments advanced, the trial Court dismissed the petition. Challenging the same, the present Civil Revision Petition is filed.

6) A perusal of the order under challenge would show that DW.1 has already admitted in his cross examination that himself and his wife made an endorsement on Ex.A2 by receiving an amount of Rs.1,50,000/- and the same is also mentioned in the notice.

7) In *Kurnool Chit Funds (P) Limited Vs. P.Narasimha and others*¹ this Court held that sending of a document to an expert would arise only when the trial Court is not in a position to come to a just conclusion. In *Kaveti Sarada V. Vemineni Hymavathi*² the Court was dealing with a case where the suit was filed on the basis of a pronote. Plea of the defendant was that it was a forged one. After examination of plaintiff, attestor and scribe, the defendant filed an application to send the pronote to an expert. The said application was dismissed on the ground that the arguments were heard and case was posted for judgment. In the facts and circumstances of the case, this Court held that the trial Court has rightly exercised its discretion in not sending the document to an expert. In *Papini Ramulu V.*

¹ 2008 (1) ALD 574

² 2006 (4) ALD 460

*A.Lavanya*³ where the trial Court rejected an application filed under Section 45 of the Evidence Act on the ground that the same was filed with an intention to delay the proceedings, which was approved by this Court.

8) In the instant case, admittedly the defendants' evidence is completed and the suit is posted for arguments. At that stage the present petition is filed to send Ex.A2 to a hand writing expert for comparison of disputed signatures therein alleging that endorsement in Ex.A2 is a forged and fabricated one. If the 1st defendant/petitioner has really disputed his signature on Ex.A2 endorsement, she could have filed the petition at the earliest stage and not after closing of entire evidence. It is also to be noted that Ex.A1 an agreement of sale was executed by both the husband and wife and Ex.A3 notice was also got issued by them. Further, the husband, who is one of the executant admitted in his cross examination that himself and his wife ie. petitioner made an endorsement on Ex.A2. Therefore, denial of her signature on Ex.A2 by the petitioner at this stage appears to have been made with an intention to prolong the proceedings. Hence, I see no reasons to interfere with the impugned order.

³ 2012 (6) ALD 692

9) Accordingly, the Civil Revision Petition is dismissed.

There shall be no order as to costs.

10) Miscellaneous Petitions, if any, pending in this Civil Revision Petition, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

12.09.2016

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