

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.3933 of 2014

ORDER:

-
-

This Civil Revision Petition under Article 227 of the Constitution of India by the petitioners/defendants 5 to 7, 11, 12 and 13 is directed against the orders dated 02.09.2014 of the learned Principal Senior Civil Judge holding Full Additional Charge of the post of the learned I Additional Senior Civil Judge (Judge, Fast Track Court), Gudivada passed in IA.no.147 of 2013 in OS.no.148 of 2006 filed with a request to summon (1) The Assistant Engineer, Electricity Department, Kazinagar; and (2) the Depot Manager, APSRTC, Bhadrachalam to produce the respective attendance registers and salary disbursement registers containing the signatures respectively of Bejjanki Rama Dhanunjaya Chari and Tadikonda Jagan Mohanachary and give evidence.

2. I have heard the submissions of the learned senior counsel for the revision petitioners/defendants 5 to 7, 11, 12 and 13 ('the revision petitioners', for brevity) and the learned counsel for the respondents 1 to 3/plaintiffs ('the plaintiffs', for brevity). I have perused the material record.

3. The case of the plaintiffs, who had filed the subject application for summoning the witnesses to produce the documents and give evidence in regard to the said documents, in brief, is as follows:

The plaintiffs brought the suit for declaration of title basing upon a Will dated 16.10.1986 executed by the plaintiffs' paternal grandfather. The plaintiffs 1 and 2 are sisters and the 3rd plaintiff is their brother. The said Will of the paternal grandfather of the plaintiffs was attested by Bejjanki Rama Dhanunjaya Chari, the husband of the 2nd defendant, and Tadikonda Jagan Mohanachary, the husband of the 3rd defendant. They were examined as PWs3 and 4. However, in their depositions, they had denied their signatures

on the said Will though they have attested the said Will. Therefore, to prove the due execution of the Will, their signatures have to be sent to a handwriting expert for comparison of their signatures with their disputed signatures on the Will. Both of them are retired employees. Bejjanki Rama Dhanunjaya Chari/PW4 worked as Bill Collector in electricity department and had retired from service while working at Kazinagar. His signatures are available on his attendance register and salary disbursement register maintained in the office at Kazinagar of the said department. The 2nd attesor-Tadikonda Jagan Mohanachary/PW3 having worked in APSRTC, Bhadrachalam depot had retired from service. His signatures are also available on his attendance register and salary disbursement register maintained in the office at Bhadrachalam of the said department. Therefore, it is essential to summon the attendance registers and salary disbursement registers of the said two witnesses from the respective departments of the said witnesses for sending them to an expert along with their respective disputed signatures on the Will in question for the purpose of comparison and furnishing a report. Hence, the present petition is filed.

4. The 2nd defendant filed a counter affidavit denying the allegations and *inter alia* contending as follows:

The averment that paternal grandfather of the plaintiffs had executed a Will dated 16.10.1986 and that the said two persons viz., Bejjanki Rama Dhanunjaya Chari and Tadikonda Jagan Mohanachary had attested the said Will are false. The signatures on the said Will said to be of Bejjanki Rama Dhanunjaya Chari and Tadikonda Jagan Mohanachary are not their signatures and they are forged signatures; and, the thumb impression on the said Will is not that of Chitroju Satyanarayana; and, it is also a forged thumb impression. To prove the Will at-least one attesor has to be examined. He should depose that the testator had executed the Will in his presence. Such evidence of an attesor is sufficient to prove the due execution of the Will. In the present case, both the attestors were examined on the side of the plaintiffs. They had categorically deposed that Chitroju Satyanarayana had never executed the Will dated 16.10.1986 and that they did not attest the said

document and that the said document is a fabricated and forged document. The law contemplates taking into consideration, the evidence, but, not the signatures of the persons on the alleged Will. The signatures have no evidentiary value. The evidence given before the Court will alone have evidentiary value. The evidence of both the sides is closed and the matter is coming up for arguments. After the matter was adjourned twice/thrice, these petitions are filed with an intention to drag on the proceedings.

5. On merits, the trial Court had allowed the petition of the plaintiffs. Therefore, the defendants 5 to 7, 11, 12 and 13 are before this Court.

6. The learned senior counsel appearing for the revision petitioners would contend as follows:

The order impugned in the revision is contrary to law. The witnesses/attestors were already examined by the plaintiff and were cross examined by the contesting defendants. Therefore, when the oral evidence is brought on record, the Court below erred in entertaining the application filed for summoning the documents from the respective offices of the attestors, who are retired employees, and for examining the witnesses who are being sought to be summoned to produce the documents. Both the attestors/PWs3 and 4 had denied the due attestation of the Will by denying their signatures. In such circumstances, the Court below erred in allowing the application for summoning the documents. When due attestation of the Will is denied by the attestors, the mere proof to the effect that the signatures on the Will are that of the attestors is of no avail to the plaintiffs. The reasons assigned by the Court below are not legally valid and correct.

7. On the other hand, the learned counsel for the plaintiffs supported the order of the Court below and had vehemently contended that when the attestors, who are called as witnesses by the plaintiffs, did not support the case of the plaintiffs, the law permits the plaintiffs to prove the Will by other means and that the only way the plaintiffs can now prove the attestation of the Will is by showing that the signatures on the said Will are that of the attestors

and that the same are made by them and that the attestors/PWs3 and 4 had falsely denied their signatures on the Will. The attesting signatures on the Will, which are denied by PWs3 and 4, can be proved to be the signatures of the said attestors by summoning their signatures available on their official records now available with their respective departments and by obtaining a report/opinion from an expert after sending the said standard signatures to an expert for comparison with their disputed signatures on the Will.

8. To begin with, it is to be noted that the plaintiffs are relying upon a Will executed by their paternal grandfather. They had called the attestors of the said Will as witnesses on their side. The said witnesses who were examined as PWs3 and 4 had denied their attesting signatures on the said Will. At the hearing, the depositions of PWs3 and 4 are made available to this Court for perusal. Though no leave was sought for and was expressly granted to the plaintiffs by the Court below for cross-examination of the said witnesses, a plain perusal of the said depositions of the said witnesses makes it clear that the said witnesses were cross-examined on behalf of the plaintiffs, who had called them as witnesses on their side. Therefore, a perusal of the depositions discloses that the Court below had impliedly permitted the learned counsel for the plaintiffs to cross-examine the said witnesses even though no express permission was sought for and granted by the Court below to put questions to the said witnesses in the nature of cross-examination. In the cross examination of the said witnesses done by the learned counsel for the plaintiffs, various questions were put and suggestions were also given to the said witnesses in line with the case of the plaintiffs. The said witnesses denied the suggestions put to them as 'not true'. Thus, the depositions of the said witnesses recorded by the Court below would reveal that on the implied permission of the Court below, the plaintiffs have put to PWs3 and 4, such questions, which might be put in cross examination by adverse party. Further, in the brief cross examination of PW3 that was done on behalf of the contesting defendants, it was elicited as follows: 'In the month of October 1986, on 16.10.1986 I was attending to my duty in Bhadrachalam APSRTC. My duty hours are from 08:00 AM to 05:00 PM.' No further cross examination

was done on behalf of the contesting defendants. So far as PW4 is concerned, cross examination for the contesting defendants was recorded as 'reported nil'. Therefore, both the attestors, who were examined on behalf of the plaintiffs as PWs3 and 4 did not support the case of the plaintiffs, who had called them as witnesses on their side; therefore, they were subjected to cross examination by the learned counsel for the plaintiffs by putting questions which might be put in cross examination by the adverse party. Section 154 of the Indian Evidence Act which deals with 'question by party to his own witness' lays down that the Court may, in its discretion, permit the person who calls a witness to put any question to him which might be put in cross-examination by the adverse party. Further, this Section lays down that nothing in this section shall disentitle the person so permitted under subsection (1) to rely on any part of the evidence of such witness. Both the witnesses are retired employees; and, according to the plaintiffs, their signatures are available in the respective attendance and salary disbursement registers maintained in the respective offices in which the witnesses worked at the time of their respective retirements. Since both the witnesses/PWs3 and 4 did not support the case of the plaintiffs and gave evidence adverse to the interests of the plaintiffs, the plaintiffs had filed the subject application before the trial Court to summon the said records from the respective offices of the said witnesses for the purpose of comparison of their admitted/standard signatures on the said respective records with their disputed signatures on the Will in question. The trial Court by the order impugned had granted permission to the plaintiffs. In the orders of the Court below, the Court had observed that the two witnesses who were alleged to have attested the Will have given evidence in the suit that they have not attested the Will and that, therefore, the plaintiffs had intended to prove that both of the witnesses had attested the Will and that for the purpose of proving the attestation of the Will by them, it is necessary for the plaintiffs to summon the listed witnesses to produce records and give evidence. In the circumstances of the case, when the matter is before the trial Court, the plaintiffs must be given an opportunity to prove their case in the manner they think fit and proper, in the well considered view of this Court. Further, there is

no impediment in law, to permit the plaintiffs to summon the witnesses to produce the records from the respective departments of the attestors/PWs3 and 4, who are retired employees, for appropriate consideration of the plaintiffs' request to send to an expert, the signatures of the said attestors on the records that may be produced by the summoned witnesses to an expert along with the Will, which is in question and obtain a report from the expert as to the genuineness or otherwise of the signatures of the two attestors/PWs3 and 4 on the said Will. Such a course may help the plaintiffs to place on record one more assured piece of evidence besides other evidence on record for consideration by the Court below at the appropriate stage.

9. However, the contention of the revision petitioners/the contesting defendants is that in view of the definition of the word 'attested', even the proposed evidence may not be sufficient to prove the due attestation and execution of the Will. Hence, it is necessary to refer to the definition of the word 'attested' in Section 3 of the Transfer of Property Act, which runs as follows:

'attested', in relation to an instrument, means (and shall be deemed always to have meant) attested by two or more witnesses each of whom has seen the executant sign or affix his mark to the instrument, or has seen some other person sign the instrument in the presence and by the direction of the executant, or has received from the executant a personal acknowledgment of his signature or mark, or of the signature of such other person, and each of whom has signed the instrument in the presence of the executant; but it shall not be necessary that more than one of such witnesses shall have been present at the same time, and no particular form of attestation shall be necessary.

There is no dispute with the definition of the word 'attested'. In the well considered view of this Court, whether the evidence which the plaintiffs intend to bring on record would be of no avail to them is a contention which cannot be countenanced at this stage by this Court. It is for the Court below to appreciate and examine the probative value of the intended/proposed evidence at an appropriate later stage when the *lis* comes to be finally adjudicated on merits after the entire evidence is brought on record.

10. In **Mathew Vs. Devassykutty and others**^[1] it was held that when the Court is satisfied in a given case that the witness had deliberately and falsely

denied that he had attested the Will, the court is entitled to look into other circumstances and the regularity of the Will on the face of it and can come to the conclusion on the question of due attestation. In this decision, while referring to a decision in **Naresh Sharan v. Paresh Sharan** (AIR 1955 SC 363), it was noted that the question whether there was due attestation will depend on the circumstances elicited in the evidence and that the question whether the attesting witnesses signed in the presence of the attestators is a question of fact and that the answer to the said question depends upon the appreciation of evidence.

10.1 In **Bandaru Veeramma and others Vs. Chirravuri Ramakrishna Sarma and others**^[2], it was held that in the event of an attestor turning hostile and being declared hostile, it is permissible for the propounder of the Will to cross examine such an attesting witness and it is legitimate for such a propounder to rely upon other evidence to show that the Will has been properly executed.

11. In view of the facts of the case, the reasons aforementioned and the settled legal position, this Court finds that the trial Court is justified in allowing the petition filed by the plaintiffs and that the well-considered order of the trial Court does not warrant interference.

12. Viewed thus, this Court finds that there is no merit in the revision and that the revision petition is liable to be dismissed.

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

Miscellaneous petitions, if any, pending in this revision shall stand closed.

M.SEETHARAMA MURTI, J

6th April, 2016
Vjl

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.3933 of 2014

-
-
-
-
-
-
-
-
-
-
-

06th April, 2016

[\[1\]](#) AIR 1988 Kerala 315

[\[2\]](#) AIR 1976 Andhra Pradesh 370