

THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

CIVIL REVISION PETITION No.3660 of 2016

ORDER:

The Civil Revision Petition is directed against the Order dt.14.03.2016 in I.A.No.2233 of 2015 in A.S.No.9 of 2011 on the file of Principal District Judge, Kadapa, whereof the appellant Court dismissed the petition filed by the Revision Petitioner/appellant/D.1 under Section 45 of Indian Evidence Act to send Ex.A.1-Will and Ex.B.7-Will to a hand writing expert for comparison along with admitted signatures of late K. Narayana Reddy, who as per the rival claims of the respondent Nos.1 and 2/plaintiffs and the petitioner/D.1 executed Wills in their favour.

2. Respondent Nos. 1 and 2/plaintiffs filed O.S.No.170 of 2004 on the file of Senior Civil Judge, Kadapa, against the petitioner/D.1 and 8 others, seeking partition of the plaint schedule property. While some defendants supported the claim of the plaintiff, the petitioner/D.1 contested the suit. The plaintiffs relied upon Ex.A.1—Will dt.11.06.1997 said to have been executed by their father—K. Narayana Reddy; whereas, the petitioner/D.1 relied upon Ex.B.7—Will dt.07.04.1997 and claimed that his father bequeathed the plaint schedule property in his favour, by virtue of the aforesaid Will.

3. The trial Court, on consideration of the material placed before it, decreed the suit in favour of plaintiffs. Aggrieved, the petitioner/D.1 preferred A.S.No.09 of 2011 before Principal District Judge, Kadapa, wherein he filed I.A.No.2233 of 2015 under Section 45 of Indian Evidence

Act r/w 151 of CPC and prayed to send the said Wills to the handwriting expert for comparison with the admitted signatures of K.Narayana Reddy available on the agreement said to be executed by him in favour of Andhra Pradesh Housing Board. For two main reasons, it appears, the Appellate Court dismissed the aforesaid Petition. Firstly; the petitioner failed to produce contemporary signatures of K. Narayana Reddy; secondly, he failed to produce the admitted signatures of K. Narayana Reddy as the respondents/plaintiffs denied the signatures contained on the agreement executed in favour of Andhra Pradesh Housing Board as that of K. Narayana Reddy. Hence, the C.R.P.

4. Heard arguments of Sri V.R.Reddy Kovvuri, learned counsel for Petitioner and Sri S.Md. Haneef, learned counsel for respondents.

5. The point for determination is:

“Whether there are merits in this petition to allow?”

6. **POINT:** Upon perusal of the impugned Order and hearing either side, I am unable to countenance the reasons given by the appellate Court for dismissal of the petition. The first reason was that no contemporaneous signatures of K. Narayana Reddy were produced. The aspect whether contemporaneity of signatures is an essential pre-requisite for Court to direct comparison thereof by an expert is no more res-integra. A full Bench

of this Court in ***Bande Siva Shankara Srinivasa Prasad vs. Ravi Surya Prakash Babu and others***¹ has discussed this aspect and held thus:

“ We accordingly answer the reference as under:

*It is essentially within the judicious discretion of the Court, depending on the individual facts and circumstances of the case before it, to seek or not to seek expert opinion as to the comparison of the disputed handwriting/signature with the admitted handwriting/ signature under Section 45 of the Indian Evidence Act, 1872. The Court is however not barred from sending the disputed handwriting/ signature for comparison to an expert merely because the time gap between the admitted handwriting/signature and the disputed handwriting/signature is long. The Court must however endeavour to impress upon the petitioning party that comparison of disputed handwritings/signatures with admitted handwritings/signatures, separated by a time lag of 2 to 3 years, would be desirable so as to facilitate expert comparison in accordance with satisfactory standards. That being said, there can be no hard and fast rule about this aspect and it would ultimately be for the expert concerned to voice his conclusion as to whether the disputed handwriting/ signature and the admitted handwriting/signature are capable of comparison for a viable expert opinion. The view expressed by the Division Bench in ***Janachaitanya Housing Limited vs. Divya Financiers: 2008 (3) ALT 409 (DB)***, as to the stage of the proceedings when an application can be moved by a party under Section 45 of the Indian Evidence Act, 1872, continues to hold the field and there is no necessity for this Full Bench to address that issue.”*

7. Thus, it was held that though the discretion lies with the Court depending upon the facts and circumstances of the case whether or not to

¹ 2016(2) ALT 248

call for expert opinion, the Court, however, is not barred from sending the disputed handwriting/signatures for comparison, merely because, the time gap between the admitted handwriting/signatures and disputed handwriting/signature is long. It was further observed that the Court may, however, impress upon the parties that a gap of 2 to 3 years between admitted handwriting/signatures and disputed handwriting/signatures would be desirable to facilitate the expert to make comparison, for a satisfactory standard. However, there was no hard and fast rule on this aspect and it would ultimately for the expert concerned to say whether the disputed handwriting/signature which can be of comparison or not. In that view of the matter, in my considered view, the appellate Court ought not to have refused to send the documents to the expert on the ground that contemporary signatures are not produced.

8. The next ground on which the expert petition was dismissed was that the petitioner/D.1 failed to produce the admitted signatures of K. Narayana Reddy. The appellate Court refused to consider the agreement executed by K.Narayana Reddy in favour of Andhra Pradesh Housing Board, on the mere ground the respondents/plaintiffs disputed the signatures thereof as that of K. Narayana Reddy. It must be said that except noting the said dispute, the impugned Order does not disclose whether the said objection was a valid one or not. Therefore, the Appellate Court was not right in refusing to send the documents of K. Narayana Reddy available on the agreement executed by him in favour of Andhra Pradesh Housing Board for comparison of his alleged signatures on the two wills.

9. In the result, this C.R.P. is allowed and the impugned Order is set aside and consequently I.A.No.2233 of 2015 in A.S.No.9 of 2011 on the file of Principal District Judge, Kadapa is allowed and it is directed that the Appellate Court shall send Ex.A.1—Will and Ex.B.7—Will to a handwriting expert (GEQD) for comparison along with admitted signatures of K. Narayana Reddy available on the agreement executed by him in favour of Andhra Pradesh Housing Board. The appellate Court shall give an opportunity to respondents/plaintiffs also to submit the admitted signatures of K.Narayana Reddy before the Court, if they propose, and upon satisfying with the genuinity of those signatures, the appellate Court shall send those admitted signatures also for comparison. No costs.

As a sequel, miscellaneous petitions pending if any, shall stand closed.

Date: 29.11.2016
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U. DURGA PRASAD RAO, J