

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition Nos.494 of 2015 and 648 & 682 of 2013

COMMON ORDER:

CRP.no.494 of 2015, under Article 227 of the Constitution of India, by the petitioners/defendants is filed assailing the order dated 01.09.2014 of the learned I Additional District Judge, Visakhapatnam passed in IA.no.514 of 2014 in OS.no.170 of 2005 filed by the defendants under Section 45 of the Indian Evidence Act requesting to send exhibits X14 to X16 to handwriting expert for furnishing his opinion.

CRP.nos.648 and 682 of 2013, under Article 227 of the Constitution of India, are also filed by the defendants in the aforementioned suit assailing the two separate orders both dated 22.01.2013 of the said learned Judge, Visakhapatnam respectively passed in IA.nos.8 of 2013 and 11 of 2013 filed by the plaintiffs under Order XVI Rule 1(2) read with Section 151 of the Code of Civil Procedure, 1908 requesting to issue witness summons to the Assistant Divisional Engineer (Operation), APEPDCL, Gopalapatnam to appear before the Court and cause production of the documents mentioned in the petition list in IA.no.11 of 2013 and to give evidence in respect of the said documents as a Court witness.

2. I have heard the submissions of the learned counsel for the revision petitioners/defendants ('the defendants', for brevity) and the learned counsel for the respondents/plaintiffs ('the plaintiffs', for brevity). I have perused the material record.

3 Dealing first with the orders impugned in CRPs.648 & 682 of 2013 whereby the trial Court had allowed IA.nos.8 and 11 of 2013 filed by the plaintiffs and granted leave to them to file documents, it is to be noted that the said documents are already exhibited through the witnesses concerned.

4. The grievance of the defendants in CRP.no.494 of 2015 is that the

Court below ought not to have dismissed their application in IA.no.514 of 2014 filed under Section 45 of the Indian Evidence Act filed with a request to send exhibits X14 to X16 to a handwriting expert and call for an opinion as to the genuineness or otherwise of the disputed signatures appearing on the said documents by comparing the same with the admitted/standard signatures of the 2nd defendant and also her signatures that may be obtained in open Court.

5. Be it first noted that the suit is filed for declaration of title and other reliefs in respect of a house property. The defendants are resisting the suit. The case of the defendants as per the pleadings in support of the petition filed under Section 45 of the Evidence Act and as per the submissions made before this Court, in brief, is this:

The land in question is a Government land. It was occupied by the defendants in the year 1993. They had constructed a small room with asbestos sheet roof. The 1st defendant is residing in the said house with his family since then. Thereafter he had dug up a bore-well in the said property and had also applied for electricity connection in the year 2000 in the name of his wife. Since One B. Sanyasi Naidu, the 1st plaintiff is working in Police department at the relevant time at Gopalapatnam Police Station, the 1st defendant (BVRM. Naidu) had taken the help of the said Sanyasi Naidu as he had assured that he would get the electricity connection from the concerned department though the land occupied is a Government land. Due to the close acquaintance with him, the request to extend help was made for getting the electricity connection and for regularizing the land by the Urban Land Ceiling Authority. Thus, the 1st plaintiff having promised to extend help in the above regard had obtained the signatures of the defendants on some papers and application forms. Later, the defendants came to know that the land was got regularized in the name of the wife of the 1st plaintiff, that is, the 2nd plaintiff. The 2nd plaintiff is also Saraswati (Boddapu Saraswati) whereas the name of the 2nd defendant is also Saraswati (Boddapati Saraswati). However, as electricity bills are coming in the name of B. Saraswati, the

defendants did not entertain any doubts that the service connection was taken in the name of the 2nd plaintiff-Boddapu Saraswati by taking advantage of similar names except for the change in the surname. Taking advantage of such mischief played, now the plaintiffs are intending to grab the property which was originally occupied by the defendants and wherein the construction was made by the defendants. The defendants filed OS.no.2534 of 2004 on the file of the Court of the learned IV Additional Junior Civil Judge, Visakhapatnam for an injunction. The 2nd plaintiff and others filed the instant suit. There are criminal cases and writ proceedings between the parties. Exhibits X14 and X15 are the form for transfer of service connection, indemnity bond said to have been submitted by the 2nd defendant to the concerned authority of the electricity department and exhibit X16 is the registered sale deed dated 15.10.1993. Exhibits X14 and X15 contain the signatures said to be of Boddapati Saraswathi @ Atchayamma. The registered sale deed from its contents disclosed that it contains the signature of B. Saraswathi, W/o.Sanyasi naidu i.e., the 2nd plaintiff. The page on the reverse side of the first page of the said sale deed contains the executant's thumb impression that was put before the Joint Sub-Registrar at the time of registration. It is the specific case of the defendants that neither the 1st defendant nor his wife made any application to APEPDCL (electricity department) at any point of time for transfer of service connection and it is not their case right from the beginning that they had purchased the property from the plaintiffs. But, the case of the defendants is that the plaint schedule property is a land reforms surplus land and that it was occupied by them long time back and that they are residing therein by making a construction and by paying taxes to the local authority and also by paying electricity charges to the department. In the circumstances stated they did not doubt the *bona fides* of the 1st plaintiff as the electricity consumption receipts are being issued in the name of B. Saraswati, which is also the name of the 2nd defendant. In order to prove their contentions, the plaintiffs had examined PWs6 to 8 and got marked exhibits X14 to X16 which are transfer application, indemnity

bond and sale deed. After perusing the said documents, it was deposed by DW1 that the signatures on the disputed documents are not that of his wife, the 2nd defendant, and that the said signatures on the said exhibits do not belong to his wife, that is, the 2nd defendant. In order to prove the said fact, it is necessary to send the documents to a handwriting expert for furnishing his opinion.

6. The case of the plaintiffs and the submissions made on their behalf, in brief, is as follows:

The petition is not maintainable under law. The plaintiffs having examined PWs 6 and 8 got marked exhibits X14 to X16 in order to establish their case that they are the absolute owners of the property and they are entitled to the reliefs claimed in the suit and that the defendants are their lessees. In fact a case in Crime no.117 of 2012 was registered by the Gopalapatnam Police Station against the defendants for the offences punishable under Sections 420, 468, 471 read with 34 of IPC and that a case in CC.no.427 of 2012 is taken on file by the learned II Additional Chief Metropolitan Magistrate, Visakhapatnam and the said case is pending. The issue in regard to exhibits X14 to X16 is to be determined by the said Court in the said calendar case. The petition is filed belatedly after more than two years with a mala fide intention to drag on the proceedings. There is no necessity to send exhibits X14 to X16 to a handwriting expert.

7. Be it noted that the learned counsel for the defendants had also submitted that the defendants had already produced the necessary documents containing the signatures of the 2nd defendant before the Court below and that the signatures of the 2nd defendant are also available on the vakalatnama and the pleadings and that the 2nd defendant is also prepared to furnish her signatures and thumb impressions before the trial Court as and when directed and that, therefore, there is sufficient material before the trial Court for being furnished to the expert for comparison with the disputed signatures on the disputed documents and that, therefore, there are no impediments to direct an expert of a Government Forensic Laboratory to

furnish his opinion in case the Court comes to the conclusion that the defendants are entitled to the relief claimed in IA.no.514 of 2014.

8. I have bestowed my attention to the facts and the submissions. The crux of the case of the defendants is that the names of the 2nd defendant and 2nd plaintiff are one and the same, their name being 'Saraswati'; but, their surnames are different and that when the help of the husband of the 2nd plaintiff i.e., the 1st plaintiff-Sanyasi Naidu who is a Constable was sought for, for obtaining service connection for the suit house and for getting clearance by the Urban Land Ceiling Department he had played fraud on the defendants and had obtained the service connection in the name of his wife Saraswati instead of obtaining the service connection in the name of the 2nd defendant Saraswati and that the defendants are innocently paying the electricity consumption charges and did not come to know of the fraud as the electricity consumption receipts are being issued in the name of B. Saraswati. It is their further case that they had never applied for transfer of service connection as it is not their case that they had purchased the property from the plaintiffs; and it is also their case that they had never purchased the property from any person and had never made any application for transfer to APEPDCL at any point of time for transfer of service connection and that there was no need for doing so, and that, therefore, the truth as to which of the two persons by the same name 'Saraswati' had signed on the disputed documents would come out, if exhibits X14 to X16 are sent to an expert for furnishing an opinion after comparing the disputed signatures on exhibits X14 to X16 with the standard/admitted signatures of the 2nd defendant which the 2nd defendant had already furnished and is further prepared to furnish as directed by the trial Court. On the other hand, the only defence of the plaintiffs is that the said documents are marked through witnesses and that the petition is intended to drag on the proceedings. In view of the complexity of the issue on account of the names of the 2nd plaintiff and the 2nd defendant being exactly similar but for their surnames and in view of the fact that further complexities have arisen on account of the allegations traded and the oral

evidence adduced, this Court is of the considered view that if an expert opinion is obtained as sought for by the defendants there would be one more assured piece of evidence on the disputed aspect and that the said opinion that may be called for by the Court, in the facts and circumstances of the case, may be useful in clearing the ambiguities and would be helpful to the trial Court in arriving at a just decision at the time of final adjudication after considering the said piece of evidence also with the other evidence that is already brought on record and that may be brought on record by the time of the conclusion of the trial. In the well considered view of this Court, the complexity involved and the suspicion shrouded around the genuineness of exhibits X14 to X16 to some extent can be resolved after giving a fair opportunity to both the parties to adduce all permissible forms of evidence, which they intend to adduce in support of their respective contentions.

9. Viewed thus, this court finds that there is merit in the request of the defendants to send exhibits X14 to X16 to an expert for the purpose as desired by them as according to them the expert's opinion would be of immense help in substantiating their defence and that such evidence might also provide adequate assistance to the Court in arriving at the truth.

10. As a sequel to the findings of this Court supra, this Court finds that there is no need to interfere with the orders impugned in CRPs.648 and 682 of 2013 as by the impugned orders therein, the trial Court had granted leave to the plaintiffs to file the documents and later, received the documents on file and had also recorded evidence of the further witnesses concerned and the documents are already marked through the witnesses concerned.

11. In the result, CRP.no.494 of 2015 is allowed and the order impugned is set aside. As a sequel, IA.no.514 of 2014 in OS.no.170 of 2005 stands allowed. The trial Court is directed to now send the exhibits X14 to X16 to a Government [hand writing] expert of the State Forensic Science Laboratory or some such Government Institution for comparison of the signature/s, and hand writing/s, if any, said to be of the 2nd defendant on the said documents and for furnishing an opinion in regard to the genuineness or otherwise of the

said signature/s and writing/s after comparing with the admitted/standard signatures of the 2nd defendant on the relevant pleadings and the other documents, which the trial Court may furnish to the expert, in its discretion, after the parties concerned producing any such required further documents as directed by it. The trial Court may also obtain the signatures and writing of the parties concerned in open Court as per procedure and also furnish the same to the expert concerned to enable him to furnish a considered opinion in the matter. However, the trial Court shall resort to this exercise after first giving necessary directions to the defendants to deposit the fee of the expert and other necessary expenses into the Court as per the procedure.

CRP.nos.648 and 682 of 2013 are dismissed.

There shall be no order as to costs.

Miscellaneous petitions, if any, pending in these revisions shall stand closed.

M. SEETHARAMA MURTI, J

1st June, 2016
Vjl