

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

Civil Revision Petition No.2292 of 2016

ORDER:

Aggrieved by the dismissal of their petition under Section 45 of the Indian Evidence Act, 1872, the plaintiffs have come up with the above revision petition.

Heard the learned counsel for the parties on both sides.

The petitioners/plaintiffs filed a suit in O.S.No.132 of 2008 on the file of Senior Civil Judge, Nuzvid for specific performance of an agreement of sale dated 02-11-2004. The original agreement of sale relied upon by the petitioners/plaintiffs contained certain endorsements on the reverse of the first page.

The respondents/defendants admitted the execution of the agreement of sale, but denied the endorsement allegedly made on 11-04-2005 as having been forged.

Almost after the conclusion of the trial, the petitioners/plaintiffs woke up to this issue and came up with an application in I.A.No.42 of 2016 under Section 45 of the Indian Evidence Act. It was dismissed by the trial Court forcing the petitioners to come up with the above revision.

The only ground on which the Court below rejected the application under Section 45 of the Indian Evidence Act was that the petition was not filed, along with the contemporaneous documents containing the admitted signatures of the defendants. But the trial Court, while doing so, failed to take into account two factors viz., 1) that the signatures of the defendants in the original

agreement dated 02-11-2004 were not denied; and 2) that in such a case, the Court should first examine the issue as per the parameters laid down in Section 73 of the Evidence Act.

There was no necessity for the petitioners to file any other contemporaneous documents, since the signatures of the defendants as on 02-11-2004 and their signatures in the vakalat were all not denied. Therefore, the question of filing a contemporaneous document of the date 11-04-2005 did not arise. But the trial Court failed to take note of this fact.

More over, Section 73 of the Indian Evidence Act prescribes a procedure, which reads as follows:

“Section 73: Comparison of signature, writing or seal with others admitted or proved-

In order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made, any signature, writing, or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing, or seal has not been produced or proved for any other purpose.

The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person.

This section applies also, with any necessary modifications, to finger-impressions.”

This procedure has not been followed by the trial Court.

Relying upon a decision of the Supreme Court in **S. Gopal Reddy v. State of Andhra Pradesh (1996 SCC (4) 596)** and a decision of this Court in **S. Harshavardhan Reddy v. Vemula Ram Reddy**^[1], it is strenuously contended by the learned counsel for the respondents that an application of this nature, filed after a

long period of time when the evidence itself was closed, cannot be entertained.

Normally it is so. But in cases where the Court below failed to exercise the jurisdiction vested in it in accordance with the parameters laid down in the Act, the interference with such orders, becomes inevitable.

Therefore, the Civil Revision Petition is allowed, and the order dated 14-03-2016 in I.A.No.42 of 2016 in O.S.No.132 of 2008 on the file of Senior Civil Judge, Nuzvid is set aside and I.A.No.42 of 2016 is remanded back for a fresh disposal, taking note of the above observations and Section 73 of the Indian Evidence Act.

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

V. RAMASUBRAMANIAN, J

Date: 24-06-2016

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[\[1\]](#) 2014 (6) ALD 114