

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD  
FOR THE STATE OF TELENGANA AND THE STATE OF ANDHARA PRADESH**

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**CIVIL REVISION PETITION No.1590 of 2016**

Between:

Bhavanam Siva Reddy and 2 others

.....Petitioners

and

Bhavanam Hanumantha Reddy and another

.....Respondents

Date of Judgment pronounced on : 30-12-2016

**HON'BLE DR. JUSTICE B. SIVA SANKARA RAO**

1. Whether Reporters of Local newspapers : Yes/No  
May be allowed to see the judgments?
2. Whether the copies of judgment may be marked : Yes/No  
to Law Reporters/Journals:
3. Whether The Lordship wishes to see the fair copy : Yes/No  
Of the Judgment?

**\* HON'BLE DR. JUSTICE B. SIVA SANKARA RAO****+ CIVIL REVISION PETITION No.1590 of 2016**

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**< GIST:****> HEAD NOTE:**

! Counsel for the petitioners : Sri P. Sridhar Reddy

^ Counsel for the respondents : Smt. Marella Radha

**? Cases referred**

1. AIR-1979-SC-1225
2. 1993-All.Cr.R-14
3. AIR-1967-AP-338
4. AIR-1976-SC-69
5. AIR-1990-SC-1243=CRLJ-1269
6. AIR-1977-SC-364 at 366
7. AIR-1973-SC-1346
8. AIR-1992(SC)CRLJ-3454
9. AIR-1967-SC-1326=CRLJ-1197
10. AIR-1965-SC-881=(2)CRLJ-8
11. AIR-1975-SC-290 at 305
12. AIR-1981-Allahabad-62
13. AIR-1936-PC-15
14. AIR-1962-AP-178 at 186
15. AIR-1960-AP-359 at 361
16. AIR-1973-SC-2200=CRLJ-1187=(2)SCC-86
17. AIR-1980-SC-531 at 535
18. AIR-1979-SC-1979=CRLJ-1386
19. 1985-MLJ-(CRL)384 at 389
20. AIR-1976-SC-69=(1)SCC-542
21. AIR-1978-SC-1183=CRLJ-1107=(3)SCC-279
22. 1987(1)KLT-391 at 397(Kerala)
23. 1975-CRLJ-1277
24. 1975-MPLJ-197
25. AIR-1923-Madras-178
26. AIR-1931-Calcutta-440 at 442
27. AIR-1936-Bombay-151
28. 1988-KLT-798
29. AIR-2001-SC-2677
30. 2016 (2) ALT 248 (FB)
31. 2008 (3) ALT 409 (DB)
32. AIR 1960 AP 359
33. (1979) 2 SCC 158
34. AIR 1967 SC 1326
35. (1980) 1 SCC 704
36. 1994 Supp. (2) SCC 619

**HON'BLE DR. JUSTICE B. SIVA SANKARA RAO****CIVIL REVISION PETITION No.1590 of 2016****ORDER:**

The defendant Nos.3, 8 & 9 by names Bhavanam Siva Reddy S/o. Venkata Reddy, Bhavanam Venkata Reddy and Bhavanam Mallikarjuna Reddy sons of Late Sowrilu Reddy, no other than legal representatives of late 2<sup>nd</sup> defendant out of original 3 defendants including 1<sup>st</sup> defendant W/o. late Sambhi Reddy, 2<sup>nd</sup> defendant Sowrilu Reddy and 3<sup>rd</sup> defendant Siva Reddy are the brothers of Sambhi Reddy, husband of defendant No.1, of O.S.No.583 of 2006 on the file of Principal Senior Civil Judge, Guntur, went unsuccessful in their application in I.A.No.1642 of 2015 maintained against the plaintiff-Bhavanam Hanumantha Reddy and 1<sup>st</sup> defendant-Bhavanam Ramakotamma W/o. Late Sambhi Reddy as 2 respondents, by the impugned dismissal order dated 18.02.2016, maintained the revision.

2. The application filed was under Section 45 of the Indian Evidence Act to send Ex.A8 (so called unregistered will dated 07.05.1990), Ex.A9 (so called unregistered adoption deed of even date 07.05.1990) and Ex.B21-so called registered will dated 15.09.1989 to the Handwriting & Finger Prints expert to compare with the so called admitted thumb marks of the deceased Bhavanam Sambhi Reddy contained in Exs.X1 and X2 and to submit report.

3. Coming to factual background in nutshell, the revision 1<sup>st</sup> respondent-plaintiff to the revision petition by name Bhavanam Hanumantha Reddy minor represented by his father Karumuru Veera Reddy filed O.S.No.61 of 1991 on the file of Senior Civil Judge, Chirala for partition and separate possession of plaint schedule items 1 to 13 and also for recovery of possession of plaint schedule items

14 & 15. After establishment of Senior Civil Judge, Parchur, the said suit was transferred and renumbered as O.S.No.43 of 1995. In the said suit, on behalf of plaintiff PWs.1 to 9 were examined and Exs.A1 to A14 were marked and on behalf of defendants, DWs.1 to 15 were examined and Exs.B1 to B24 were marked, besides Exs.X1 to X3. From said evidence in support of the respective pleadings and on contest, the suit was preliminarily decreed on 10.07.1998 for partition and separate possession of items 1 to 13 and also for recovery of items 14 & 15 of suit schedule properties.

4. Against said decree and judgment, defendant Nos.2 & 3 i.e., Bhavanam Sowrilu Reddy and Siva Reddy filed A.S.No.1331 of 1998. The appellants also maintained CMA.No.2329 of 1998 against Bhavanam Rama Kotamma and B. Hanumantha Reddy minor represented by his father Karumuru Veera Reddy, which is against the order in O.P.No.2 of 1995 (original No.7 of 1991) dated 10.07.1998 of the Senior Civil Judge, Parchur, under Section 384 of Indian Succession Act for succession certificate sought for was ended in dismissal. Said Hanumantha Reddy minor represented by his father Karumuru Veera Reddy was claiming as legatee and adopted son of Rama Kotamma and her husband late Sambhi Reddy under Exs.A8 and A9.

5. A.S.No.1331 of 1998 and C.M.A.No.2329 of 1998 were while pending before the High Court for common disposal, there were 3 applications filed in A.S.M.P.Nos.1287 and 2683 of 2005 and CMP.No.8079 of 2004, for additional evidence viz., to receive and exhibit certified copy of sale deed dated 29.12.2004 document No.2890 of 2004 of Sub Registrar, Chebrolu, to receive and exhibit the plaint in O.S.No.6 of 2001 on the file of Additional Senior Civil

Judge, Guntur, and to receive the certified copies of promissory notes dated 24.11.1986, 01.11.1987, 10.06.1988, 14.07.1988 and 05.11.1988 and written statement of late Sambi Reddy in O.S.No.422 of 1990 and deposition of 2<sup>nd</sup> defendant in E.A.No.276 of 2002 in E.P.No.265 of 2000 in O.S.No.397 of 1990 on the file of Additional Senior Civil Judge, Guntur. All the matters covered by the common judgment by another Bench of this Court dated 13.08.2005, whereunder it was observed that application was moved for comparison of disputed thumb impression with admitted thumb impressions during fagend of trial and the dismissal was made a ground of attack in the appeal under Section 105 CPC. I.A.No.55 of 1998 was filed by the defendant Nos.2 & 3 under Section 45 of Indian Evidence Act and Section 151 CPC to send the Exs.A8, A9, B19 to B21 and Exs.X1 and X2 to the Government Finger Print expert to examine the genuineness of the thumb impressions of late B. Sambi Reddy and for opinion. The same was ended in dismissal on 17.02.1998, with observations that the dispute between the parties is with regard to the estate of late Sambi Reddy husband of 1<sup>st</sup> defendant-Rama Kotamma and plaintiff-B.Hanumantha Reddy S/o. Karumuru Veera Reddy claiming as legatee and adopted son of them by relying upon Exs.A8 and A9. The defendant Nos.2 and 3, no other than brother's sons of late B. Sambi Reddy are claiming that Sambi Reddy settled his properties in their favour by executing Exs.B18 and B19 agreements and Ex.B21 is registered will dated 15.09.1989 and they cause examined the Branch Managers as DWs.10 and 11, who produced the account opening forms containing thumb impressions of Sambi Reddy and after trial the matter is at the arguments stage and at this fagend, filed the applications to refer the documents

containing the so called thumb impressions of Sambhi Reddy for expert opinion and Exs.A8 and A9 produced from the custody of plaintiff, Exs.B18 and B19 produced from custody of defendant Nos.2 and 3 and Ex.B21 produced from the custody of District Registrar, Guntur, and Exs.X1 and X2 were produced by the Branch Manager of the Bank DW.11 supra. The scribe and one of the attestors of Exs.A8 and A9 are among PWs.1 to 3, 6 and 9. From the above ample oral and documentary evidence for appreciation to ascertain the genuineness of thumb impression of Sambhi Reddy from the Court also got power to compare the thumb impressions and thereby there is no necessity to send the documents to the handwriting expert for opinion at the fagend'.

6. It is also necessary to mention in this context that plaintiff filed application in I.A.No.78 of 1998 under Section 151 CPC and Order XIII Rule 10 CPC to send photographic enlargements of Exs.A8 and A9 to the Government Finger Prints expert to compare the same with the thumb impressions in the application form of F.D.Rs in Indian Overseas Bank, Vegendla and Corporation Bank, Guntur and for opinion saying those are the admitted specimen thumb impressions of Sambhi Reddy lying in IOB, Vegendla and Corporation Bank, Guntur. The defendant Nos.2 and 3, who are the applicants in I.A.No.55 of 1998 supra opposed said petition saying there is no further necessity to send any fresh or further documents for purpose of comparison. Said application was also ended in dismissal on 27.02.1998 with almost same observations of the order supra by saying further that the plaintiff as respondent to I.A.No.55 of 1998 is saying Exs.X1 and X2 are not admitted thumb impressions of Sambhi Reddy and those are the thumb impressions of F.D.Rs. in I.O.B.,

Vegendla and Corporation Bank, Guntur that were summoned from Bank during trial and in fact there is sufficient oral and documentary evidence to ascertain genuineness of thumb impressions of Sambhi Reddy and Court also got power to compare the thumb impressions of Sambhi Reddy available on record, apart from sufficient oral and documentary evidence and the suit is at fagend and thereby no merits to consider the request. The said order was dated 27.02.1998.

7. The impugned dismissal order of I.A.No.55 of 1998 was also taken as ground under Section 105 CPC in the appeal A.S.No.1331 of 1998 and therefrom by common disposal of appeal and CMA decree and judgment, the High Court while answering point No.3 having observed the above facts and also the fact that in the light of voluminous documentary evidence which has been produced before the Court it would not be just and proper to record positive findings in relation to Exs.A8 and A9 and Ex.B21 respectively, without taking into consideration of said voluminous documentary evidence placed in the appellate Court and hence, proper opportunity to be given to the parties for explaining their respective stands in relation to said documents, while further recording the findings on validity of those and sufficient to say no further opinion can be expressed in allowing the additional evidence application. It is further observed that except item No.1 of plaint schedule, all other items are situated within the territorial jurisdiction of Senior Civil Judge, Guntur and thereby it is just and proper to remand to the learned Senior Civil Judge, Guntur, said suit O.S.No.43 of 1995 by setting aside the decree and judgment and with a direction to afford opportunity to all parties to adduce further evidence, if necessary by taking into consideration of the voluminous documentary evidence placed before the appellate Court

also, and to dispose of accordingly. It is equally in allowing the CMA.No.2329 of 1998 and remanding the O.P.No.7 of 1995. Few more facts necessary in this regard are that, as the Bank asked succession certificate, pursuant to the respective wills particularly relied by defendant Nos.2 & 3 under Ex.B21 dated 15.09.1989 against defendant No.1 wife of late Sambi Reddy, the succession certificate O.P.No.7 of 1995 maintained which is the subject matter of CMA supra. The 1<sup>st</sup> defendant Rama Kotamma W/o. Late Sambi Reddy contested the succession certificate petition referring to a will dated 15.11.1990. No doubt same was not exhibited by her, if at all to consider the same also for any requirement to send along with Exs.A8 or A9 or B21 so called disputed thumb impressions of Sambi Reddy respectively therein and respectively relied upon by plaintiff (Exs.A8 and A9) and defendant Nos.2 and 3 (Ex.B21).

8. It is the factual background under which pursuant to the remand instead to the Senior Civil Judge, Parchur, to restore the suit O.S.No.43 of 1995 from original No.61 of 1991 of Senior Civil Judge, Chirala, remanded to Senior Civil Judge, Guntur, thereby said suit was renumbered as O.S.No.583 of 2006 by the Senior Civil Judge, Guntur. In the Senior Civil Judge, Guntur, defendant Nos.3, 8 & 9 for the selfsame relief sought in I.A.No.55 of 1998 during trial of the suit went unsuccessful in seeking to send the documents to expert viz., Exs.A8, A9 and B21 to compare with Exs.X1 and X2, filed fresh application in I.A.No.1642 of 2015. That was since ended in dismissal, the present revision is maintained.

9. Heard both sides at length in the revision in the factual scenario and perused the entire material on record.

10. The suit and succession O.P. pursuant to the remand orders of this Court referred supra are pending within the scope of remand to decide afresh after giving opportunity to both sides to adduce any further evidence including with reference to 3 additional evidence documents filed pending appeal that were allowed to exhibit no doubt always subject to proof, relevancy and admissibility. It is needless to repeat from what is referred supra, not only the defendant Nos.2 & 3 in I.A.No.55 of 1998 pending suit and for the selfsame relief practically by defendant Nos.3, 8 & 9 as legal representatives of 2<sup>nd</sup> defendant filed I.A.No.1642 of 2015 covered by the impugned order to send Exs.A8, A9 and B21 with Exs.X1 and X2 for comparison of the so called disputed thumb impressions with so called admitted thumb impressions in Exs.X1 and X2; but also the plaintiff sought for in I.A.No.78 of 1998 to send Exs.A8 and A9 to the Government Fingerprint expert to compare the same with thumb marks contained in applications of F.D.Rs in I.O.B., Vegendla and Corporation Bank, Guntur containing the thumb marks of said Sambhi Reddy and to give opinion.

11. Thus in the application of plaintiff, he sought for Exs.A8 and A9 to be send with so called available signatures from the banks by securing with the Banks, whereas defendant Nos.2 and 3 sought for to send not only the Exs.A8 and A9 relied on by plaintiff supporting by 1<sup>st</sup> defendant but also Ex.B21 relied upon by them the registered will in which the thumb impressions of Sambhi Reddy are in dispute by plaintiff, for comparison with so called admitted signatures in Exs.X1 and X2.

12. The earlier applications before the trial Court were ended in dismissal as referred supra saying the Court got power to compare and those were filed at the fagend of the trial and almost at the arguments stage after closure of evidence. Whereas the impugned dismissal order in the present revision pursuant to the remand order from the application of defendant Nos.3, 8 & 9 is with observation of the application and the proceedings is without reasons and they failed to assign reasons for not raising objections previously in different courts.

13. Said observations for respective dismissal of all the 3 applications are untenable and unsustainable particularly covered by the impugned order of the revision Court for the reason even during pendency of the trial, plaintiff on one hand and defendant Nos.2 and 3 on the other side maintained two applications in I.A.Nos.55 & 78 of 1998 for sending the so called disputed thumb impressions of late Sambi Reddy covered by Exs.A8, A9 and B21 to compare with other available and admitted signatures of Sambi Reddy. Defendant Nos.2 and 3=3, 8 & 9 relied upon Exs.X1 and X2 and plaintiff relied upon the thumb marks of Sambi Reddy in the applications of F.D.Rs. available with IOB, Vegendla and Corporation Bank, Guntur. Same missed consideration of the trial Court in passing the impugned order covered by the revision is clear from the above to say said dismissal order with contra observation is no way sustains.

14. Before discussing further on facts, coming to law on expert opinion:

14(a). **OPINION EVIDENCE:** A witness in order to give an opinion must be competent (*Peritus*)-i.e., an Expert in the field and

the subject matter must be one in respect of which an opinion is allowed.-**See-Section-45-Evidence Act.**

14(b). Meaning of Opinion-What a person thinks in respect of the existence or non-existence of fact is opinion. Whatever is presented to the senses of a witness and of which he receives direct knowledge without any process of thinking and reasoning is not opinion.

14(c). As a general rule the opinion or belief of third person is not relevant and admissible as the witnesses are allowed to state facts alone of what they themselves saw or heard. However, cases in which the question involved is beyond the range of common experience and knowledge or Court has no special study and necessary experience on the subject and is not in a position to form a correct opinion, in such cases help of an expert in that field is necessary-held in **Sitaram Srigopal vs. Daulati Devi**<sup>1</sup>.

14(d). Hearsay-direct evidence-can be tested by actual cross examination and there is fear of perjury. Hearsay indirect evidence is thus prohibited indirectly or precluded.

14(e). The word “hearsay” is used in various situations. Sometimes it means what a person is heard to say something, sometimes it means whatever a person declared on information given by someone else and sometimes it is hearsay as nearly synonymous with irrelevant. Hearsay is not confined to oral statements but includes what is done or written.

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<sup>1</sup> AIR-1979-SC-1225

14(f). Hearsay evidence is inadmissible unless the Statute provides for it. Expert opinion evidence is no way an exception to it being opinion of a third person inadmissible as a general rule, but for Sections 45-51 Evidence Act. The prerequisite from Section 45 Evidence Act is that the witness must be an Expert in the field.

14(g). Expert—is the person who specifically or specially skilled or practiced on any subject. Expert evidence is thus the direct evidence of an expert in the field from what he perceived by the senses of perception or in any other manner. According to Russell—any person who is skilled or has adequate knowledge in a particular field is called Expert.

14(h). RELEVANT PROVISIONS DEALING WITH OPINION EVIDENCE:

(I) Section 45 of the Evidence Act, speaks that- **for the Court to form an opinion the opinion of an expert is relevant.** This section is thus an exception to the general rule as regards exclusion of opinion evidence.

(II) Section 51 says that whenever the opinion of any **living person** is relevant, **the grounds on which such opinion is based** are also relevant.

(III) Section 46 makes facts, not otherwise relevant, are relevant- (1). If they support or are inconsistent with the opinions of experts, when such opinions are relevant.

(IV) Regarding opinion evidence—the other relevant sections are Sections.47-50, 73 & 67, among which-

(V) Section.50—speaks of relevancy of opinion on relationship—  
for the Court to form an opinion.

(VI) Section.49-speaks of relevancy of opinion on usages and tenets of any body of men or family- for the Court to form an opinion.

(VII) Section.48-speaks of relevancy of opinion on existence of custom or right general or relating to a considerable class of persons- for the Court to form an opinion.

(VIII) Sections-47, 73 & 67 speak on handwriting – opinion evidence and proof.

(IX) Section.67-speaks of requirement of proof of handwriting of person alleged to have signed or written the document in question- for the Court to appreciate the evidence.

(X) Section.47-speaks of relevancy of **opinion of person acquainted with the handwriting of the person**-by whom any document was written or signed-in question-for the Court to form an opinion. The **acquaintance may be from**-he has seen when that person writes or he has received the documents purporting to be written by that person or when in the ordinary course of business the documents purporting to be written by that person have been habitually submitted to him.

(XI) Section.73-deals with Comparision of signature, writing or seal with admitted or proved ones reads that-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.

(XII) **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.***

(XIII) The amended provisions in reference to the above for electronic evidence are covered by Section-47-A-opinion as to digital signature, Section-67-A proof as to digital signatures, Section-73-A proof as to verification of digital signatures which are (not to mention about Sections-65-A,65-B,81-A,85-A,85-B,85-C,88-A,90-A&22-A) relating to electronic records.

(XIV) Sections 45-51 nowhere speak of requirement of corroboration to the opinion evidence. Section 134 Evidence Act-says no particular number of witnesses shall in any case be required for the proof of any fact.

(XV) Thus coming to relevancy and evidentiary value of expert opinion and evidence, the Latin general maxim is that-“**EXPERTO-CREDE**” to mean an Expert is to be generally believed. It is because the testimony of an expert as to general scientific facts and doctrines-which are unintelligible to the lay-men, will serve to elucidate the facts in issue. **However the general rule is that the evidence of an expert has to be tested as any other evidence.** Thus the privilege of drawing inferences including in case of expert opinion evidence is given to the Courts to appreciate with reference to facts and circumstances of the case and from other evidence available on record for overall appreciation to arrive a right conclusion on a fact is proved or not proved or disproved.

(XVI) It is needless to say that it is not essential always to prove facts in dispute by expert opinion evidence where there is other reliable material or the disputed facts are matters of common knowledge, which does not require expertise. That is the reason why Section 73 envisages the situation to form own opinion by Court from its comparison, though not ordinarily to resort to it without aid of opinion, particularly in handwriting or finger prints or foot prints comparison etc.,

(XVII) Thus, where the opinion evidence of an expert is of necessity for the Court to form an opinion in the concerned matter to decide the lis, it can take it in aid and appreciate his evidence from the reasons in support of opinion. This power is in addition to the power of Court under Sections-311-A CrPC amended by Act 25/05 which came into force w.e.f. 23-6-2006 to direct the arrested accused to subscribe his specimen signature or handwriting. It is also in addition to the power of Court under Sections-54 CrPC directing medical examination of the accused brought for remand at that time or later at the request of the accused. This power is also in addition to the power of Medical Officer acting at the request of the police officers under Sections-53-A&54 of the CrPC for examination of the accused or under Sections-164-A of the CrPC for examination of the victim of rape- as per CrPC amended by Act 25/05 which came into force w.e.f. 23-6-2006.

(XVIII) **The cases in which testimony of an expert is admissible are of two types:** 1). When the conclusions to be drawn by the Court depends upon the existence of facts which are not of common knowledge and which are peculiarly with in the special

knowledge of men whose experience and study enables them to speak with authority up on the subjects in question. 2). When the conclusions to be drawn by the Court depends both upon the facts stated as well as the knowledge of the facts themselves not with in the range of ordinary intelligence. **In the first class of cases – the facts are to be stated by the expert and the conclusion is to be drawn by the Court. In the second class of cases – the expert states the facts and give his conclusions in the form of opinion – which may be accepted or rejected by the Court from appreciation of evidence.**

(XIX) **The credibility of the expert witness and his competency to give opinion and the reasons given supporting it are the material aspects in the appreciation of evidence by the Court concerned:**

(i) The test to determine **competency of an expert** is (a). Educational background in the field, (b). Practical knowledge in the field, (c). Careful analysis in arriving to the conclusion opined & (d). Ability to explain the expertise and how he arrived to the conclusion opined.

(ii) The test to determine **credibility of an expert** is (a). Basis of opinion- The opinion must be based on facts and reasons there from to support the conclusion. How far to rely there from is a matter of appreciation in evidence by the Court. The expert furnishes the data with reasons to his opinion there from and the Court decides there from and from other material in evidence if any.

(iii) The correct approach for the Court would be to weigh the reasons on which the expert report is based and the quality of expert's opinion would ultimately depend upon the soundness of the

reasons on which it is founded-held in **Uma kant Bajpayee vs. State of UP**<sup>2</sup>.

(XX) In **Bommidi purnesh vs. Union of India**<sup>3</sup> the A.P. High Court at Page No.348 held that the expert must give evidence based on his opinion and reasons-with opportunity to cross examine by the parties assailing the correctness of the opinion, with out which, mere report or certificate of an expert is of no evidence.

(XXI) In **Mohd. Vs. State of U.P.**<sup>4</sup> the Apex Court held that where the expert had given no reasons in support of his opinion, nor was it shown that he possesses special skill, knowledge and experience in the science of identification of finger prints, it is unsafe to rely on such unreasoned opinion, even it is a developed science and the report is otherwise admissible and relevant-u/s.45 Evidence Act. In **Anwaruddin Vs. Shakoor**<sup>5</sup> at para-10 and also in **Darsan Singh Vs. State of Haryana**<sup>6</sup> it was held that where the expert evidence is obscure and oscillating, it is not proper to discredit eye witness evidence even it is not consistent to the expert evidence.

(XXII) Difference between handwriting and finger prints-comparison and opinion concerned:

(i) In **Bhagvan Kaur vs. MK.Sharma**<sup>7</sup> it was held that the science of handwritings comparison is inconclusive, the evidence of handwriting expert, unlike that of finger prints expert, is generally of a frail character and its fallibilities have been quite often noticed. The Courts should therefore be wary to give too much weight to the

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<sup>2</sup> 1993-All.Cr.R-14

<sup>3</sup> AIR-1967-AP-338

<sup>4</sup> AIR-1976-SC-69

<sup>5</sup> AIR-1990-SC-1243=CRLJ-1269

<sup>6</sup> AIR-1977-SC-364 at 366

<sup>7</sup> AIR-1973-SC-1346

evidence of handwriting expert. Conclusions based upon mere comparison of handwriting be indecisive and yield to positive evidence.

(ii) In **State of Maharastra vs. Sukhdev Singh**<sup>8</sup> it was held that the quality of a handwriting expert's opinion would depend upon the soundness of the reasons on which it is founded. The Court can not afford to overlook the fact that the science of identification of handwritings and comparison is an imperfect and frail one as compared to the science of identification of finger prints and Courts have therefore been wary in placing implicit reliance on the evidence of a handwriting expert without corroboration, though there is no hard and fast rule to insist corroboration for placing reliance on the evidence of a handwriting expert. It is the discretion of the Court depending upon the facts and overall circumstances of each case.

(iii) A writing may be proved to be in the hand writing of a particular individual-from admission of the writer-if it is available no other kind of evidence is necessary-Section-58. If not so, (1) by the evidence of a person acquainted or familiar(not a scientific expert) with the hand writing of that individual-Section-47 or (2) by a testimony of an (a scientific expert) expert competent to do the comparison of disputed with admitted or proved handwritings on scientific basis-Section-45 or (3) by the opinion formed by the Court on comparison made by itself-with writings made in the presence of Court or admitted or proved to be the writings of the person with the disputed writing, for that where an expert's opinion is called for by the Court, the Court must see for itself and with the assistance of the expert, then come to its own conclusion-whether it can safely be held that the two writings are by the same person. This is not to say that

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<sup>8</sup> AIR-1992(SC)CRLJ-3454

the Court must play the role of an expert, but to say that the Court may accept the fact proved only when it had satisfied itself on its own observation that it is safe to accept the opinion either of the expert or other witness.-Section-73. **Fakruddin vs. State of MP**.<sup>9</sup>, **Raanjit vs. State of Maharastra**<sup>10</sup>, **Rahim Khan vs. Kurshid Ahmed**<sup>11</sup>, **Sohanlal vs. Lala Mangilal**<sup>12</sup>, **S.K.Roy vs. M.M.S.A.Matvali**<sup>13</sup>, **R.K.Rao vs. B.S.P.Rao**<sup>14</sup> & **Vadrevu vs. Vadrevu**<sup>15</sup>.

(iv) In **Rama Narayana vs. State of UP**<sup>16</sup>, the opinion evidence of a hand writing expert which is relevant, may be worthy of acceptance if there is internal or external evidence relating to the document in question supporting the view expressed by the expert. If after comparison of the disputed and the admitted or proved writings by the Court itself, it is considered safe to accept the opinion of expert, then the conclusions so arrived at can not be assailed on mere ground that a comparison of handwriting is generally considered as hazardous and inconclusive and the opinion of the handwriting expert has to be received with considerable caution.

(v) In **Murarilal vs. State of MP**<sup>17</sup>, in cases where the reasons for the opinion evidence of a hand writing expert are convincing and there is no other reliable evidence throwing a doubt, the uncorroborated testimony of an handwriting expert may be accepted. There can not be any inflexible rule on a matter, which in the ultimate analysis, is no more than a question of testimonial weight. It is merely a rule of caution and not an absolute rule of law. There is nothing in law to prevent the Court from recording conviction on

<sup>9</sup> AIR-1967-SC-1326=CRLJ-1197

<sup>10</sup> AIR-1965-SC-881=(2)CRLJ-8

<sup>11</sup> AIR-1975-SC-290 at 305

<sup>12</sup> AIR-1981-Allahabad-62

<sup>13</sup> AIR-1936-PC-15

<sup>14</sup> AIR-1962-AP-178 at 186

<sup>15</sup> AIR-1960-AP-359 at 361

<sup>16</sup> AIR-1973-SC-2200=CRLJ-1187=(2)SCC-86

<sup>17</sup> AIR-1980-SC-531 at 535

expert's evidence alone. The value of the expert evidence, however, varies with the circumstances of each case and the reasons given by him in support of his opinion. Its value is to be judged with the same yard stick with which the evidence of any other witness is appraised. It is to be seen how far it fits in to the surrounding circumstances and the natural probabilities of the case.

(vi) In **Jaspal Singh vs. State of Punjab**<sup>18</sup> it was held that the science of identifying thumb impressions is an exact science and does not admit of any mistake or doubts and also in **Th.Thevar vs. State**<sup>19</sup>.

(vii) In **Mahmood vs. State of UP**<sup>20</sup> it was held that where the finger prints of the accused were found on the handle of the gandasa which was found lying near the dead body at the scene of occurrence, even if it is proved that the handle of gandasa bore the finger prints of the accused from the expert opinion evidence found reliable, it would not be suffice to say **unmistakably** that he killed the deceased.

(viii) In **Mohanlal vs. Ajit Singh**<sup>21</sup> it was held that where the finger prints found are smudged, it is for the expert to say whether similarity on 8 or even less identical characteristics can be established.

(ix) In **Chandran vs. State**<sup>22</sup> regarding finger prints endure over period of time up on touched surface, the atmospheric conditions and the nature of surface where the prints adhere are of high importance. Finger prints will usually remain viscid for several days when left upon glass, steel or other smooth and non-porous surfaces.

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<sup>18</sup> AIR-1979-SC-1979=CRLJ-1386

<sup>19</sup> 1985-MLJ-(CRL)384 at 389

<sup>20</sup> AIR-1976-SC-69=(1)SCC-542

<sup>21</sup> AIR-1978-SC-1183=CRLJ-1107=(3)SCC-279

<sup>22</sup> 1987(1)KLT-391 at 397(Kerala)

(x) In **Mandrup vs. State**<sup>23</sup> & **State of MP vs. Sitaram**<sup>24</sup> it was held that comparison of ridge characteristics above six generally sufficient for identification of the finger prints.

(xi) In **Emperor vs. Virammal**<sup>25</sup>, **Harendranath Sen. vs. Emperor**<sup>26</sup> & **Fakir vs. Emperor**<sup>27</sup> it was held that it is going too far to say that Courts must insist corroboration to the expert opinion evidence on finger and thumb impressions, but for saying the Courts have to evaluate on the evidence and come to its conclusions in appreciation instead of acting on the opinions by taking it for granted. Conviction can even be based on it with out corroboration where it point outs that the marks of the accused and at the scene of offence are tallied and expert where says that it is impossible to tally many characteristics of any two different persons marks when taken and compared.

(xii) In **Pathumma vs. Veersha**<sup>28</sup> it was held that finger prints offer most positive means of identification as that never changes from cradle to grave and for that matter even plastic surgery cannot change the arches and whorls that graced the fingers and thumbs at birth.

(xiii) In **Gade Lakshmi Mangaraju @ Ramesh vs. State of AP**<sup>29</sup> it was held at paras 19-21 that presence of fingerprints at the scene of offence is positive evidence. Out of two accused fingerprints of one found at the scene of offence are tallied on comparison and such evidence showing his presence at the scene of offence when he did not dispute, the other accused cannot dispute that evidence.

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<sup>23</sup> 1975-CRLJ-1277

<sup>24</sup> 1975-MPLJ-197

<sup>25</sup> AIR-1923-Madras-178

<sup>26</sup> AIR-1931-Calcutta-440 at 442

<sup>27</sup> AIR-1936-Bombay-151

<sup>28</sup> 1988-KLT-798

<sup>29</sup> AIR-2001-SC-2677

(XXIII) Coming to contemporary relevancy, the full Bench of this Court in **Bande Siva Shankara Srinivasa Prasad Vs. Ravi Surya Prakash Babu (died) per L.Rs. and Others**<sup>30</sup>, in answering a reference on the question of requisites to seek expert opinion by Court mainly on contemporary relevancy of the admitted or available signatures with disputed signature which are available and if not from any long gap how to consider if not contemporary relevancy is pre-requisite to direct comparison by expert and to give opinion. The same is answered saying Court has discretion to seek or not to seek expert opinion depending upon on individual facts and circumstances and it no where a bar in sending the disputed handwriting or signature for comparison to expert merely because there is time gap between the admitted and disputed handwriting or signature even its long gap, however, desirable of gap up to 3 years for the Court impress upon the parties to secure if possible though there is no hard and fast rule about this aspect therefrom as to capable of comparison or not that too expert opinion is advisable in nature to appreciate like in other evidence and in this regard the Division Bench of this Court already held in **Janachaitanya Housing Limited Vs. Divya Financiers**<sup>31</sup> and there is conflict of opinion with the same very earlier expression of a single Judge expression in **Annapurnamma Vs. B.Sankara Rao**<sup>32</sup> for the ratio the 2 judgments operate in different fields and did not impugn upon each other.

15. In this regard it is also necessary to mention that, Court though got power to compare under Section 73 of the Evidence Act, a handwriting that equally apply to thumb impression from its

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<sup>30</sup> 2016 (2) ALT 248 (FB)

<sup>31</sup> 2008 (3) ALT 409 (DB)

<sup>32</sup> AIR 1960 AP 359

wording, Court is not an expert. The Apex Court in **State Vs. Pali Ram**<sup>33</sup>, categorically held that the Courts when not experts cannot take the ordeal for comparing the handwriting or signatures or thumb impressions without any expert opinion to its aid. This Court feels it apt to reproduce Para 30 of the above expression as follows:

“Although there is no legal bar to the Judge using his own eyes to compare the disputed writing with the admitted writing, even without the aid of the evidence of any handwriting expert, the Judge should, as a matter of prudence and caution, hesitate to base his finding with regard to the identity of a handwriting which forms the sheet anchor of the prosecution case against a person accused of an offence, solely on comparison made by himself. It is, therefore, not advisable that a Judge should take upon himself the task of comparing the admitted writing with the disputed one to find out whether the two agree with each other; and the prudent course is to obtain the opinion and assistance of an expert.”

16. In fact in the earlier expression of the Apex Court in **Fakhruddin Vs. State of M.P.**<sup>34</sup>, the Apex Court observed that both under Section 45 and Section 47 the evidence is an opinion evidence. In the former by a scientific comparison and in the latter on the basis of familiarity, resulting from frequent observations and experience. In either case the Court must satisfy itself by such means as are open that the opinion may be acted upon. One such means open to the court is to apply its own observation to the admitted or proved writings and to compare them with the disputed one, not to become an handwriting expert but to verify the premises of the expert in the one case and to appraise the value of the opinion in the other case.

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<sup>33</sup> (1979) 2 SCC 158

<sup>34</sup> AIR 1967 SC 1326

17. On the relevancy and evidentiary value of expert opinion under Section 45 of the Evidence Act, the Apex Court in **Murali Lal Vs. State of M.P.**<sup>35</sup>, observed that:

“Expert testimony is made relevant by section 45 of the Evidence Act and where the Court has to form an opinion upon a point as to identity of handwriting, the opinion of a person "specially skilled" "in questions as to identity of handwriting" is expressly made a relevant fact. There is nothing in the Evidence Act, as for example like illustration (b) to Section 114 which entitles the Court to presume that an accomplice is unworthy of credit, unless he is corroborated in material particulars, which justifies the court in assuming that a handwriting expert's opinion is unworthy of credit unless corroborated. The Evidence Act itself (Section 3) tells us that "a fact is said to be proved when, after considering the matters before it, the Court either believes it to exist or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists". It is necessary to occasionally remind ourselves of this interpretation clause in the Evidence Act lest we set an artificial standard of proof not warranted by the provisions of the Act. Further, under Section 114 of the Evidence Act, the court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct, and public and private business, in their relation to facts of the particular case. It is also to be noticed that Section 46 of the Evidence Act makes facts, not otherwise relevant, relevant if they support or are inconsistent with the opinions of experts, when such opinions are relevant. So corroboration may not invariably be insisted upon before acting on the opinion of an handwriting expert and there need be no initial suspicion. But, on the facts of a particular case, a court may require corroboration of a varying degree. There can be no hard and last rule, but nothing will justify the rejection of the opinion of an expert supported by unchallenged reasons on the sole ground that it is not corroborated. The approach of a court while dealing with the opinion of a handwriting expert should be to proceed cautiously, probe the reasons for the opinion, consider all other relevant evidence and decide finally to accept or reject it.”

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<sup>35</sup> (1980) 1 SCC 704

18. In **Neelalohithadasan Nadar Vs. George Mascrene**<sup>36</sup>, the Apex Court held that under the Evidence Act two direct methods of proving the handwriting of a person are: (a) by an admission of a person who wrote it; (b) by the evidence of some witness who saw it being written by that person. Apart from these, there are some other methods of proving the handwriting by opinion. They are by the evidence of a handwriting expert (Section 45); by the evidence of a witness acquainted with the handwriting of the person who is said to have written the disputed writing (Section 47) and opinion formed by the Court itself on comparison made of the disputed writings with the admitted or specimen writings (Section 73).

19. No doubt from the above, for the handwriting expert's opinion there is no rule of requirement of corroboration nor any rule of same can be acted solely as basis but to decide with reference to it for its circumstances and other evidence. Opinion of handwriting expert mainly to be supported by reasons contemplated under Section 51 of the Evidence Act. It is needless to say once there is other reliable evidence of the attester or other direct witness to the transaction covered by the document, the handwriting or signature if in dispute to prove, if it is credible, handwriting expert's opinion running contra to it cannot be a basis to disbelieve other cogent evidence. Thus each case depends upon own facts and from the nature of evidence available on record for appreciation by the Court of prudence and commonsense, with experience of men and matters.

20. Having regard to the above propositions settling the law, coming back to the facts which no way require repetition of plaintiff also sought for comparison of Exs.A8 and A9 so called thumb

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<sup>36</sup> 1994 Supp. (2) SCC 619

impressions of Sambi Reddy and defendants sought for comparison of Ex.B21 leave about 1<sup>st</sup> defendant W/o. late Sambi Reddy in the succession O.P. counter stated about another will not filed it at all to consider the thumb impression or signature therein also for seeking comparison and what the defendants sought for comparison for Exs.X1 and X2 in dispute by plaintiff saying those are not genuine thumb impressions and what plaintiff asks to compare to secure from the bank thumb impressions on the applications of F.D.Rs. in IOB, Vegendla and Corporation Bank, Guntur, leave about those are all with time gap and not of contemporary relevancy. Here it is not the signature but thumb impressions and thumb impressions contain ridge marks for comparison which is almost an exact science and contemporary relevancy may not have that criteria like for handwriting or signatures. Thus it just to sub serve the requirement of comparison of the disputed thumb impressions of both sides respectively in Exs.A8, A9 and B21, however not only with Exs.X1 and X2 but also by securing the thumb impressions available in the applications and FDRS in the Banks, further if necessary by securing any registered original document containing the thumb impressions of executant with the Registrar also and from hearing of parties if able to produce other available thumb impressions of deceased Sambi Reddy and then send to the expert for comparison and opinion individually for each of the 3 documents Exs.A8, A9 and B21 with reference to Exs.X1 and X2 and with reference to the thumb impressions available if any with IOB and Corporation Bank.

21. Accordingly and in the result, the revision petition is allowed and the impugned dismissal order of the lower Court is set aside and the petition in I.A.No.1642 of 2015 is restored to the file of

the trial Court with a direction to the trial Court to send the Exs.A8, A9 and B21 not only with Exs.X1 and X2 but also by securing from the IOB and Corporation Bank the other thumb impressions stated that of Sambi Reddy contained in the applications and FDRs and also to secure from submission of information by any of the parties other available thumb impressions, therefrom to send all those to the Government examiner of fingerprints at the expense of defendant Nos.3, 8 and 9 for comparison and to give opinion with reasons individually with reference to Exs.X1 and X2 and individually with reference to the documents to be called from the Banks and other material to be furnished containing the thumb impressions and combinedly with reference to all and with reasons to the opinions. For said purpose, the trial Court shall direct after receipt of this order, the defendant Nos.3, 8 and 9 to deposit Rs.10,000/- initially within one week from date of receipt of its order and to furnish information by both sides regarding other available thumb impressions if any and also those from the Banks the trial Court to call for as stated supra and those all to send to the Government Fingerprint expert for examination and opinion as indicated supra.

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

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**JUSTICE Dr. B.SIVA SANKARA RAO**

Date: 30.12.2016  
Note: L.R. Copy to be marked  
(B/o)  
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