

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION No. 4628 OF 2016

ORDER:

In view of the order that is proposed to be passed now, putting the respondents on notice is dispensed with.

This Civil Revision Petition is directed against the order dated 24.08.2016 in I.A.No. 94 of 2015 in O.S.No. 47 of 2007 on the file of the Court of the Senior Civil Judge, Kavali.

Petitioner herein is the plaintiff, who filed the above-said suit for specific performance of agreement of sale dated 11.01.1992. The 2nd defendant in the suit, the 1st respondent herein, had taken out I.A. No. 94 of 2015 under Section 45 of the Indian Evidence Act to send the disputed agreement of sale dated 11.01.1992 and the original cist receipt dated 02.07.1998 to the hand writing expert for comparing with the admitted signatures. That I.A. was allowed by the order dated 16.09.2015, as against which, C.R.P. No. 85 of 2016 was filed by the petitioner herein. The said C.R.P. was allowed holding that the order impugned therein is not a speaking order and hence, it is not sustainable. Accordingly, the matter was remitted to the Court below for consideration afresh after taking into account the submissions on merits and the objections, if any in accordance with law. By the order impugned, the I.A. was allowed. Hence, this Revision.

Learned counsel for the petitioner submits that the 1st respondent had already, on his own accord, obtained an expert opinion and also examined the said expert as D.W.8 and in that view of the matter, sending the said documents, once again, for

expert opinion is impermissible and hence, the Court below ought not to have allowed the I.A. According to the learned counsel, the order impugned is hit by the principles of *res judicata*.

Heard learned counsel for the 1st respondent.

Perused the material available on record. In the order under Revision, the learned Senior Civil Judge has clearly observed that on earlier occasion, the 1st respondent herein had obtained the opinion based on the xerox copies of the documents and since the petitioner disputes the same, in order to avoid further complications and to come to a just conclusion, it would be expedient to allow the I.A. Hence, the contention of the learned counsel for the petitioner that the impugned order is hit by the principles of *res judicata*, cannot be accepted. Here, it is to be noted that the suit is for specific performance of an agreement of sale in which the crucial aspect, which is required to be decided is the genuineness or otherwise of the document on which the suit is based. Inasmuch as sending the document for expert opinion would aid in deciding the real controversy in the suit, the order under revision cannot be found fault with, hence, this Court is not inclined to interfere with the same.

The learned counsel for the petitioner, at this stage, submits that on earlier occasion, the expert opinion was obtained by the respondent from Truth Labs, which was a private agency, therefore, to avoid any controversy in future, a direction may be issued to the learned Senior Civil Judge to send the disputed documents to the State Forensic Science Laboratory. The said request remained unopposed. Since the petitioner in the I.A.

himself had prayed for sending the documents to the hand writing expert, FSL or any other expert of Truth Labs or of the choice of the Court, the order under I.A. stands modified to the extent of sending the documents to the Forensic Science Laboratory for comparison.

With this, the Civil Revision Petition stands disposed of. No costs.

Consequently, the miscellaneous applications, if any shall also stand disposed of.

30th September 2016

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CHALLA KODANDA RAM, J

