

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

- **Civil Revision Petition no.5719 of 2011** -

ORDER:

- This Civil Revision Petition under Article 227 of the Constitution of India by the unsuccessful 1st defendant is directed against the orders dated 27.10.2011 of the learned I Additional Senior Civil Judge, Guntur passed in IA.No.40 of 2011 in OS.No.449 of 2001 filed for summoning a Register from the Sub-Registrar's Office, Guntur, which is stated to be containing the signature of the executant of the Gift Deed bearing document no.6965/2010 dated 13.08.2001 executed in favour of Nandipati Syamala.

2. I have heard the submissions of the learned counsel for the revision petitioner/1st defendant ('the 1st defendant', for short) and the learned counsel for the respondent/plaintiff ('the plaintiff', for short). I have perused the material record.

3. The facts, which are stated at the hearing and which are necessary for consideration, in brief, are as follows:

The plaintiff brought a suit against the defendants including the 1st defendant for recovery of money. The 1st defendant is resisting the suit. The 1st defendant had already filed IA.No.159 of 2009 under Section 45 of the Indian Evidence Act requesting the Court to send the document containing the disputed signature and other documents containing admitted signatures to an expert for comparison and furnishing an opinion as to the genuineness or otherwise of the disputed signature on the suit document. The trial court by orders dated 06.08.2009 had already allowed the said petition. The operative portion of the said order reads as follows:

'Perused the affidavit filed in support of the petition and the learned counsel for the respondents reported no objection. For the reason stated in the petition the petition is allowed by ordering

transmission of Ex.A1 pronote to the hand writing expert for comparison along with the admitted signatures of late Apparao for the relevant period on deposit of expert fee Rs.5000/- which is tentatively.'

[Reproduced verbatim]

Since a document, which contains the signature which is admitted, is also to be sent to the expert for comparison with the disputed signature, the 1st defendant had filed the instant application for summoning the aforementioned Register from the above said Sub-Registrar's office to facilitate sending of the said Register to the expert as it contains the admitted signature. However, that petition was resisted by the plaintiff *inter alia* contending that the disputed signature on the suit document was made in the year 1999 whereas the admitted signature in the register, which was sought to be summoned is of the year 2001 and that both the signatures are not of a contemporaneous period and, therefore, are not of comparable standard and hence, the petition is liable to be dismissed. Accepting the said contention, the trial Court had dismissed the application of the 1st defendant. Therefore, the 1st defendant is before this Court.

4. The learned counsel for the 1st defendant would contend that the distance of time between the two signatures is not a huge and that an expert can always find out variations, which occur in signatures due to lapse of time and that such natural variations do not come in the way of an expert arriving at a correct opinion and that to enable the expert to compare the disputed signature with the admitted signature, it is absolutely necessary to summon the Register from the Sub-Registrar's office, which contains the admitted signature and that the summoning of the Public Register is highly necessary as such a signature contained in such a Public Register is not only indisputable but also authentic. He, therefore, finally urged that the trial Court committed a grave error in dismissing the application.

5. The learned counsel for the plaintiff while supporting the orders of the trial Court would submit that that unless the signatures are of a contemporaneous period no useful purpose would be served and that since

the signatures are made at different times on the two documents containing the two signatures, the signature in the Register is not of comparable standard.

6. In the decision in **Chenga Chinaa Reddaiah vs. Shaik Khalander**^[1] this Court, while dealing with a similar factual aspect and question, held as under:

Comparison of signatures, by an expert, is provided for under the Indian Evidence Act, and the procedural part of it is taken care of, by under Order 26 of C.P.C., in so far as it relates to civil matters. It is no doubt true, that comparison is a complex process, and the exercise would become perfect, in case the comparison is of signatures of contemporaneous period. However, it is very difficult to expect the contemporaneous signatures, to exist. Whatever be the possibility of securing such signatures of persons, involved in business, it is difficult to expect from those, who do not undertake day-to-day business. A given expert may express his inability to undertake comparison, in the absence of the signatures of the corresponding time, of the disputed document. However, if one possesses capability, to express the opinion, by undertaking comparison of the disputed and undisputed signatures, though separated by time, such as, by interpreting the slant, curves etc., in the writing of a concerned person, an opinion can certainly be rendered. At any rate, the opinion expressed by a handwriting expert is not the final word, on the issue. The parties can put forward their own objections for the conclusions arrived at by the expert, and the Trial Court itself can examine it, to satisfy itself about the accuracy of the opinion. The burden squarely rests upon the persons, relying upon such document, to prove the execution thereof, through the other oral and documentary evidence.

The above observations aptly suit the facts of the case on hand as the executant of the document had expired and is not available to furnish his signatures to the Court.

7. I have bestowed my attention to the facts and the submissions. The learned counsel for the 1st defendant fairly submits that the Gift deed dated 13.08.2001, which contains the admitted signature of the deceased is a registered gift deed and that it is in the custody of a mortgagee since the document was deposited with the mortgagee while obtaining a loan. He would also fairly submit that the 1st defendant can take steps for summoning the said document from the mortgagee instead of summoning the Register from the sub-registrar's office as the summoning of the original gift deed,

which contains the admitted signature, would also serve the required purpose.

8. Having regard to the facts and the submissions, this Court is of the considered view that the revision petition can be disposed of giving appropriate directions.

9. In the result the Civil Revision Petition is disposed of confirming the orders of the Court below, making it clear that the 1st defendant is at liberty to file a fresh application before the trial Court for summoning the mortgagee or any other person having custody of the original gift deed dated 13.08.2001 to produce the same before the trial Court for the purpose of sending the said document, along with other documents, if any, containing the admitted signatures of the deceased, to the expert for comparison with the disputed signature on the suit document, since IA.No.159 of 2009, as already noted, was allowed by now by the trial Court. It is needless to state that the trial Court is also at liberty to also send to the expert any other documents of a contemporaneous period, which contain the admitted or undisputed signatures of the deceased. There shall be no order as to costs.

Miscellaneous petitions pending, if any, in this CRP shall stand closed.

M. SEETHARAMA MURTI, J

15.02.2016
Vjl

[\[1\]](#) 2009 (2) ALD 510