

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION No. 13 OF 2016

ORDER:

This Civil Revision Petition under Article 227 of the Constitution of India by the unsuccessful petitioners/plaintiffs 1, 2 and 4 is directed against the orders dated 29.12.2015 of the learned Senior Civil Judge, Siddipet of Medak District passed in I.A.No.601 of 2015 in O.S.No.15 of 2010 filed under Rule 129 of the Civil Rules of Practice read with Order XVI Rule 6 and Section 151 of the Code of Civil Procedure, 1908 requesting to direct the Sub-Registrar (Urban), Siddipet, to produce original thumb impression register pertaining to the original registered sale deed dated 20.12.1967 bearing No.1009 of 1967 executed by Vadithala Srinivasa Rao, S/o.Narsing Rao, resident of Bandaram Village in favour of Almadi Papi Reddy S/o.Ram Reddy resident of Bandaram Village in respect of House No.3-39, in an extent of 450 square yards situated at Bandaram Village, for comparison of the signature in the said Register of the said V.Srinivasa Rao, who is the executant of the said registered sale deed, with the signatures on exhibit.A5, which are being disputed.

2. I have heard the submissions of the learned counsel for the petitioners/plaintiffs 1, 2 and 4 ("the petitioners", for brevity) and that of the learned counsel for the first respondent/defendant ("first respondent", for brevity). The second respondent/third plaintiff is stated to be not necessary party.

3. I have perused the material record.

4. The case of the petitioners, as stated by the 1st petitioner

in the affidavit filed in support of the aforementioned request in brief is this:

The plaintiffs brought the suit against the first respondent for declaration of title and recovery of possession of the suit lands and mesne profits and also for rectification of entries in the Records of Rights in respect of the suit lands. The defendant/first respondent is resisting the suit. During the course of trial, after the evidence on the side of the plaintiffs is closed, DWs.1 to 5 were examined on the side of the first respondent/defendant. Even before the first respondent adduced evidence, the plaintiffs filed a Memo before the trial court on 27.08.2014 reserving right to adduce rebuttal evidence after the evidence on the side of the first respondent/defendant is adduced.

The first respondent created a false unregistered agreement of sale dated 25.11.1973; and, a certified copy of the same was marked as exhibit A5. The first respondent/defendant has been alleging that the said exhibit A5-agreement of sale was executed by the father of the plaintiffs i.e., Srinivasa Rao in respect of suit land in favour of the first respondent/defendant. The said agreement of sale is forged and is not signed by the father of the plaintiffs-Srinivasa Rao. The

plaintiffs/petitioners filed certified copy of the sale deed dated 20.12.1967 and it is marked as exhibit A6. The said sale deed of the year 1967 was executed by the father of the plaintiffs. However, since exhibit A6 is a certified copy, the signature of the executant-Srinivasa Rao is not available on it. Therefore, it is necessary to summon from the office of the Sub-Registrar (Urban) Siddipet, the original thumb impression register pertaining to the above said sale deed as in that register the signature and the thumb impression of the executant were taken at the time of

registration of the document. The summoning of the said register containing the signature of the plaintiffs' father, Srinivsa Rao, is necessary for comparison of the signature thereon with the disputed signature on exhibit A5 agreement of sale alleged to have been executed by the plaintiffs' father Srinivasa Rao. The comparison of the signatures on the said register and the disputed agreement of sale is necessary for better adjudication of the issues involved in the suit.

5. The case of the first respondent/defendant, as stated in the affidavit of the power of attorney holder, is as follows:

The power of attorney holder of the first respondent/defendant is her son. The petition to summon a thumb impression register is not maintainable as the first respondent/defendant is seriously disputing the genuineness of the signature of Srinivasa Rao in the thumb impression register. The alleged registered document and the thumb impression register pertain to the year 1967 whereas the original agreement of sale executed by the said Srinivasa Rao in favour of the first respondent/defendant is of the year 1973. The signatures on the Thumb impression register and sale agreement are not of contemporaneous period. The signature in the thumb impression register of the year 1967 cannot be taken as a standard for comparison with the signature in the agreement of sale of the year 1973. In a suit for declaration of title and recovery of possession, the plaintiffs must establish that they are in possession within the statutory period prior to the institution of the suit. The plaintiffs, instead of establishing their pleaded case, had filed this petition only to prejudice the mind of the trial court. The petition may be dismissed.

6. At the hearing before the trial court no documents were exhibited on either side.

7. By the order impugned in this revision, the trial court had dismissed the petition on the grounds of delay and laches on the part of the petitioners/plaintiffs and on the ground that there is no explanation as to how a signature of the father of the plaintiffs in a register of the year 1967 would be of comparable standard for comparing with his signature on a document of the year 1973 and that the two signatures are of too distant years and are not of contemporaneous period and that the plaintiffs did not show that they made efforts *prima facie* to produce the original document of the year 1967.

8. Aggrieved of the said orders, the present revision is filed by the petitioners.

9. The learned counsel for the petitioners/plaintiffs while reiterating their pleaded case would contend as follows:

“The order of the trial court is erroneous. The trial court ought to have seen that the petitioners were permitted to mark the certified copy of the sale deed as the original sale deed is not available and could not be produced. An application to summon a document cannot be dismissed merely on the ground of delay and laches. The document required for comparison need not be of a contemporaneous period, as per settled law. In support of the said contentions, he had placed reliance on a Full Bench decision of this Court in ***Bande Siva Shankara Srinivasa Prasad v. Ravi Surya Prakash Babu (died) per L.Rs^[1]*** .

10. Per contra, the learned counsel for the first respondent/defendant while reiterating his defence, which is already stated supra, and while supporting the orders of the court below, would contend as follows:

As rightly held by the trial court, the petitioners could not explain the reasons for non-production of the original document i.e., sale deed of the year 1967. The signature, if any, of Srinivasa Rao in the thumb impression register of the year 1967 is not of comparable standard as it is not of a contemporaneous period and as there is lot of time gap between 1967 and 1973. The petitioners without proving their title as required under law are unnecessarily trying to disprove the agreement of sale being relied upon by the first respondent/defendant and are intending to show that it is forged. They are intending to do so only to prejudice the mind of the trial court. The petition is filed only to drag on the matter after realizing that the plaintiffs have no chance of success in the suit.

11. I have bestowed my attention to the facts. I have given earnest consideration to the submissions.

12. In a suit for declaration of title and recovery of possession in respect of a valuable immovable property/lands, the plaintiffs having adduced evidence on their side, filed a Memo before the trial court reserving right to adduce rebuttal evidence. The defendant/

first respondent examined himself and his supporting witnesses and his side evidence is closed. One of his defence is that the plaintiffs' father-Srinivasa Rao executed an agreement of sale dated 25.11.1973 in respect of the suit land in his favour. A copy of the said agreement is marked as exhibit A5. He is also

contending that since 1960 neither the plaintiffs' father nor were the plaintiffs in possession of the suit property and that the defendant/first respondent and another are the owners and possessors and that they had perfected their title to the suit property by adverse possession by being in possession for over the statutory period. In the said circumstances, the plaintiffs, who are contending that the agreement of sale the copy of which is marked as exhibit A5 is forged and that the said original agreement is not signed by their father, had filed the instant application to summon the thumb impression register from the Office of the Sub-Registrar concerned, which contains the signature of their father Srinivasa Rao for the purpose of comparison of the signature thereon with the disputed signature on exhibit A5 being relied upon by the defendant/first respondent to establish their case that the alleged original agreement is forged.

13. The only defence is that the plaintiffs have to prove their title as required under law as well as possession within the statutory period prior to the suit and that the signature on the thumb impression register of the year 1967 which allegedly contains the signature of Srinivasa Rao is not of a contemporaneous period and therefore the signature in the said register is not of comparable standard.

14. Be that as it may, in **Bande Siva Shankara Srinivasa Prasad's** case (supra), a Full Bench of this Court held as follows:

"It is essentially within the judicious discretion of the Court, depending on the individual facts and circumstances of the case before it, to seek or not to seek expert opinion as to the comparison of the disputed handwriting/signature with the admitted handwriting/signature under Section 45 of the Indian Evidence Act, 1872. The Court is however not barred from sending the disputed handwriting/signature for comparison to an expert merely because the time gap between the admitted handwritings/signature and the disputed handwriting/signature is long. The Court must however endeavour to impress upon the petitioning party that comparison of disputed handwritings/signatures

with admitted handwritings/signatures with admitted handwritings/signatures, separated by a time lag of 2 to 3 years, would be desirable so as to facilitate expert comparison in accordance with satisfactory standards. That being said, there can be no hard and fast rule about this aspect and it would ultimately be for the expert concerned to voice his conclusion as to whether the disputed handwriting/signature and the admitted handwriting/signature are capable of comparison for a viable expert opinion. The view expressed by the Division Bench in *Janachaitanya Housing Limited v. Divya Financiers* [(2008)3 ALT 409 (D.B)], as to the stage of the proceedings when an application can be moved by a party under Section 45 of the Indian Evidence Act, 1872, continues to hold the field and there is no necessity for this Full Bench to address that issue.”

14.1 In **Janachaitanya Housing Ltd. case** (which is referred to supra in the Full Bench decision of this Court), a Division Bench of this Court, while answering a reference, had held as under:

“No time could be fixed for filing applications under Section 45 of the Indian Evidence Act for sending the disputed signature or writings to the handwriting expert for comparison and opinion and same shall be left open to the discretion of the court; for exercising such discretion when exigencies so demand, depending upon the facts and circumstances of the each case.”

15. In view of the ratio in the decisions of this Court, the trial court is not barred from sending the disputed signatures for comparison to an expert merely because the time gap between the documents containing the standard signature and disputed signature is long. Though the present application is not one filed under Section 45 of the Indian Evidence Act, 1872, what is to be noted is that the matter is essentially within the judicious discretion of the trial court depending upon the facts and circumstances of the case before it. Unless the thumb impression register is summoned, it will not be known as to whether the signature of Srinivasa Rao thereon is at variance with his disputed signature on exhibit A5-agreement. Whether the trial court would itself compare the signatures or would permit the petitioners/plaintiffs to seek an opinion of an expert is not germane for consideration at this stage. If the thumb impression register is

summoned from the Sub-Registrar's Office concerned, the signature of Srinivasa Rao that may be available on the said Register would be one more assured piece of evidence before the trial court apart from the oral and documentary evidence that is already brought on record.

16. Viewed thus, this Court finds that there is merit in the request of the petitioners/plaintiffs to send for or summon the thumb impression register from the Office of the Sub-Registrar (Urban), Siddipet, in the facts and circumstances of the case, and that the order of the court below warrants interference.

17. Accordingly, the Civil Revision Petition is allowed and the impugned order is set aside. As a sequel, the I.A.No.601 of 2015 in O.SNo.15 of 2010 on the file of the trial court is allowed. There shall be no order as to costs.

As a sequel, the miscellaneous applications pending, if any, in this revision shall stand closed.

JUSTICE M.SEETHARAMA MURTI

June 30, 2016
LMV

[\[1\]](#) 2016(2) ALT 248 (F.B.)