

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Civil Revision Petition Nos.5297, 5303 and 5308 of 2015

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COMMON ORDER:

The self-same 5 petitioners in each of the three revisions are the defendants in O.S.No.194 of 2006 filed by sole plaintiff on the file of the learned Senior Civil Judge, Kadapa preferred these revisions impugning the dismissal order dated 02.11.2015 in I.A.No.1906 of 2015 (C.R.P.No.5297 of 2015), I.A.No.1904 of 2015 (C.R.P.No.5303 of 2015) and I.A.No.1905 of 2015(C.R.P.No.5308 of 2015) in the above suit filed to reopening the matter.

2. The petitioners in all the revisions hereinafter are referred to as defendants for sake of convenience.

3. The I.A.No.1906 of 2015 is filed by the defendants U/O.VIII rule 1(3) of C.P.C. seeking to receive the documents viz; registration copy of the assignment deeds 5 in number Doc.Nos.8620 of 1981 dt.04.11.1981, Doc.No.5335 of 1982 dated 05.08.1982, Doc.No.5336 of 1982 dated 05.08.1982,Doc.No.5340 of 1982,dated 05.08.1982 and Doc.No.5951 of 1982 dated 07.09.1982 by granting leave to prove their case. On hearing both sides, the trial Court held that the specific case of the respondent/plaintiff is that the D.1(died by D.3 to D.5) and his father had created Ex.B.2 sale deed, dated 17.06.1985 by forging her signature as if she executed and the same is sent to Expert for comparison with the admitted signatures and opinion but the documents sought for receiving are not relevant to the present case as they belong to third parties to the suit but not executed by the plaintiff in favour of D.1 and dismissed the petition.

4. The I.A.No.1905 of 2015 is filed by the defendants U/O.XVI Rule 5 of C.P.C. seeking to summon the Sub Registrar, Kadapa to cause production of documents cited in the petition which contain thumb impression in the ends of justice. After hearing both sides, the

trial Court both parties adduced their evidence on their behalf and the matter is posted for arguments and while the matter stood thus, the present petition is filed. The Ex.B.2 sale deed dated 17.06.1985 on the petition filed by the plaintiff in I.A.No.281 of 2008 was sent to the handwriting Expert for comparison and opinion the disputed signatures with the admitted signature and opinion and the opinion is received and marked as X.1. Further held that the D.1 admitted in his cross-examination that Ex.B.2 sale deed Dt.17.06.1985 does not contain the thumb impression of plaintiff which shows the said document is crucial but the documents sought for receiving are not relevant to the present case, hence the Court was not inclined to summon the Sub Registrar, Kadpaa to cause production of documents cited above and dismissed the petition.

5. The I.A.No.1904 of 2015 is filed by the defendants U/Sec.151 CPC seeking to re-open the matter. On hearing both sides, the trial Court held that in view of the dismissal of the petitions in I.A.Nos.1905 and 1906 of 2015 are dismissed, the question of reopening the matter does not arise and dismissed the petition.

6. The three revisions supra are filed by impugning the above three dismissal orders supra by the defendants with the common contentions in the grounds of revision that the Court below failed to appreciate the fact that all the documents now sought to be filed are registered assignment deeds executed by P.W.2 and ought to have allowed the said petition in the light of admission made by the P.W.2 in his evidence that he has executed assignment deeds in the capacity of President, House Building Society, Kadapa, that the trial Court having observed that both the parties to the suit adduced evidence and matter is posted for arguments, it ought to have seen in similar situation after filing written arguments on behalf of plaintiff the matter was reopened and sent the document for an expert opinion, but when an application was made by defendants seeking in furtherance of such order passed

by trial Court, it erred in holding that it cannot be re-opened for the sake of revision petitioners, that the trial Court failed to appreciate the respective applications made by the defendants are necessitated due to passing of an order by the Court after closure of the evidence as such it cannot find fault with the revision petitioners, it ought to have seen it is settled principle of law, the orders passed by the Court cannot prejudice to the interest of either party, hence to set aside the respective orders by allowing the respective revisions.

7. Heard both sides and perused the material on record.

8. The factual matrix is that the plaintiff is by name Smt.M.Vsanta W/o Venkat Subba Reddy and the defendants who are originally two in number but on death of 1st defendant by name N.Naraiah Naidu his legal representatives D.3 to 5 are brought on record) and 2nd defendant by name C.P.Sreerama Prasad. Said D.3 to 5-legal representatives of D.1 are his wife, daughter and son by names Nettem Indira Naidu, Ravi Sasikala and Nettem Ajay Kumar respectively. The suit filed was for the relief of declaration of plaintiff's right and title over the plaint schedule property consisting of Ac.3-00 cents in Sy.No.617-2 of Mamillapalle village fields, Kadapa Municipal Corporation limits within the boundaries described of East, North: Rastha, West: land belongs to Kumar South: railway poramboke, for consequential permanent injunction restraining the defendants and their men from interfering with the plaintiff's possession and enjoyment of the plaint schedule property supra with costs and such other reliefs.

9. The plaint averments in nutshell are that one Shaik Mohiddin Saheb S/o Shaik Momen Fakruddin of Kadapa town was absolute owner of the plaint schedule who executed registered General Power of Attorney (G.P.A.) dated 08.05.1978 in favour of Syed Salauddin son of Syed Ramthullah of Kadapa district, for alienating the property to the 3rd parties and pursuant to which said G.P.A. holder on behalf of the

principal, as agent sold the plaint schedule property to the plaintiff on 24.01.1983 under registered sale deed and delivered possession and since then the plaintiff is in peaceful possession and enjoyment of the property, that while so, on 15.08.2006 the defendants 1 and 2 issuing publication through their advocate stating that they are absolute owners of about Ac.6.58 cents including site covered by public road leading to Jyothi Chemicals by virtue of registered sale deed dated 08.08.1984 and 17.06.1985 saying no others got any right or interest over the property and came to know of the publication, the plaintiff obtained certified copies of the sale deed dated 17.06.1985 alleged to have executed by the plaintiff in favour of the 1st defendant and father of 2nd defendant and came to know that it is a forged one and created with a view to grab the property of the plaintiff, from the factum of father of 2nd defendant and the plaintiff were family friends and residents of R.K.Nagar, Kadapa, that the 1st defendant and 2nd defendant's father jointly purchased the land in Sy.No.617/2 and 2nd defendant's father requested husband of plaintiff for original sale deed of plaintiff for the purpose of verification and promised to return within two days and the plaintiff's husband had given it hoping return of the document in two days and thereafter instead of returning it is stated of misplaced and he would return as and when being traced which they believed in keeping quiet all through however unfortunately during that period 2nd defendant's father died and plaintiff never received any amount from 1st defendant and father of 2nd defendant and executed any documents much less the alleged sale deed dated 17.06.1985, in their favour in respect of plaint schedule property so also plaintiff's husband never executed and plaintiff's husband never even figured as attester to any such execution much less subscribed his signature as witness to any document to attest for alleged document not even executed by plaintiff much less she appeared before any Sub Registrar in connection with alleged document and never signed the alleged

document and it is crystal clear that the alleged sale deed dated 17.06.1985, said to have been executed by the plaintiff in favour of the 1st defendant and father of 2nd defendant, is a forged one by impersonating the plaintiff and her husband before the Sub Registrar and thereby the same is not binding being a manipulated one with some evil idea of the 1st defendant who is an experienced advocate in collusion with the 2nd defendant's father and other persons if not in order to grab the property for unlawful gain by using the friendship of the 2nd defendant's father with plaintiff's husband by stating to verify the original title deed of plaintiff dated 24.01.1983 and getting it from the custody of the plaintiff from increase in the market value and as part of it to grab the property of the plaintiff with possession and enjoyment cause issued false paper publication dated 15.08.2006 to deny the plaintiff's title and to set up title in their favour and for plaintiff questioning such publication they started threatening with the support of local political and anti-social element with dire consequences which constrained the plaintiff to file the suit.

10. Coming to the written statement of defendants 1 and 2 dated 16.03.2007 while admitting the plaintiff's vendor Shaik Moiddin Saheb, the original owner represented by GPA holder by name Syed Salauddin, and sold the plaint schedule property to plaintiff under registered sale deed dated 24.01.1983 however contending later plaintiff sold the said plaint schedule land covered by sale deed in her favour dated 24.01.1983 to the 1st defendant and father of 2nd defendant under registered sale deed dated 17.06.1985 and handed over the original sale deed dated 24.01.1983 and source of title and photostat copies of two sale deeds already filed in IA No.902 of 2006(temporary injunction application), that at the time of execution of the sale deed dated 17.06.1985 plaintiff and her husband went to the house of one C.P.Sri Rama Raju, father of 2nd defendant, for receiving payment of the sale to be registered on the same day and defendants

1 and 2 and said Sree Rama Raju were Present when plaintiff and her husband received consideration and later in the evening the plaintiff and her husband along with Salaluddin went to the Registrar's office and got the sale deed registered on the husband of plaintiff identified the plaintiff and her signature before the Sub Registrar as identifying witnesses and endorsed on the sale duly signing and Salaluddin-vendor of the plaintiff has attested the said sale deed in the presence of registering authorities and attested the same which proves the factum of plaintiff executed the sale deed and attended the Sub Registrar office with her husband in registration and the present version of the plaintiff in the suit for declaration and injunction is nothing but cock and bull story invented to have unlawful gain and if not as contended in the counter filed opposing injunction application in I.A.No.902 of 2006 and the cause of action said to be as if the plaintiff in possession and never executed the sale deed much less registered as impersonated one or created and came to know only from the paper publication dated 15.08.2006 is a created version for the cause of action so also the alleged explanation in the vain attempt of father of 2nd defendant-friend of the plaintiffs' husband taking the sale deed of plaintiff dated 24.01.1983 to verify and return and in saying later misplaced to return when kept quiet for more than 21 years is as false to believe and highly incredible if at all there is no any questioning during Srirama Raju alive till 1998 after the sale deed dated 17.06.1985 for about 13 years and there is no even any registered notice issued if true regarding return of the document alleging handed over or to alleging fake much less even later since duly executed and registered as referred in the sale deed and thereby the plaint story is invented one. It is also averred that the plaintiff never in possession and enjoyment after the execution of sale deed dated 17.06.1985 wherein the defendants came to possession and the names of defendants also reflected in the revenue records and 10-1 accounts and pattadar passbooks were also issued in favour of defendants

wayback in 1992 which proves the defendants possession and enjoyment being the purchasers with reflection in the encumbrance certificate also apart from the revenue pattadar passbook and title deed or other documents besides the father of 2nd defendant has some more legal heirs without impleading them by the plaintiff the suit is bad in law to maintain and there is no cause of action thereby to dismiss the suit.

11. It is from the pleadings and in the course of trial, the plaintiff filed IA No.281 of 2008 u/sec. 45 of the Indian Evidence Act and u/sec.151 of C.P.C. requesting the Court to take thumb impressions and signatures of plaintiff and her husband in open Court and send the same to the handwriting expert for comparison with the disputed signatures and thumb impressions in the registered sale deed dated 17.06.1985 said to have been executed by her attested by her husband identifying her handwriting and also the signatures or thumb impressions of the witnesses in the books maintained by the Sub Registrar, Kadapa, in respect of the said sale deed vide document No.4205 of 1985 and also exchange deed dated 30.06.1988 vide document No.2991 of 1988. The affidavit petition of plaintiff in I.A.No.281 of 2008 speaks besides in nutshell of plaint averments in her contest supra in saying are never executed any document much less registered sale deed dated 17.06.1985 and the same is created to grab the property as if executed by her and attested by her husband in so seeking to send the documents with other documents of 1988 and by calling for the signatures and thumb impressions in the document besides in the original book maintained by the Sub Registrar, Kadapa, was opposed by the common counter dated 08.07.2008 of the respondents signed by her about saying the respondents/defendants 1 and 2 wanted to file application to send the sale deed dated 17.06.1985 to handwriting expert and exhibiting it by plaintiff intentionally filed the same, that in the cross-examination of plaintiff-

P.W.1 not even completed has any progress in part so as to complete the cross-examination and to consider the application in saying the plea of the plaintiff to take signatures of her and her husband in open Court now after length of time to the document of 1985 will defeat the ends of justice in the deliberate time to change and manipulate their signatures to suit their needs, hence to pass appropriate orders.

12. The trial Court as per the orders in I.A.No.281 of 2008 sent the documents to expert and the expert opinion is received and the defendants through their advocates with signature of 2nd defendant filed objections dated 25.02.2014 and the expert opinion received in I.A.No.281 of 2008 saying the expert opinion is biased one and not on scientific investigation, with no proper indication in the report as to which signature is compared with standard signature and the report of the Expert does not show which signatures of P.W.2 husband of Plaintiff-P.W.1 were used for comparison and there is no definite opinion about the genuineness of signature of P.Ws. 1 and 2 and defendants intend to seek for appointment of another expert for second opinion.

13. It is needful to say C.R.P.No.4519 of 2014 was maintained to seek direction to the learned Senior Civil Judge, Kadapa to dispose of I.A.S.R.No.3234 of 2014 and also the memo filed by the defendants therein before further proceeding with the trial of the suit saying during the pendency of the suit, I.A.No.281 of 2008 with prayer to send the disputed documents to handwriting expert for comparison and opinion was filed by them and same was allowed and report of expert dated 21.06.2013 from the Central Forensic Scientific Laboratory, Hyderabad received and aggrieved thereby the defendants filed I.A.S.R.No.3234 of 2014 seeking to scrap Expert opinion/report dated 21.06.2013 in toto and call for fresh report after due and scientific examination showing said unnumbered application filed in June 2014 is pending along with the memo filed by the defendants by recasting of issues to

the suit pending disposal and there was a direction consequentially in the revision by disposal before admission dated 03.12.2014 advising the trial Court to dispose of the same within 4 weeks from the date of receipt of the order and preferably before examination of the handwriting Expert if not to decide the memo also of recasting of issues. In fact, the I.A.No.281 of 2008 and another order dated 06.11.2014 of the learned Senior Civil Judge reads that a perusal of the record shows the document is of the year 1982 which contains signature of P.W.2 Venkata Subba Reddy-husband of plaintiff –P.W.1 marked as Ex.B.1 and the question of sending the Ex.B.1 bearing document No.6292 of 1982 dated 27.09.1982 for comparison with signature of Venkata Subba Reddy(P.W.2) does not arise and if the respondent feels he can take necessary steps for second opinion and close the petition.

14. It appears above said order dated 16.11.2014 was sought to reopen by setting aside the same in I.A.No.2132 of 2014 filed by the defendants as in I.A.No.281 of 2008 in the suit with averments that the P.W.2 husband of the plaintiff admitted in the cross-examination of plaintiff that he had registered the site in favour of 1st defendant late Naraiah Naidu on behalf of Housing Board in the capacity of President and the assignment deed signed by him was marked as Ex.B.1. It is subsequent to I.A.No.281 of 2008 allowed and signature of plaintiff and also her husband sent to the handwriting Expert for comparison and opinion and while sending the Ex.B.1 was not sent to the Expert for comparison thus report dated 21.06.2013 of the Expert is incomplete and inchoate one and it does not throw any light over controversies raised regarding the due execution of sale deed dated 17.06.1985 which was marked as Ex.B.2 and the report of the expert to be scrapped. Hence the petition was filed to set aside the orders dated 06.11.2014.

15. The plaintiff filed counter opposing the same saying Ex.B.2

sale deed dated 17.06.1985 as contended in the suit is a rank forgery and not executed by her and the handwriting expert gave opinion by comparing the signatures of her and her husband and the defendants did not raise objection with regard to non-sending of so called Ex.B.2 assignment deed dated 17.06.1985 nor they have taken steps at that time to send the Ex.B.1 also at least for second opinion and the order passed in I.A.No.281 of 2008 is after hearing both sides and there is no necessity to reopen I.A.No.281 of 2008 especially when it is open to the defendants to seek second opinion and there is no rule authorizing the Court to reopen the closed I.A.No.281 of 2008 and as per the orders of the High Court in C.R.P.No.4519 of 2014 that no way helpful to the defendants. Hence to dismiss.

16. It is therefrom as can be seen pursuant to the High Court order in CRP No.4519 of 2014 to dispose the unnumbered I.A.S.R.No.3234 of 2015 numbered as I.A.No.2132 of 2014, the order passed is that in the suit plaintiff was examined as P.W.1 and her husband as P.W.2 and got marked Exs.A.1 to A.5 and after plaintiff side evidence, on the defendants' side, the 1st defendant since died Nettem Indira Naidu(D.3) examined as D.W.1 and C.P.Sree rama Prasad(D.2) as D.W.2 and two others as D.Ws.3 and 4 and got marked Exs.B.1 to B.9 to say from the factual matrix after framing of issues in the suit, the plaintiff filed I.A.No.281 of 2008 to take thumb impressions and signature of her and her husband in the open Court and to send the same to handwriting expert for comparison with reference to the disputed Ex.B.2 sale deed dated 17.06.1985, also with the original maintained with the Sub Registrar, Kadapa and also the exchange deed dated 30.06.1988 and the defendants reported under declaration with expert opinion, the petition was allowed on 07.11.12 and on 19.12.2012 plaintiff and her husband present and subscribed their signatures and thumb impressions in open Court in the presence of learned counsel for both parties and the defendants submitted of no private or contemporary other documents available for the Expert to

compare and the matter posted to 21.12.2012 and again to 26.12.2001 on that aspect for further hearing and on 26.12.2012, plaintiff filed handwriting expert address by giving notice to the defendant's counsel where there is no specific endorsement and therefrom the documents were ordered to be sent to the expert subject to deposit of Rs.5,000/- as expert fee and later on 01.02.2013 a memo was filed by the plaintiff with D.D. of Rs.5,000/- to send the documents to expert and the same were accordingly sent with covering letter dated 02.02.2013 and expert opinion report dated 25.06.2013 is/was received by the Court on 01.07.2013 opined the questioned signature of plaintiff and her husband were not made by the plaintiff and her husband respectively and at that stage the plaintiff filed memo of reporting no objection to the Expert's report, however, the defendants filed a memo stating opinion of the handwriting expert is biased one and not on scientific investigation and when the matter was coming up for hearing both the parties, the defendants raised objection to the expert report, the plaintiff's counsel submitted about the assignment deed dated 27.09.1982 marked as Ex.B.1 through D.W.1 in the suit by sending to the handwriting Expert and after hearing both sides on 6/16.11.2014 it was observed by the trial Court that the Ex.B.1 assignment deed filed subsequent to filing of I.A.No.281 of 2008 passing of orders therein and thus question of sending Ex.B.1 for comparison with signatures of plaintiffs' husband does not arise and necessary steps can be taken for second opinion if interested and closed the matter and by that time the application I.A.S.R.No.3234 of 2014 to scrap the very report of the expert was returned and CRP No.4519 of 2014 filed in the High Court where order on 03.12.2014 was passed to dispose of and when the defendants did not raise objection for non-sending of Ex.B.1 to handwriting expert and when the petition was closed, the I.A.S.R.No.3234 of 2014 filed to reopen the I.A.No.281 of 2008 no way be helpful much less to scrap report/opinion of the handwriting expert in I.A.No.281 of 2008 and the present petition IASR No.3234 of 2014 =

I.A.No.2132 of 2014 is hereby another attempt to enable the Court to consider once again report of handwriting expert.

17. Heard and perused and observed when the defendants submitted, before sending the documents to expert in I.A.No.281 of 2008 of no proper document available for comparison of signatures and thumb impressions of plaintiff and her husband and not raised objection for sending with the specimen signatures taken including on the memo handwriting expert filed by the plaintiff by giving notice to the defendants endorsed on notice received and filed objections to the handwriting expert for opinion and report expressing idea to get second opinion on Ex.B.1 of 1982 and instead of making such application for second opinion, the petitioner failed to separate the expert opinion and report is not possible and the conclusion is fortified in the expression of this High Court DB in **M.Ramesh Babu Vs. M.Sreedhar**^[1] holding if circumstances warrant Court may appoint second commissioner or seek opinion or consent under Order XXVI Rule 10 read with Section 45 of the Indian Evidence Act which setting aside the report and opinion for holding reason to be recorded so to look after both the expert opinions and findings to arrive true and just decision therefrom when Ex.B.1 document was referred to sending of the documents to the expert sought by plaintiff with signatures of her and her husband and there is no possibility for the expert to compare signature of P.W.2 on Ex.B.1 with that of his specimen signatures and thumb impressions obtained in open Court and if at all the defendant can seek is only of second opinion as sought in their petitions to the expert opinion received in I.A.No.281 of 2008 which petitions filed on 25.02.2014 (referred supra) for second opinion to seek not to reopen and thereby dismissed the petition by order dated 10.03.2015.

18. It is later the defendants filed I.A.No.2164 of 2014 u/sec. 151 of C.P.C. Order XXVI Rule 10 of C.P.C. saying in I.A.No.281 of 2008 the disputed document registered sale deed Ex.B.2 dated 17.06.1985

with specimen signature of plaintiff and her husband taken in open Court sent for comparison by handwriting expert and recent opinion with report dated 21.06.2013 and that Ex.B.1 is the registered assignment deed dated 27.09.1982 document No.6392 of 1982 which contains signatures of P.W.2 husband of the plaintiff who admitted execution of that assignment deed in his cross-examination and a memo filed by the defendants to send that assignment deed also for opinion of handwriting expert with admitted and disputed signatures of plaintiff and her husband as if those compared along with this Ex.B.1 assignment deed dated 27.09.1982, the opinion may vary and the earlier opinion received dated 21.06.2013, if not to be scraped to ignore. Hence to call for fresh opinion with reference to Ex.B.1 on record. The plaintiff filed counter opposing the same saying I.A.No.281 of 2008 filed by the plaintiff to send the Ex.B.2 disputed document dated 17.06.1985 as forged disputed signatures of her husband, in the year 2007 after notice to the defendants on 23.11.2007 and after hearing both sides and as per the directions of the Court thumb impressions and signatures of plaintiff and her husband in the presence of defendant's counsel obtained in the open Court which is happened 7 years back and receive the expert opinion and for sending the same no objections raised by the defendants and it is after receipt of the expert opinion as against them they started raising objections as the opinion as if managed one or not correct and to scrap and went unsuccessful now seeking for second opinion with reference to Ex.B.1 and if at all to seek any second opinion, there is nothing to scrap earlier opinion but for to consider both by the Court. It is therefrom, the Court in the order dated 10.03.2015 I.A.No.2164 of 2014 observed that in I.A.No.281 of 2008 after obtaining specimen signatures and P.Ws. 1 and 2 with thumb impressions in open Court to send the Ex.B.2 registered sale deed dated 17.06.1985 for comparison and opinion by expert along with registered exchange deed of 1988 executed by the plaintiff and no objection raised by the defendant to it, order was

passed dated 07.11.2012 and after obtaining specimen signatures in their presence in the open Court on 19.12.1972 address of the expert taken with notice and memo and on deposit of amount and even with opportunity to the defendants to submit any other signatures having contemporary relevancy on 21.12.2012 and 26.12.2012 ultimately passed the order for no more endorsement as to the sending the documents with specimen signatures to admitted and disputed signatures respectively to expert plaintiff's memo dated 01.02.2013 with covering letter dated 02.02.2013 and the opinion of the expert with report dated 25.06.2013 received on 01.07.2013 for which the plaintiff reported no objections and defendant filed memo saying the expert opinion biased and they seek for appointment of another expert for second opinion and later sought for sending Ex.B.1 assignment deed dated 27.09.1982 that is marked through D.W.1/P.W.2 and after hearing both parties the Court passed the order of same was exparte to subsequent to passing orders and sending the documents to expert in I.A.No.281 of 2008 supra and thereby seeking that document again for comparison does not arise but for to take any steps for second opinion. It is therefrom filed the application to scrap the expert opinion in toto or to call for second opinion and orders passed referring to expression of this High Court DB in M.Ramesh Babu supra with no need to scrap first opinion but for at best to seek second opinion that was disposed of and later the application filed again for the same reliefs saying as per the expression Kerala High Court in **Hydru Vs. Govindankutty Nair** ^[2] page 49 scraping of first report of commissioner issuing second commissioner is barred as per order XXVI Rule 10 of CPC in asking to quash the first expert opinion. In fact in M.Ramesh Babu supra, when very clear of second opinion sought for, no way requires to scrap first opinion but for reading of both by the Court to arrive the correct truth for a just decision correlating the High Court's expression is no way helpful to ask for quashing of the first handwriting expert's opinion/report and thereby no grounds to scrap

the first expert opinion/report but for if at all to seek for second opinion and dismissed the petition.

19. The plaintiff's suit for declaration and injunction is by disputing the Ex.B.2 registered sale deed dated 17.06.1985 bearing No.4205 of 1985 is forged and fabricated document by impersonating her and of her husband as if she executed and registered by appearing before the Registrar and identified by her husband and there is an exchange deed, registered document No.2991/88 dated 30.06.1988 which bears thumb impression and signatures of plaintiff and therefrom by obtaining the specimen signatures and thumb impressions of plaintiff and her husband to send the document Ex.B.2 of 1985 with 1988 document supra and the defendants could not produce any contemporary relevancy documents including Ex.B.1 of the year 1981-82 so called assignment deed and when could raise no objection the Expert opinion sought for. It is after Expert opinion received undisputedly as facts apparent by record since by one against the contention of the defendants and supporting the contention of the plaintiff, the defendants started to say that opinion is not sustainable. No doubt they can raise the objection and the law is fairly settled in this regard on Expert opinion evidence is as per Section 45 read with Section 51 of the Indian Evidence Act. It is the reason to the opinion that is the heart and soul having any necessity of examination of the Expert by the Court it can and therefrom comes to conclusion with reference to the opinion supported by reasons and by cross-examination of the Expert, from that opinion evidence with reference to the other evidence on record to arrive a just conclusion as to whether truth lies or due execution or otherwise. That is when the stage not reached and even without waiting defendant started seeking by several petitions to scrap the first expert opinion which they cannot even, leave about any concession by the Court to seek for second opinion with reference to Ex.B.1 assignment deed containing admittedly the signature of P.W.2 husband of P.W.1 who is one of the

attestors or identifying witness to the Ex.B.1 sale deed in dispute by plaintiff of not the executants and she was impersonated and same is a forged and fabricated one dated 17.06.1985. The defendants undisputedly in that period of sending the document to Expert in I.A.No.281 of 2008, not asked for calling of Sub Registrar office record and now there is no basis to call for Sub Registrar office record. What is the concession given at best to them earlier is, to seek for second opinion with reference to Ex.B.1 and now having that option available though not sought for earlier, in their subsequent vain attempts to scrap the first Experts report went unsuccessful as discussed supra now even cannot seek for sending or calling for Sub Registrar records for sending to Expert but for with reference to Ex.B.1 on record. However, instead of considering the same, the Court given concession already including as per the order dated 6/16-11-2014 in the pending petition after the Expert opinion received therein I.A.No.281 of 2008 to seek for second opinion on Ex.B.1, since that was not there but produced subsequently and confronted to P.W.2 and marked further through D.W.1. Ex.B.1 assignment deed showing the signature as executants with thumb impression if not as P.W.2 as President of house Building Society, executed in favour of 1st defendant as other contemporary relevancy document so far as the writings of the identifying witnesses to Ex.B.2, the P.W.2-husband of the plaintiff so called executants of that Ex.B.2, to compare with the said Ex.B.1. Hence, to that extent the trial Court should have allowed the application instead of dismissing in toto.

20. Accordingly and in the result, the three revision petitions are disposed of while dismissing the application to call for original record from Sub Registrar, kadapa, while allowing to the extent of sending the existing specimen signatures of the husband of the plaintiff-P.W.2 taken in open Court in the presence of parties as per the orders in I.A.No.281 of 2008, to send along with the Ex.B.2 registered sale deed dated 17.06.1985 which contains the so called identifying witness signature or as attestor of P.W.2 with reference to his signature and

thumb impression if any in Ex.B.1 the assignment deed dated 27.09.1982 executed by him as President of the Housing Board, in favour of D.1, for the trial Court to send the same to the Expert for second opinion with reference to it subject to deposit of Expert fee by the defendants of Rs.5,000/- or more required as being ordered by the trial Court within the stipulated time. Consequently, miscellaneous petitions, if any, pending in these three revisions shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:12.02.2016

Vvr

[\[1\]](#) 2009) 4 ALT 780

[\[2\]](#) AIR 1982 Kerala 49