

HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

C.R.P.Nos.1492, 1524 and 1536 of 2016

COMMON ORDER:

The defendants 2 and 3/unsuccessful respondents in I.A.Nos.87, 88 and 89 of 2016 in O.S.No.22 of 2009 preferred these three revisions assailing the orders, dated 16.02.2016, separately passed by the learned II Additional Senior Civil Judge, Nandyal, in the aforestated interlocutory applications filed by the plaintiff.

I have heard the submissions of Sri K.Rathanga Pani Reddy, learned counsel for defendants 2 and 3/revision petitioners ('defendants 2 and 3' for brevity) and of Sri M.Ravindra, learned counsel for the 1st respondent/plaintiff ('plaintiff' for brevity).

I have perused the material record.

The introductory facts, in brief, are as follows: "The plaintiff originally brought the suit against the sole defendant (defendant No.1) for specific performance of an agreement of sale dated 06.09.1994 executed by the late mother of the said defendant, Begum Bibi, in favour of plaintiff in respect of the plaint schedule property. While the sole defendant is resisting the suit, the defendants 2 and 3, who are the purchasers of the suit schedule property by virtue of a registered sale deed dated 19.02.2010, were brought on record as defendants 2 and 3 as per orders dated 03.02.2011 in I.A.No.308 of 2011. It is an admitted fact that the mother of the 1st defendant, who is said to be the executant of the said agreement, also executed a registered gift

deed on 27.11.2006 in favour of the 1st defendant in respect of the suit schedule property. According to the case of the plaintiff, the husband and the son, Abdul Sattar, of the executant, attested the said suit agreement of sale. However, both the said attestors died. An application in I.A.No.225 of 2012 filed earlier by the plaintiff to summon the son of the scribe of the said agreement, who is also no more, was dismissed by the trial Court as the trial Court was of the view that examining the son of the scribe, in the facts and circumstances of the case, is of no avail to the plaintiff. A revision in C.R.P.No.2776 of 2012 filed by the plaintiff against the said orders of the trial Court was allowed by this Court. The said Abdul Sattar, one of the attestors of the instant suit sale agreement, filed vakalats in O.S.No.18 of 2008 and the same were marked as Exs.A-26 and A-27. Since the defendants, particularly the revision petitioners, denied not only the signatures of the attestors but also the thumb impression of the executant on the agreement of sale, the plaintiff filed the three subject applications seeking the following reliefs:

‘I.A.No.87 of 2016:

For the reasons stated in the accompanying affidavit the petitioner prays this Hon’ble court may be pleased to send the suit agreement for sale dated 06-09-21994 i.e., Ex.A2 and the original Registered Gift deed dated 27-11-2006 i.e., Ex.B4 to the Finger Print Expert for comparing the disputed signature LTI of the executant Syed Begum Bibi in the 1st and 2nd pages over Ex.A2 with the admitted signature Left Thumb Impression over Ex.B4 (on each page and over the reverse of the 1st page) in the interests of justice.

I.A.No.88 of 2016:

For the reasons stated in the accompanying affidavit the petitioner prays this Hon'ble court may be pleased to re-open the evidence on petitioner's side in the interests of justice.

I.A.No.89 of 2016:

For the reasons stated in the accompanying affidavit the petitioner prays this Hon'ble court may be pleased to send the Vakalat in O.S.18/2008 and I.A.2139/2008 in O.S.18/2008 which contain the original signatures of S.A.Sattar which were marked as Ex.A26 and Ex.A27 to this Hon'ble Court from the V Additional District Judge, Kurnool at Nandyal, enabling the petitioner to send the said signatures for comparing them by the hand writing expert in the interests of justice.”

(Reproduced verbatim)

The defendants 2 and 3 resisted all the three applications by filing detailed counters. The case of defendants 2 and 3, in brief, is this: “The suit is instituted in the year 2009 based on agreement dated 06.09.1994 allegedly executed by the mother of the 1st defendant. The gift deed is of the year 2006 having been executed on 27.11.2006. The plaintiff filed her affidavit in lieu of her examination in chief on 17.10.2011. Exhibits on her side were marked. She was cross-examined on various dates in the month of December 2011 and January 2012. Her application for summoning the son of the deceased scribe of the suit agreement was dismissed. The revision filed before this Court was allowed on 03.09.2015. The trial Court was directed to dispose of the suit within a time frame. Despite lapse of the said time, the suit was not being disposed of. After a long time, the 2nd witness was examined as PW-2. DWs.1 to 6 were also examined on the side of the defendants. When the suit is coming for the examination of DW-7, the instant applications were filed by the plaintiffs to drag on the proceedings

endlessly. The suit of the year 2009 based on an agreement of the year 1994 is barred by law of limitation. Since the suit is *ex facie* barred by law of limitation, mere proof of the agreement by sending the document to an expert would serve no purpose. The petitions filed belatedly are liable for dismissal.”

At the hearing, the learned counsel for defendants 2 and 3, while reiterating the contentions in the counter which are stated *supra*, contended as follows: “In view of the various dates which are adverted to in the defence of the defendants 2 and 3 and as the defendants 2 and 3 had acquired interest by obtaining a registered sale deed dated 19.02.2010 pursuant to an award passed by Lok Adalat in the suit between the defendants *inter se* and as the plaintiff being aware of all the facts, kept quiet till the trial in the suit has reached an advanced stage and as the plaintiff filed these petitions belatedly and as the suit based on the agreement of the year 1994 is *ex facie* barred by law of limitation, the trial Court ought to have dismissed the applications and therefore, the orders impugned in these revisions are liable to be set aside.”

Per contra, the learned counsel for plaintiff, while supporting the orders of the trial Court, would submit as follows: “Necessary averments in the plaint showing that the suit is well within time are made in the plaint. There is a recital in the agreement that the balance of sale consideration is payable with interest. Therefore, time is not the essence of the contract. After the agreement was executed, the executant who is none other than the mother of the 1st defendant, executed Ex.B-4 gift settlement deed in favour of 1st defendant in the year 1994 to defeat the just claim of the plaintiff. The onus of proof is on the plaintiff to prove the genuineness of the suit sale

agreement. Both the attestors and the scribe of the suit agreement died. It has become necessary to summon the vakalats of the attestor, who is none other than the son of the executant, from the record in the former suit for sending the said vakalats along with the suit agreement to an expert for comparing of his signatures on the vakalats with his attesting signature on the suit agreement. In the circumstances stated and to substantiate the claim of the plaintiff, it has also become necessary to make a request to send the suit agreement with the thumb impression of the executant along with the gift deed dated 27.11.2006 containing her admitted thumb impressions. The opinion that may be furnished by the expert in regard to the genuineness of the thumb impression on the suit agreement would be based on exact science. Therefore in the facts and circumstances of the case, the trial Court is justified in passing the orders impugned in these revision petitions.”

I have given detailed and thoughtful consideration to the facts and submissions. The facts, which are narrated above, need no further dilation. As rightly contended by the learned counsel for plaintiff, it is for the plaintiff to prove the truth and validity of the suit agreement (Ex.A-2) dated 06.09.1994. According to the plaintiff, it bears the thumb impression of the executant and it was attested by her husband and son, Abdul Sattar. They both are no more. Since the vakalats filed in an interlocutory application and also in the suit in O.S.No.18 of 2008, which are marked as Ex.A-26 and A-27 are very much available, they are called for from the said suit record to the record of the present suit to facilitate sending of said vakalats to an expert for comparison of the signatures of the said Abdul Sattar with his attesting signature said to have been made by him as an attestor on the

suit agreement. The plaintiff also requests to obtain an opinion from an expert after comparison of the thumb impression of the executant on the suit agreement with her admitted thumb impression available on the registered gift deed dated 27.11.2006 (Ex.B-4). Since the attestors and the scribe died, there is no other option for the plaintiff but to make a request to send the documents to an expert for obtaining his opinion with regard to the genuineness or otherwise of the signature of one of the attestors and the genuineness of the thumb impression of the executant on the suit sale agreement to substantiate the case of the plaintiff. In the well considered view of this Court, in the circumstances the plaintiff is placed, she ought to be given an opportunity to prove her case in the best possible manner she chooses. Be that as it may.

Coming to the aspect of delay, as per the settled legal position, it is essentially within the judicious discretion of the Court, depending upon the individual facts and circumstances of the case before it, to seek or not to seek an expert's opinion as to the genuineness or otherwise of disputed thumb impressions after comparison of the same with the admitted and or standard impressions. Be it also noted that the judgment of the Division Bench of this Court in **Janachaitanya Housing Limited** [2008 (3) ALT 409 (DB)] was rendered upon a reference made by a learned Single Judge of this Court on the question as to whether an application under Section 45 of the Indian Evidence Act, 1872, for expert opinion on disputed signatures could be entertained at a later stage of the suit, including when the suit was coming up for arguments after the entire trial. Upon due consideration of the case law on the point, the Division Bench

while referring to the judicious discretion vested with the Court answered the reference as under:

For the reasons aforementioned, we answer the reference thus: 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.

Before proceeding further it is trite to refer to the Full Bench decision of this Court in **Bande Siva Shankara Srinivasa Prasad v. Ravi Surya Prakash Babu and others**¹ wherein the legal position is settled. In this decision the reference was answered as under by the Full Bench.

"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 handwriting/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, 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 (DB)], 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."

The law is well settled that an opinion furnished by an expert with regard to the genuineness or otherwise of the thumb impression shall be considered as an opinion based on exact science. Coming to the aspect that the suit based on an agreement of the year 1994 is barred by law of limitation, it is not the stage to go into the said aspect, as the said contention is besides the issue raised in these revisions. Therefore, in the well

¹ AIR 2016 AP 118

considered view of this Court, if the thumb impression said to be of the executant on the suit sale agreement and her admitted thumb impression on the gift deed are directed to be compared and a report with the opinion of the finger print expert is called for, such a course would meet the ends of justice. Further, if the expert furnishes an opinion as to the genuineness of the signature of one of the attestors as well as the thumb impression of the executant on the suit sale agreement, such an assured piece of evidence may be helpful to the Court below for effectively resolving the issue and in giving a quietus to the *lis*.

On the above analysis, this Court is of the considered view that there is no merit in any one of the revisions. All the revision petitions are accordingly dismissed. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

7th December 2016

ajr

M. SEETHARAMA MURTI, J