

THE HON'BLE SRI JUSTICE A.V. SESA SAI

CIVIL REVISION PETITION No.4349 of 2015

ORDER:

This revision, filed under Article 227 of the Constitution of India, assails the order, dated 13-08-2015 passed by the Court of the Senior Civil Judge, Chirala, Prakasam District in I.A.No.866 of 2015 in O.S.No.1 of 2013.

Heard Sri Nimmagadda Satyanarayana, learned counsel for the petitioner and Sri N. Parameshwar Reddy, learned counsel for the respondents, apart from perusing the material available before this Court.

Petitioner herein instituted the above-mentioned Original Suit for recovery of money on the foot of a promissory note, dated 04-07-2010. In the said suit the defendants/ respondents herein filed a written statement resisting the pleadings in the plaint. In the said suit the respondents herein filed the instant I.A.No.866 of 2015 under the provisions of Section 45 of the Indian Evidence Act, 1872 (for short, 'the Act'), praying the Court to send the suit promissory note, dated 04-07-2010 and the admitted signatures of the deceased, husband of the 1st respondent, i.e., passport issued by the Government of India and PAN Card issued by Income Tax Department to Andhra Pradesh Forensic Laboratories, Red-hills, Hyderabad, for the purpose of comparison of the signatures of the deceased and to obtain report. The plaintiff/ petitioner herein opposed the said application by filing a counter. The learned Senior Civil Judge by way of an order, dated 13-08-2015 allowed the said application. The said order is under challenge in the present revision.

It is contended by learned counsel for the petitioner that the questioned order is erroneous, contrary to law and opposed to the very spirit and object of the provisions of Section 45 of the Act; that the Court below grossly erred in sending the document to the expert in absence of contemporaneous signatures of the deceased; that the Court below did not properly consider the contents of the counter filed by the plaintiff/petitioner herein and that in view of the power conferred under Section 73 of the Act, the Court below grossly erred in sending the document for the expert opinion.

Per contra, it is contended by learned counsel for the respondents that there is absolutely no illegality nor there exists any material infirmity in the impugned order and the learned Senior Civil Judge correctly exercised the discretion, as such, the order impugned is not amenable for any interference of this Court under Article 227 of the Constitution of India. It is the further submission of learned counsel that in absence of any perversity in the questioned order the present revision cannot be maintained by the petitioner. In support of his case learned counsel places reliance on the judgment of the Hon'ble Apex Court reported in AIR 1979 Supreme Court 14.

In the above back-ground now the issue that boils down for consideration of this Court is:

Whether the order passed by the learned Senior Civil Judge is in accordance with the object behind Section 45 of the Act or whether the same requires any correction by this Court under Article 227 of the Constitution of India?

The information available before this Court manifestly discloses that the defendants/respondents herein filed a written statement and at paragraph No.5 of the written statement it is specifically pleaded that the suit pro-note is a rank forgery and concocted by the plaintiff with the help of his henchmen to gain unlawfully by illegal means.

A perusal of the order impugned in the present revision goes to show that the learned Senior Civil Judge directed to send the suit promissory note and the admitted signatures of the deceased Sri Bommisetty Srinivasa Rao and the passport issued by the Government of India and the PAN Card issued by Income Tax Department and also admitted signatures of the deceased Bommisetty Srinivasa Rao relevant to the year 2010 to Andhra Pradesh Forensic Laboratories, Red-hills, Hyderabad for the purpose of comparison of the signatures of the deceased and to obtain report.

The learned Judge also recorded valid and convincing reasons for allowing the application and exercised his jurisdiction and passed the impugned order. In this context it may be appropriate to refer to the judgment of the Hon'ble Apex Court in case of **State (Delhi Administration) vs Pali Ram**, wherein the Hon'ble Apex Court at paragraph No.29 categorically held that it is not advisable that a

Judge should take upon himself the task of comparing the admitted writing with the disputed one to find out whether the two agree with each other; and the prudent course is to obtain the opinion and assistance of an expert.

In the instant case, since the Court below exercised its jurisdiction and allowed the application by recording the reasons this Court does not find any justification to meddle with the order under challenge in the revision.

For the aforesaid reasons, the Civil Revision Petition is dismissed. There shall be no order as to costs. The Miscellaneous Petitions, if any, pending in this Civil Revision Petition shall stand closed.

A.V. SETHA SAI, J

February 12, 2016

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