

**HON'BLE SRI JUSTICE M.SEETHARAMA MURTI**

**CIVIL REVISION PETITION No.2931 of 2013**

**ORDER:**

This is a revision by the unsuccessful defendant, under Article 227 of the Constitution of India, assailing the orders dated 6<sup>th</sup> June, 2013 of the learned II Junior Civil Judge, Ranga Reddy District, passed in I.A.No.233 of 2013 in O.S.No.956 of 2004 filed under Section 45 of the Indian Evidence Act, 1872, read with Section 151 of the Code of Civil Procedure, 1908, requesting to send the gift deed dated 15.06.1977 bearing registration No.1554/1977 duly registered in the office of the Registrar of Hyderabad said to be containing the left hand thumb impression of the executant, K.Laxmamma, along with the Vakalat, dated 11.06.1980, of the said executant filed in O.S.No.61 of 1978, which was filed by her against one of her sons, for comparison of the thumb impressions on the said two documents and furnishing an opinion as to the genuineness or otherwise of the disputed thumb impression on the above said gift deed.

I have heard the submissions of Sri G.V.Shivaji, learned counsel for the petitioner/defendant (“defendant” for brevity), and Sri Harender Prasad, learned counsel for the contesting respondents/plaintiffs (“plaintiffs” for brevity). I have perused the material record.

The facts which are necessary to be stated as a prelude to this order, in brief, are as follows:

The plaintiffs 1 and 2 filed the present suit against the defendant who is their sister-in-law for a declaration that the gift deed dated 15.06.1977 bearing registration No.1554/1977 (hereinafter “gift deed” for brevity) is null and void and for costs. The defendant is resisting the suit. After the trial in the suit had made progress, the plaintiffs filed the subject application for the aforestated relief *inter*

*alia* contending that the said K.Laxmamma/the alleged executant of the gift deed filed a suit O.S.No.61 of 1978 earlier and that they have already taken steps for summoning the Vakalat from the said suit to the present suit file and that the said application was allowed and that the Vakalat of the said K.Laxmamma filed in the said suit is received on the file of this Court and that therefore they filed the subject application for the aforestated relief to substantiate their case. They pleaded *inter alia* in the affidavit filed in support of the petition that the defendant, DW-1, during her evidence has stated that she has no objection if the said gift deed is sent to a fingerprint expert for comparison of executant's the thumb impression thereon with the thumb impression said to be of the said executant, K.Laxmamma, on the above stated Vakalat filed in O.S.No.61 of 1978 on the file of the Court of the learned Principal Junior Civil Judge, East and North, Hyderabad. The defendant resisted the said application *inter alia* contending that the gift deed is true and valid and that it was executed out of love and affection in favour of the defendant by the said K.Laxmamma, who is her mother-in-law, and that the same was duly attested by two attestors including PW-2 and that one of the two attestors is no more and that PW-2 in his cross-examination done on behalf of the defendant supported the version of the defendant stating *inter alia* that the said K.Laxmamma put her thumb impression in his presence on the registered gift deed and that the plaintiffs are now seeking comparison of the disputed thumb impression on the gift deed with the thumb impression said to be of the said Laxmamma on the Vakalat in the former suit and that the thumb impression on the Vakalat said to be of K.Laxmamma is not admitted by the defendant and that, therefore, the said thumb impression on the said Vakalat is not of a comparable standard and that in view of the evidence already brought on record there is no need to send the documents to an expert for obtaining an opinion and hence, the petition is liable to be dismissed.

The trial Court, having overruled the objections of the defendant in her counter, allowed the application and directed that the gift deed as well as the Vakalat be sent to a fingerprint expert for comparison and furnishing an opinion. Aggrieved thereof, the defendant is before this Court.

The learned counsel appearing for the defendant, while reiterating the case of defendant, which is stated supra, contended that PW-2 has categorically admitted in his cross-examination that K.Laxmamma, the executant of the gift deed, affixed her thumb impression on the document in his presence and in the presence of the other witness/attestor, and as such, no purpose would be served by sending the gift deed to an expert for obtaining an opinion and that the application is filed at a belated stage after the trial has concluded and that the defendant is not admitting the thumb impression said to be of K.Laxmamma on the Vakalat which was summoned from the suit record in O.S.No.61 of 1978. In support of the contention that the signature or thumb impression on the Vakalat is not of a comparable standard, he placed reliance on the following two decisions: (i) **Gowri Shankar v. J.L.Babu & another**<sup>1</sup> and (ii) **Nalnaru Shanmugam v. Nalnaru Narayanaiah**<sup>2</sup>.

*Per contra*, the learned counsel for plaintiffs, while supporting the orders of the Court below and while reiterating the contentions of the plaintiffs, stated supra, would contend that opinion that an expert may furnish with regard to the genuineness or otherwise of a thumb impression would be based on exact science, and therefore, if such opinion is obtained, there will be one more additional assured piece of evidence before the trial Court for determining the crucial issue in the suit and that both the attestors of the gift deed had earlier given notarized affidavits in favour of the plaintiffs but one of the attestors/witnesses examined as PW-2 did not support the case of plaintiffs and that he was subjected to cross-

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<sup>1</sup> 2012 (3) ALT 287

<sup>2</sup> 2013 (3) ALT 497

examination by the plaintiffs' counsel, as well and that in view of his contradictory and conflicting statements first in the notarized affidavit and later in his deposition before the trial Court, it is necessary to obtain an opinion from a finger print expert.

I have bestowed my attention to the facts and submissions.

Be it first 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 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**<sup>3</sup> 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**

<sup>3</sup> AIR 2016 AP 118

**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."**

Therefore, on the ground of delay the application need not be dismissed. Be it noted that the suit is filed for a declaration that the gift deed said to have been executed by K.Laxmamma in favour of the defendant is null and void. At the instance of the plaintiffs the Vakalat said to have been filed in the year 1980 by the said K.Laxmamma in a former suit, which was filed by her in the year 1978, is called for from the said suit record to the file of the instant suit. The plaintiffs now intend to prove their case by requesting to send the two documents viz., (i) the disputed gift deed said to be containing the thumb impression of the said executant, K.Laxmamma; and, (ii) the above said Vakalat said to be containing the thumb impression of the said K.Laxmamma, to a finger print expert for comparison of the thumb impressions said to be of the said K.Laxmamma on the said two documents and furnishing a report with an opinion as to the genuineness or otherwise of the thumb impression on the above said disputed gift deed. The defendant is resisting the said request. One of the contentions of the defendant is that the thumb impression on the said Vakalat is not of a comparable standard. It is trite to observe that the Vakalat contains the thumb impression said to be of the said K.Laxmamma and not her signature. Generally when genuineness of signatures is in dispute, the party who has knowledge of the case of the opposite party may tend to file Vakalat in the same proceeding by designedly disguising his/her signature. Therefore, in such cases, it is unsafe to consider the Vakalat containing signature of such a party as a document of comparable standard. But in the case on hand, the Vakalat said to be of the said K.Laxmamma was filed in the year 1980 in a former suit of the year 1978 and it contains her thumb impression and not her signature and it was called directly from the said suit record to the file of the instant suit record. Hence, the first contention needs no countenance. For

the reasons aforestated and in the light of the ratios in the decisions of the division bench and of the full bench referred to supra, the decisions relied upon by the learned counsel for the defendant are not helpful to advance the case of the defendants any further.

The next contention of the defendant is that by cross-examining PW-2, the attester of the gift deed, sufficient evidence was already brought on record and that his evidence supports the case of the defendant and that, therefore, there is no need to obtain any opinion of any expert and that obtaining any opinion will not serve any useful purpose. Be it noted that at the stage of deciding the subject interlocutory application of this nature, the trial Court or, for that matter, this Court will not go into the merits of the main matter and record any findings as to the validity or genuineness or otherwise of any document in question; further, the present stage is not the stage for the evaluation and appreciation of evidence in regard to validity or genuineness of a document; and the stage for the said exercise comes only after full-fledged trial and the said exercise has to be done by the trial Court at a later stage, that is, at a stage when it decides on merits all the issues settled for determination in the suit. Be that as it may. The law is now well settled that an opinion furnished by an expert in regard to the genuineness or otherwise of the thumb impressions shall be considered as an opinion based on exact science and that such an opinion does not admit any doubt. Therefore, in the well considered view of this Court, if the thumb impression/s said to be of the executant on the gift deed are directed to be compared with the thumb impression said to be of her on the Vakalat and a report with the opinion of a finger print expert is called for as being sought for by the plaintiffs, such a course would meet the ends of justice. Further, on such directions, if the expert furnishes a comprehensive opinion, such an assured piece of evidence may be of considerable assistance to

the Court below in effectively resolving the dispute and in setting at rest, the dispute, once and for all.

On the above analysis this Court finds that the trial Court is justified in passing the impugned order and that the said considered order does not call for interference.

Viewed thus, this Court finds that there is no merit in this revision and that this revision is liable to be dismissed. The revision is accordingly dismissed. No costs.

Pending miscellaneous applications, if any, shall stand closed.

21<sup>st</sup> November 2016

ajr



**M.SEETHARAMA MURTI, J**