

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION No.5729 of 2011

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ORDER:-

This Civil Revision Petition, under Article 227 of the Constitution of India, filed by petitioner is directed against the order dated 09.11.2011 of the learned II Additional District Judge, Krishna District at Vijayawada ('the trial Court', for brevity) in I.A.No.2054 of 2006 in O.P.No.472 of 2001 filed under Order XXVI Rule 10-A read with Section 151 of the Code of Civil Procedure requesting to direct the expert to compare the thumb impression also on the Will dated 3rd May, 1999 said to have been executed by late K.Kameswaramma W/o late K.L.Narasimha Rao, which is the subject matter of the original petition.

2. I have heard the submissions of the learned counsel for the petitioner/appellant ('appellant', for brevity). Though notices are served on the respondents, none appears. I have perused the material record including the copy of the Will and also the order of the Court below, which is impugned.

3. The petitioner had filed the succession OP for grant of a succession certificate obviously in respect of moveable properties, which are bequeathed under the aforementioned Will. One of the contesting respondents had filed I.A.No.125 of 2003 in the said original petition requesting to send the original Will to an expert for obtaining his opinion in regard to the genuineness or otherwise of the signatures of the testatrix. The trial Court had granted the said request; therefore, the original Will along with the other documents containing the signatures of the testatrix, which are either admitted or

standard, is already sent to an expert for furnishing an opinion. While so, the petitioner had filed the first mentioned IA before the trial Court requesting to direct the expert to compare not only the signatures but also the thumb impression/s of the testatrix on the Will with her other admitted/standard thumb impressions available on other records and furnish a comprehensive opinion to enable the Court to arrive at a just decision in the *lis*. The said petition was filed by the petitioner after realizing the fact that the Court below had directed the expert to furnish his opinion only in regard to the disputed signatures but not in regard to the thumb impression/s of the testatrix on the Will, which is in question. The trial Court in the order impugned, having noted that the Will is already sent to a qualified expert for his opinion, had further observed that there is no need to again direct the expert to compare the thumb impressions and furnish his opinion and that such a necessity does not arise for consideration in the matter and that the present petition is only filed by the petitioner to protract the proceedings in the OP of the year 2001; and having so observed, the Court below had dismissed the petition of the petitioner holding that that there are no valid grounds for granting the request of the petitioner. Therefore, the aggrieved petitioner had preferred this revision.

4. The learned counsel for the petitioner would submit as follows: “The Will contains both the signatures and the thumb impressions of the testatrix. It is in the interest of justice to direct the expert to furnish his opinion in regard to the genuineness or otherwise of both the signatures and the thumb impressions of the testatrix on the Will. It is unjust and unfair to direct the expert to furnish his opinion in regard to only the signatures on the Will, which contains the thumb impressions also. If the thumb impressions on the Will are also directed to be compared with the admitted or standard impressions of the testatrix on

the other documents, the expert would be able to furnish an assured opinion. Such an assured opinion will be one more useful additional piece of evidence, which the Court can take into consideration while arriving at a just decision in the matter.”

5. I have perused the material record. I have noted the submissions. I have bestowed my attention to the facts.

6. It is not in dispute that the Will in question bears the signatures and thumb impressions said to be of the testatrix. The Will is already sent to an expert and it appears from the contentions of the appellant that the trial Court had directed the expert to furnish an opinion in regard to the genuineness or otherwise of the signatures of the testatrix on the Will, but it did not direct the expert to furnish his opinion in regard to the genuineness or otherwise of the thumb impressions on the said Will. Therefore, the petitioner made a request to the trial Court to direct the very same expert to compare the thumb impressions of the testatrix also which are on the Will with the admitted or standard impressions of the testatrix on the other documents and furnish a comprehensive opinion. The trial Court for no valid reasons declined to grant the said request.

7. The law is now well settled that an opinion furnished by an expert in regard to the thumb impressions shall be considered as an opinion based on exact science and that such an opinion does not admit any doubt. However, an opinion furnished by an expert in regard to disputed signatures and/or handwritings is just a piece of evidence having lesser probative value. Therefore, in the well considered view of this Court, if the thumb impressions said to be of the testatrix on the Will are also directed to be compared as being sought for by the petitioner such a course would meet the ends of justice. Further, on

such directions, if the expert furnishes a comprehensive opinion it may be of considerable assistance to the Court below in resolving the dispute and in setting at rest, the dispute, once and for all.

8. Coming to the question as to whether the succession OP is maintainable in the presence of the Will, suffice if it is observed that that said question does not fall for consideration in this revision and that the said question will have to be considered by the Court below at an appropriate stage, if necessary.

9. Viewed thus, this Court finds that the order impugned needs interference.

10. In the result, the Civil Revision Petition is allowed and the impugned order is set aside and I.A.No.2054 of 2006 in O.P.No.472 of 2001 on the file of the learned II Additional District Judge, Krishna District at Vijayawada is allowed. The trial Court is now directed to issue necessary directions to the expert to whom the Will is already sent to furnish his further opinion in regard to the genuineness or otherwise of the thumb impressions said to be of the testatrix on the Will in question by furnishing to the said expert the documents containing the admitted/standard thumb impressions of the testatrix, which the petitioner would make available to the Court for that purpose. It is made clear that the trial Court shall again give necessary directions to the same expert and obtain his opinion as directed in these orders even if the expert had already furnished his opinion in regard to signatures and returned the papers to the Court, by the date of implementation of these orders. The petitioner is directed to bear the necessary expenses in this regard.

There shall be no order as to costs.

Miscellaneous petitions pending, if any, in this revision petition,

shall stand dismissed.

M. Seetharama Murthi, J

13th April, 2016
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