

HON'BLE SRI JUSTICE G. SHYAM PRASAD

CIVIL REVISION PETITION No. 2597 OF 2016

ORDER:

1. This Civil Revision Petition, under Article 227 of the Constitution of India, is preferred against the dismissal order, dated 25.04.2016, in Interlocutory Application No.149 of 2016, in Original Suit No.162 of 2006, on the file of the Court of Junior Civil Judge, Salur, Vizianagaram District (for short, 'the trial Court').

2. The respondent is the plaintiff and the revision petitioners are the defendants in O.S.No.162 of 2006. The revision petitioners have filed a petition I.A.No.149 of 2016 for reopening of the suit and for sending the documents to the Expert for determination of the age of ink.

3. The brief facts leading to filing of this revision petition are that the respondent – Sanyasamma filed a suit O.S.No.162 of 2006 against the revision petitioners herein, for possession of the suit schedule properties. To prove her contention, she filed Ex.A-1 un-registered adoption deed and Ex.A-2 will deed before the trial Court. The revision petitioners have taken a plea that the documents Exs.A-1 and A-2 filed by respondent are fabricated documents. Therefore, the revision petitioners have filed I.A. No.126 of 2010 for sending the documents to the expert for comparison of signatures with regard to determination of age of ink. The said petition was allowed by the trial Court on 13.07.2000 and the documents were sent to the expert for comparison. The expert has

given his opinion on the documents without any opinion as to the age of the ink used in the documents Exs.A-1 and A-2.

4. Therefore, the revision petitioners have filed the present application, under Section 151 of the CPC, seeking for reopening the matter, and for resending the documents Exs.A-1 and A-2 to the expert for determination of the age of ink. It is also alleged that the documents Exs.A-1 and A-2 were said to have been scribed by one and the same scribe. The respondent has obtained some old stamp paper and fabricated the adoption deed and will deed with anterior dates. It is further submitted that the revision petitioners could not cross-examine P.W.9, the expert, who gave his opinion on Exs.A-1 and A-2 but did not give any opinion as to the age of ink. The revision petitioners are ready to bear the necessary expenses for sending the documents Exs.A-1 and A-2 to the expert for determination of the age of ink.

5. It is the case of the respondent that he had filed a suit claiming that she was adopted daughter and she got the properties through Ex.A-1 un-registered adoption deed and Ex.A-2 will deed from her father.

6. The revision petitioners contend that the documents Exs.A-1 and A-2 are fabricated and, therefore, sought for sending them to the expert for his opinion. The expert had given his opinion, but could not give any opinion about the age of ink. Therefore, the documents Ex.A-1 and A-2 are sought to be sent to the expert for his opinion as to the determination of the age of ink. The revision

petitioners also submitted that they could not cross-examine P.W.9 on the point of determination of the age of ink.

7. In this revision, in spite of service of notice, none entered appearance on behalf of the respondent.

8. During the course of arguments, Sri K.Subrahmanyam, learned counsel for the petitioners, mainly submitted that the expert, PW.9, had not given earlier any reason for non-determination of the age of ink on the documents and, therefore, these documents are to be resent to the expert for an opinion on the age of the ink on those documents.

9. The trial Court, observing herein below in Para 8 and 9 of the impugned order, dismissed the I.A. No.149 of 2016.

“8. As can be seen from the material available on record, it is obvious that the defendants filed I.A.No.126/2010 which was allowed by order dated 13.07.2010 and as a result thereof the documents were sent to the expert who sent his opinion dated 19.12.2013 to this Court. At this stage, the petitioners/defendants did not take any steps immediately after receipt of the report from the expert by this Court on the ground that the expert did not send his opinion on all the aspects sought for by them in their earlier application. Later, the said expert was examined as PW.9 before the Court by the learned counsel for the respondent/plaintiff on 31.07.2015 and the report of the expert came to be marked as Ex.X.18. Even at this stage, the petitioners/defendants did not even choose to cross-examine the expert on 31.07.2015 when he appeared before the Court, for the reasons best known to them. That being so, if really the defendants thought that the report of the expert does not cover the aspects mentioned in their earlier

10. The suit is filed in the year 2006. The Interlocutory Application was filed by the petitioners for sending the documents to the expert and he gave opinion, Ex.P-18. The expert was examined as PW.9. The petitioners have not cross-examined the expert on the question of determination of age of ink on Exs.A-1 and A-2. They have not availed the opportunity given to them. They did not elicit anything against the determination of age of ink on Exs.A-1 and A-2 and, on the other hand, filed instant petition under Section 151 of C.P.C. for reopening of the matter, and sending the documents Exs.A-1 and A-2 for the opinion of the expert. Since the expert has already given his opinion on Exs.A-1 and A-2, there is no need again to send the documents to the expert.

11. The silence on the part of the petitioners, in not cross-examining the expert, PW.9, when he appeared before the lower Court, would clearly show that they have conceded for the report of the expert and only for that reason they might not have cross-examined the expert and, hence, the report of the expert attained finality. It is also pertinent to note that I.A. No.149 of 2016 is filed for two reliefs *i.e.* one for reopening the matter and the other for sending the documents Exs.A-1 and A-2 to the expert for determination of age of ink. Technically, the petitioners are not entitled to seek two reliefs in one petition; on this ground alone this Petition is liable to be dismissed.

12. The evidence of an expert, under Section 45 of the Act of 1872, is not a conclusive proof. The surrounding circumstances of execution of the documents *i.e.* Exs.A-1 and A-2 are to be proved

with other relevant and cogent evidence adduced by the parties. In this case, the petitioners' failure to cross-examine the expert clearly shows that they have no grievance for non-examination of the expert. Moreover, the matter pertains to the year 2006, and the evidence on either side was recorded, and the matter was coming up for arguments. The filing of I.A. No.149 of 2016 is only to fill up the lacunae in their evidence and also to drag on the proceedings, further.

13. The following are the decisions regarding various facilities to be considered for sending the documents to labs: In *Yash Pal Vs. Kartar Singh*¹, The Punjab and Haryana High Court held as follows:

“5.However, in the present case, such investigation is not likely to help to conclusively prove that the writing dated 11.02.1998 was in fact recorded earlier because the age of the ink cannot be determined on the basis of the writing. If the ink is manufactured five years before the date of the execution of the document and used on 11.02.1998 for the first time then instead of resolving any controversy it would create confusion. Therefore, no useful purpose could be served by allowing such an application. It is true that opinion of expert is relevant under Sections 45 and 46 of the Indian Evidence Act, 1872 but in the present case that has to be read with Order 26 Rule 10A of the Code. The basic rationale is whether such scientific investigation is going to advance the cause of justice and would be necessary for adjudicating upon the rights of the parties. Therefore, I do not find any ground to interfere in the well reasoned order passed by the learned Civil Judge. The revision petition does not disclose any irregularity or illegality warranting interference of this Court in exercise of its jurisdiction under Section 115 of the Code.”

¹ AIR 2003 (P&H) 344

14. In *S. Gopal Vs. D. Balachandran*², The Madras High Court held as follows:

“15. It is found that the age of the ink cannot be determined by an expert with scientific accuracy. Further, the use of old ink manufactured long ago will definitely create a dent in the opinion furnished by an expert. Therefore, there is no necessity for sending the disputed cheque admittedly signed by the petitioner to an expert for his opinion. The order passed by the learned Judicial Magistrate I, Erode in C.M.P. No. 2915 of 2007 in C.C. No. 1287 of 2006 does not suffer from any illegality or impropriety. Therefore, there is no warrant for interference with the well considered order passed by the Trial Court.”

15. In *R. Jagadeesan Vs. N. Ayyaswamy and another*³, The Madras High Court held as follows:

“8. In view of the above clear and unambiguous statement made by no less a person than the Head of the Department of Forensic Science, I am of the view that the whole exercise adopted in various Courts in this State to send the disputed documents for opinion to the Forensic Department in respect of the age of the writings and the documents is only futile. If any document is so sent, certainly the department will say that no opinion could be offered. As a matter of fact, the Assistant Director would inform the Court that already many such documents, which were sent to them by various Courts in the State for such opinion, have been returned by them with the report that no such opinion could be offered.

9. In view of all the above, in my considered opinion, sending the documents for opinion in respect of the age of the writing on documents should not be resorted to hereafter by the Courts unless, in future, due to scientific

² 2008 (CTC) (1) 491

³ 2010 (CTC) (1) 424

advancements, new methods are invented to find out the age of the writings.”

16. In view of the decisions referred *supra*, it is clear that possibilities of determination of the age of ink are less. Even if such facilities are available now, the petitioners have lost their opportunity, as they have not cross-examined the expert, on the aspect of determination of age of ink, unless he submitted Ex.X-18 report. The report of the expert is before the trial Court. There is no need to call for another report unless sufficient reasons are given for not considering the report under Ex.X-18. Therefore, there is no need for considering the request of the petitioners by the trial Court. So, the trial Court has rightly rejected their request. The order of the trial Court is not suffering with any error, apparent on the record or perverse. The petitioners are not entitled for any relief under Article 227 of the Constitution of India. Hence, the petition is liable to be dismissed.

17. Hence, there is no error in the impugned order of the trial Court, warranting interference invoking Article 227 of the Constitution of India. The Civil Revision Petition is liable to be dismissed.

18. In the result, the Civil Revision Petition is dismissed. However, the trial Court is directed to dispose of the suit, on merits, as expeditiously as possible. No order as to costs.

19. In consequence, miscellaneous petitions, if any, pending in this Revision shall stand dismissed as infructuous.

G. SHYAM PRASAD, J

Date:11-11-2016.
Dsh



HON'BLE SRI JUSTICE G. SHYAM PRASAD

127



14112016

CIVIL REVISION PETITION No.2597 OF 2016

Date.11-11-2016

DSH