

THE HON'BLE SRI JUSTICE SANJAY KUMAR
CIVIL REVISION PETITION NO.4525 OF 2016

O R D E R

O.S.No.569 of 2011 was filed before the learned Principal Senior Civil Judge, Ranga Reddy District, by the respondent herein for recovery of a sum of Rs.8,10,000/- with interest and costs. The petitioners, the defendants in the suit, filed I.A.No.1267 of 2015 therein under Section 45 of the Indian Evidence Act, 1872 (for brevity, 'the Act of 1872') to send Ex.A1 suit promissory note dated 22.03.2008 to the Forensic Science Laboratory to ascertain the age of the handwriting and signature therein. By order dated 20.04.2016, the trial Court dismissed the I.A. Aggrieved thereby, they filed the present revision under Article 227 of the Constitution.

Upon being informed that the trial Court had already reserved judgment, this Court granted interim stay of further proceedings in the suit, by order dated 28.10.2016.

Heard Sri Virupaksha Dattatreya Gouda, learned counsel for the petitioners/defendants, and Sri V.Ramesh Reddy, learned counsel for the respondent/plaintiff.

Parties shall be referred to hereinafter as arrayed in the suit.

Defendant 1 filed a written statement in the suit wherein defendant 2, speaking on its behalf, asserted that the signature in Ex.A1 suit promissory note was not hers. She also alleged that the suit promissory note was a forged, fabricated and created one. According to her, certain cheques and signed promissory notes had been misplaced by her and she had also given a complaint to the police. I.A.No.1267 of 2015 was therefore filed in the suit reiterating that certain blank cheques, non-judicial stamp papers and signed

promissory notes, which were on the office table, were misplaced in the last week of March, 2009, whereupon a complaint was lodged with Rajendranagar Police Station, Cyberabad, on 10.04.2009. The defendants further alleged that Ex.A1 suit promissory note may have been scribed just before the institution of the suit but the signature therein and the seal of defendant 1 may be of the year 2005-06. Defendant 2 asserted that the writing in the suit promissory note did not belong to the year 2008 and claimed that examination of the suit promissory note by the Forensic Science Laboratory was essential to ascertain the age of the writings therein.

The trial Court however accepted the plea of the plaintiff that the subject I.A. was filed only to drag on the proceedings, as it was instituted at the stage of the final arguments. The trial Court also observed that there was no technology available to accurately determine the age of the handwriting in a document. On these grounds, the trial Court held against the defendants.

Sri Virupaksha Dattatreya Gouda, learned counsel, contended that as defendant 2 had asserted in the written statement, filed as long back as on 21.11.2013, that signed promissory notes left on the table were misplaced and that the suit promissory note was a fabricated one, the trial Court ought not to have brushed aside her plea for expert examination of the document to determine the age of the writings and signature therein. He would assert that scientific technology has advanced to such an extent that it would be possible for an expert to determine, with accurate proximation, the age of the ink used in writing a document and that such determination in the present case would greatly help the trial Court in adjudicating the issue of genuineness of the suit promissory note.

Per contra, Sri V.Ramesh Reddy, learned counsel, pointed out that the subject I.A. was filed at the eleventh hour only to drag on the proceedings and that there are no *bonafides* in the defendants seeking expert opinion on the suit document at this late stage, when they had taken the plea that it was fabricated as long back as in November, 2013. Learned counsel would further contend that scientific technology is not available to accurately determine the age of the writings/signature in a document and that no purpose is served by undertaking this exercise.

Sri Virupaksha Dattatreya Gouda, learned counsel, relied on **T. NAGAPPA Vs. Y.R. MURALIDHAR**¹, wherein the Supreme Court observed that a fair trial includes fair and proper opportunity allowed by law to prove innocence and that adducing evidence in support of the defence is a valuable right.

In **UPPU JHANSI LAKSHMI BAI Vs. J. VENKATESWARA RAO**², a learned Judge of this Court justified the order of the trial Court under Section 45 of the Act of 1872, seeking expert opinion as to whether the ink used for signing was different from the ink used for writing the body of the document.

Sri Virupaksha Dattatreya Gouda, learned counsel, also placed reliance on data downloaded from the internet and texts with regard to the scientific capability of determining the age of ink and writing in documents.

Per contra, Sri V. Ramesh Reddy, learned counsel, relied upon **KAMBALA NAGESWARA RAO Vs. KESANA BALAKRISHNA**³, wherein a learned Judge of this Court disallowed an application

¹ Criminal Appeal No.707 of 2008 decided on 24.04.2008

² AIR 1994 AP 90

³ AIR 2014 AP 37

under Section 45 of the Act of 1872 to test the age of a signature. The learned Judge observed that several complications would arise in the course of such examination as mere determination of the age of the ink, even if there exists such facility, would not be determinative of the age of the signature. The learned Judge observed that the ink may have been manufactured several years ago but it may have been used long thereafter to affix a signature and in the event there was a gap of ten years between the date of manufacture of the ink and the date on which the signature was put on the document, determination of the age of the ink would be wholly ineffective for the purpose of finding out as to when the document was signed.

In the light of the various judgments cited by Sri Virupaksha Dattatreya Gouda, learned counsel, including one of the Supreme Court, this Court opined that if a trustworthy and credible scientific facility could undertake an exercise to determine the age of the contents of the suit promissory note and the age of the signature therein, the defendants should not be denied the benefit thereof.

The Registrar (Judicial) of this Court was accordingly asked to enquire with the Central Forensic Science Laboratory at Hyderabad as to whether it could undertake this exercise. However, the Registrar (Judicial) submitted Report dated 08.11.2016 to this Court that the Director, Central Forensic Science Laboratory, Hyderabad, had informed him that the Laboratory does not undertake examination of documents to verify the age of the ink in the body of the writing of the document and the age of the ink in the signature so as to ascertain whether both are contemporaneous.

In the light of the Central Forensic Science Laboratory, Hyderabad, expressing its inability to undertake this exercise, this

Court is left with no option but to disallow the prayer of Sri Virupaksha Dattatreya Gouda, learned counsel, to enable an expert to examine the suit promissory note for the purpose of determining the age of the writing/signature therein. No credibility can be attached to opinions of non-accredited experts who may be willing to undertake this kind of scientific testing.

On this ground, this Court finds no reason to interfere with the order under revision. Needless to state, as mentioned in the said order, the issue as to whether defendant 1 is a proprietorship or a partnership is left open and it is for the trial Court to adjudicate upon the same on facts and in accordance with law.

The Civil Revision Petition is dismissed.

Interim order dated 28.10.2016 shall stand vacated. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

2nd DECEMBER, 2016

PGS

SANJAY KUMAR, J