

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.4581 of 2015

ORDER:

The revision petitioners are the unsuccessful petitioners in the lower Court vide order dated 12.08.2015 of VII Additional Senior Civil Judge, City Civil Court, Hyderabad in I.A.No.1070 of 2014 vis-à-vis defendants in O.S.No.269/2009, which was filed by the revision respondent/plaintiff. It is after the closure of the evidence of DWs.1 to 4, the defendants filed the application supra under Section 45 of the Evidence Act to send the thumb impression contains in Exs.B11 and B12 to the expert for comparison of the disputed thumb impression, if any, with admitted specimen to be obtained after contest by respondent/plaintiff saying the document sought for sending to expert at the fag end and it is without no due diligence and it is with some ill motive to drag on the suit proceedings and apart dilatory tactics. The lower Court therefrom observed in Para 6 of the impugned order referred supra, when it is the specific contention of the plaintiff that the defendants did not adduce any other evidence to prove Exs.B11 and B12 are genuine documents and the present petition to send the documents to send to expert filed at the fag end of the suit proceedings after entire trial and in the course of submission of arguments, it is nothing but drag on and delay the proceedings with no bonafides. Same is now impugned in the revision.

The revision petition enclosed memo shown those memos filed by plaintiff in taking time for cross examination of DW.1 or DW.2 or DWs.3 and 4 respectively mostly for one reason or the other. After closure of the plaintiff's side evidence in so far as defendants evidence, nothing practically demonstrates of dragging on the proceedings much less to say from the matter ripen to stage of arguments by filing the petition to send the thumb impression to expert is mainly to drag on the proceedings as part of any alleged dilatory

tactics for no such foundation to the observation by the lower Court, but for simply adopting the contention of the counter of the plaintiff respondent for so saying so casually. Leave it as it is though the learned counsel for the plaintiff/revision respondent placed reliance upon **S.Harshavardhan Reddy Vs. Vemula Ram Reddy**^[1], **P. Seshagiri Rao and Another Vs. P.Soma Sekhar Rao and Another**^[2] and **Mortha Vimala Vs. Gouthu Rajulu**^[3], the expressions of learned single Judge of this Court are confining to the facts of the respective cases. Some of the matters is in saying it serves from handwriting comparison and opinion evidence as peace of corroborative evidence for not a substantive one. Here the case on hand is opinion on thumb impressions which is a developed science and same can be relied as a substantive evidence even. The other decisions are on factual foundation laid for observing the petitions impugned are to drag on the proceedings and lack of bonafides. The expressions thereby of no help much less to dismiss the petition therefrom.

In fact the thumb impressions are once in dispute and those were when confronted to PW.1 from not admitted though marked only for referring door numbers mentioned therein when those were marked through DWs.3 and 4 respectively as Exs.B11 and B12 the entire document with contents the contention that those were liable for stamp duty or those cannot be looked into or those were fabricated cannot be given much credence as once an objection in relation to the requirements of stamp not raised while marking later not left open after marked; from the waiver as per Sections 34 to 36 of the Stamp Act, leave about any requirement of registration even the document can be admitted for a collateral purpose even it is a compulsory registerable document under Section 17 as to nature of the transaction, though not character of the transaction from any of the contents covered by document under Section 49 of the Registration Act. As such, such a

contention if at all is left open for the trial Court to decide. In fact the law is fairly settled that finger prints science is fully developed and exact science and once the thumb impression on the document in dispute, besides there is evidence from DWs.1 to 4 in proof of the so called execution and thumb impression of the executants. Once that is in dispute by the plaintiffs side particularly from PW.1 plaintiff sending the same will clear the cloud in this regard, thereby the trial Court should have been considered the request to send the documents to expert.

Having regard to the above, the impugned order dismissing the application is set aside and the revision petition is allowed. Consequently the petition in I.A.No.1070 of 2014 on the file of VII Senior Civil Judge, City Civil Court, Hyderabad, in O.S.No.269 of 2009 is allowed to send the document Exs.B11 and B.12 to handwriting expert to decide the genuineness of the disputed thumb impressions therein by obtaining specimen thumb impression of the alleged executant of the document and also with available admitted thumb impressions, if any, to be produced by the parties and to be considered relevant by the Court which is subject to deposit of Rs.10,000/- by the petitioners/defendants within in one week from the date of receipt of a copy of this order, before the trial Court for taking the specimen signature and collecting the admitted signatures and to send along with it disputed thumb impressions on Exs.B11 and B12 to the handwriting expert to receive opinion and to proceed further thereafter with the arguments of the matter subject to necessity of examining the expert supported by reasons from the opinion to be given if any.

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 17.08.2016
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- [\[1\]](#) 2015 (1) ALT 306
- [\[2\]](#) 2012 (4) ALD 536
- [\[3\]](#) 2015 (1) ALT 186