

HON'BLE SRI JUSTICE G. SHYAM PRASAD

CIVIL REVISION PETITION Nos.4410 AND 4610 OF 2016

COMMON ORDER:

1. These two Civil Revision Petitions, filed under Article 227 of the Constitution of India, arose out of the common order passed in Interlocutory Application Nos.3120 and 3119 of 2015, dated 25.07.2016, on the file of the Court of Senior Civil Judge, Vizianagaram (For short, 'the lower Court').

2. The brief facts, leading to filing of these Petitions, are as follows:

The respondent is the plaintiff in O.S.No.172 of 2005 filed suit against the defendant/petitioner herein for specific performance of an agreement of sale.

In the said suit, she filed I.A.No.404 of 2009 under Section 45 of the Indian Evidence Act which was allowed. The petitioner's signatures were obtained in the open Court and sent to the Handwriting expert for comparing the signature on Ex.A.1 with the admitted signatures. The Handwriting expert has sought for clarification on 04.10.2010 about the admitted signatures. On that the petitioner filed I.A.No.222 of 2010 under Order XVI Rule 6 CPC, seeking for the scanned copies of her account opening form, and the withdrawal from, which are Exs.X-5 and X-6, from the Branch Manager, SBI, Gajuwaka Branch. The said application was dismissed. Those documents were not sent to the expert for his opinion. The present applications are filed for reopening the matter, and sending of the agreement of sale, along with the registered mortgage deed, dated 10.11.1988, which was marked as Ex.X-3 to the Handwriting expert.

3. The respondent filed his counter before the lower Court denying material allegations in the petition, *inter-alia* contending that the petitioner has been frequently changing her signature intentionally, to defeat the comparison of her signature and more than 12 admitted signatures of the relevant period pertaining to the petitioner have been obtained. The present applications are filed only to drag on the proceedings. Therefore sought for dismissal of the applications.

4. The lower Court framed the issue as to whether or not, there existed legitimate grounds for entertaining and allowing the applications in issue? During the enquiry, no witnesses were examined, and no documents were marked on either side. The lower Court dismissed the Applications by a common order dated 25.07.2016.

5. Feeling aggrieved by the common order, in I.A. Nos.3120 and 3119 of 2015, the petitioner-defendant preferred these Civil Revision Petitions.

6. Heard the arguments of Mrs. G. Jaya Reddy, learned counsel for the petitioner-defendant, and Mr. M. Balasubramanyam, learned counsel for the respondent-plaintiff.

7. Considering rival contentions and perusing the material available on record, the sole point that arises for consideration in these Revisions is;

Whether there are sufficient grounds to set-aside the common order passed by the trial Court in dismissing the Applications filed for reopening of the matter and sending Ex.X-3 along with Ex.A-1, to the hand writing expert?

8. It is the case of the revision petitioner that the lower Court had not sent the suit document Ex.A-1 to the expert for comparison of the disputed signature of the revision petitioner with those of her admitted signatures.

It is submitted that several petitions have been filed for that purpose, but the comparison of disputed signatures with the admitted signatures was not done due to various reasons. Therefore, the revision petitioner has filed the present revisions for sending the disputed signature on Ex.A-1 to compare the same with the admitted signature on a mortgage deed, which is said to have been marked as Ex.X-3 in the suit.

9. The contention of the respondent is that the petitioner had filed several petitions for sending the document Ex.A-1 to the expert for comparison of her disputed signature with that of her admitted signatures. The lower Court has obtained the signatures of the petitioner for comparison. The lower Court has passed orders in I.A.No.404 of 2009, I.A.No.2297 of 2015 and I.A.No.2644 of 2015 filed by the petitioner for sending the document Ex.A-1 to the expert for comparison of signatures. The lower Court has observed in I.A.No.2644 of 2015 that the petitioner shall not have any liberty for making a request in future either for reopening the matter or for sending the disputed signatures with her admitted signatures to the expert. Even after passing said orders, the petitioner has come up with the present application for sending the document to the expert.

10. Learned counsel for the respondent submits that this amounts to *res judicata* and the present revision petition is liable to be dismissed.

11. Learned counsel for the revision petitioner submits that the purpose of sending Ex.A-1 to the expert could not be done in spite of filing several applications before the lower Court. Therefore, the revision petitioner has come up with the present application for sending the disputed signature on Ex.A-1 to compare the same with the admitted signatures on Ex.X-3 mortgage deed.

12. Learned counsel for the respondent vehemently opposed for sending the mortgage deed to the expert for comparison of the signature on Ex.A-1. It is submitted that Ex.A-1 is said to have been executed in the year 2004, whereas Ex.X-3 was executed in the year 1988. There is 16 years gap between the alleged execution of these two documents and therefore Ex.X-3 is not fit for comparison. On this ground, the lower Court dismissed the present application filed by the revision petitioner.

13. However, learned counsel for the respondent, during the arguments before this Court, has fairly admitted that he has no objection if the document pertaining to the year 2004 or around 2004 wherein the admitted signatures of the petitioner are there, can be sent for comparison.

14. On consideration of the representation of the learned counsel for respondent, since the observation of the lower Court that there is 16 years gap between these two documents Ex.A-1 and Ex.X-3, Ex.X-3 cannot be sent for comparison. I agree with this finding of the lower Court.

15. Further, in the concluding portion of the order, the lower Court observed that Ex.A-1 was of the year 2004 and Ex.X-3, which was sought to be sent along with Ex.A-1 to the expert for comparison, was of the year 1988, where there is a gap of 16 years and also in view of the fact that the petitioner-defendant failed to avail the opportunity of sending her admitted signatures of the year 2004, as required by the hand writing expert, the lower Court dismissed both the Applications.

16. No doubt, this finding of the lower Court does not require any interference. However, in view of the fact that the suit in O.S. No.172 of 2005 was filed for specific performance of agreement of sale, Ex.A-1, and

the petitioner-defendant is disputing her signature on it, it has to be sent to the expert for proving whether the signature on Ex.A-1 is her genuine signature or not. For this purpose, I feel that the ends of justice would be met, if the petitioner-defendant is given a last chance to prove her case. In view of the same, the petitioner-defendant is directed to file fresh applications before the lower Court, for reopening of the matter and sending the agreement of sale, Ex.A-1, with her admitted signatures pertaining to the year 2004 or the proximate date of the year to the hand writing expert. The lower Court is directed to consider those Applications, in accordance with the law, un-influenced by any of the observations made hereinabove, and dispose of the same at an early date, as the matter pertains to the year 2005.

17. Accordingly, with the above observation, both the Civil Revision Petitions are disposed of. No order as to costs.

18. In consequence, miscellaneous petitions, if any, pending in these Petitions, shall stand disposed of as infructuous.

Date: 28-10-2016.
Dsh

G. SHYAM PRASAD, J

HON'BLE SRI JUSTICE G. SHYAM PRASAD

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Date.28-10-2016

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