

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.1524 of 2014

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ORDER:

This Civil Revision Petition under Article 227 of the Constitution of India by the unsuccessful petitioner/1st defendant is directed against the order dated 15.04.2014 of the learned III Additional Senior Civil Judge, Kakinada of East Godavari District passed in I.A.no.256 of 2014 in O.S.no.664 of 2010 filed under Section 45 of the Indian Evidence Act read with Section 151 of the Code of Civil Procedure, 1908 ('the Code', for brevity) requesting to send exhibit B1-registered Will deed dated 09.05.1997 and exhibit B2-registered partition deed dated 17.11.1989 to a Government handwriting expert for examination and comparison of the signatures and thumb impressions said to be of Vungarala Seshagiri Rao on the said documents and furnish his report with opinion.

2. I have heard the submissions of the learned counsel for the revision petitioner/1st defendant ('the 1st defendant', for brevity) and the learned counsel for the 1st respondent/plaintiff ('the plaintiff', for brevity). I have perused the material record.

3. The introductory facts, in brief, are as follows:

The sole plaintiff brought the suit against the defendants for declaration of title and consequential perpetual injunction in respect of Ac.1.80 cents out of total extent Ac.7.20 cents in Sy. No.142 of Polekurru village, more fully described in the schedule annexed to the plaint. The 1st defendant is resisting the suit. While the trial in the said suit is in progress, the 1st defendant had filed the subject application with the aforementioned prayer. That petition was resisted by the plaintiff by filing a counter. The trial Court had dismissed the petition, on merits. Hence, the 1st defendant is before this Court.

4. The learned counsel for the 1st defendant would submit as under: “The observations and findings in the impugned order of the trial Court that the plaintiff is disputing both the documents and contending that they are not admitted are incorrect. Having wrongly observed to the above effect, the trial Court had erroneously dismissed the petition. The trial Court had wrongly dismissed the application merely on the ground that there is a direction by a learned Additional District Judge in the civil miscellaneous appeal that the suit shall be disposed of within a time frame. The dismissal of the petition merely on the ground that the petition is belatedly filed and that the 1st defendant could not produce before the Court below any admitted documents containing the admitted signatures and thumb marks of the said Seshagiri Rao for comparison by an expert is incorrect and not just and fair. The said reasons assigned for dismissal of the petition are not valid reasons, in the facts and circumstances of the case. The order impugned, which was made on erroneous assumptions and unsound reasons is liable to be set aside being unsustainable.”

5. Conversely, the learned counsel for the plaintiff while supporting the impugned orders of the Court below would submit as under: “The suit for declaration is based on a registered sale deed dated 10.12.2009. The suit land is a cultivable land. The 1st defendant could not produce before the court below any signatures of Vungarala Seshagiri Rao of a contemporaneous period. The two documents, exhibits B1 and B2 are not of a contemporaneous period. Therefore, the signatures on the said two documents, which are disputed, are not of a comparable standard. Hence, in the facts and circumstances of the case, no purpose would be served by seeking an opinion from an expert. As rightly observed by the court below in its orders, there is a direction by the learned Additional District Judge to dispose of the suit within a time frame; and the present petition is belatedly filed only to drag on the matter endlessly. Hence, the order impugned does not warrant interference.”

6. I have given earnest consideration to the submissions. I have bestowed my attention to the facts.

6.1 One Vungarala Seshagiri Rao is the husband of one Satyavathi. They both had given birth to two sons and three daughters. After the death of said Satyavathi, the said Seshagiri Rao had married her own sister whose name is also Satyavathi; she is the present revision petitioner. Seshagiri Rao and the revision petitioner/1st defendant were blessed with a son by name Veera Bhadraiah Naidu and a daughter Satyavathi. In view of the fact that the suit for declaration of title and consequential injunction is being resisted by the 1st defendant and the 1st defendant is now seeking permission of the Court to send exhibit B1 registered Will of the said Seshagiri Rao and exhibit B2-registered partition deed dated 17.11.1989 to an expert for comparison of the signatures and thumb impressions of the said Seshagiri Rao on the said documents and furnishing an opinion, it is necessary to first deal with the aspect as to whether the deed of partition is admitted or not. It is necessary to consider this aspect because the trial Court in its orders observed that the 1st respondent/plaintiff denied both the documents. The learned counsel for the 1st defendant drew the attention of this Court to the registered sale deed dated 10.12.2009 which is the basis for the suit claim. In the said document there is a specific reference to the registered partition deed bearing no.3778 of 1989 dated 17.11.1989. He had also drawn the attention of the Court to the earlier suit O.S.no.852 of 2010 filed by the 1st defendant herein and others against the 1st respondent/plaintiff herein and two others wherein, the 2nd defendant therein filed a written statement *inter alia* admitting as follows: 'However, it is true that the husband of the 1st plaintiff herein along with his sons and daughters partitioned the properties by way of Regd. Partition Deed dated 17.11.1989 vide Doc. No.3778/1989 and that all of them have been enjoying their respective partitioned properties.' He would also draw the attention of this Court to the fact that the said written statement in the said suit filed by the 2nd defendant was adopted by the present plaintiff by filing an

adoption memo. Therefore, the plaintiff herein cannot be heard to say that exhibit B2, partition deed is not admitted. As a sequel, it must be held that the findings of the Court below that the respondent/plaintiff denied both the documents exhibits B1 and B2 is unsustainable.

7. Coming to the observations of the Court below and the contentions of the plaintiff in regard to the 1st defendant's failure to produce documents of a contemporaneous period containing the signatures of the said Seshagiri Rao, what is to be noted is that the 1st defendant is requesting to send the said two documents to an expert for the comparison of not only the signatures said to be of Seshagiri Rao but also the thumb impressions said to be of Seshagiri Rao available on the said two documents, exhibits B1 and B2. It is settled law that the science of identifying thumb impressions is an exact science and does not admit any mistake or doubt. Therefore, in the facts and circumstances of the case, the 1st defendant's mere failure to produce documents of a contemporaneous period containing the signatures of Seshagiri Rao is no ground to reject the request of the 1st defendant. Dealing finally with the aspect of delay in making the present request by the 1st defendant and also the direction of the learned Additional District Judge in the CMA for disposal of the suit within the time frame, be it noted that the controversy involved in the *lis* is in regard to the genuineness or otherwise of exhibit B1, the registered will said to have been executed by Seshagiri Rao. The controversy can be set at rest once and for all if the *lis* is adjudicated after permitting the parties to adduce the best possible evidence. Both exhibits B1 and B2 admittedly contain not only signatures said to be of Seshagiri Rao but also thumb impressions. Out of the two documents, though exhibit B1 registered Will is in dispute; exhibit B2 registered partition deed is an admitted document. If an expert's report with his opinion is called for by directing him to compare the signatures and thumb impressions on the two documents said to be of Seshagiri Rao, that evidence in the form of an opinion by an expert, in the well-considered view of this Court, would certainly be one more assuring additional piece of evidence for adjudicating

the *lis*. Thus, if the request of the 1st defendant is considered and the expert's opinion is obtained, then the trial Court will have the advantage of considering the opinion evidence along with other evidence that would be available on record by the time the suit comes up for final adjudication on merits. Therefore, in a suit of this nature filed for the relief of declaration of title in respect of a valuable immovable property, the request to send the documents to an expert for getting an assured opinion cannot be declined on the mere ground of delay.

8. Viewed thus, this Court finds that there is acceptable merit in the contentions of the revision petitioner and, hence, the order, which is impugned, warrants interference.

9. In the result, the Civil Revision Petition is allowed and the impugned order dated 15.04.2014 passed in I.A.no.256 of 2014 in O.S.no.664 of 2010 is set aside and the said application is allowed. The trial Court is directed to now send exhibits B1 and B2 to Government expert of the Forensic Science Laboratory or some such Government Institution with a direction to compare the signatures and thumb impressions said to be of Seshagiri Rao on the said documents and furnish an opinion in regard to genuineness or otherwise of the signatures and thumb impressions of Seshagiri Rao on exhibit B1 Will. However, the trial Court shall resort to this exercise after giving necessary direction to the 1st defendant to deposit the required amount towards the fee of the expert and necessary expenses as per the procedure. Considering the fact that the suit is of the year 2010, the trial Court shall make an endeavor to complete the whole exercise and obtain an opinion from the expert as expeditiously as possible and dispose of the suit, on merits and in accordance with the procedure established by law, however, within three months from the date of the receipt of the report from the said expert.

There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this revision shall stand closed.

M. SEETHARAMA MURTI, J

08th March, 2016
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