

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION NO.335 OF 2016

ORDER

This civil revision petition under Article 227 of the Constitution arises out of the order dated 26.08.2015 of the learned Principal Junior Civil Judge, Puttur, in I.A.No.462 of 2015 in O.S.No.281 of 2008. The petitioners are the plaintiffs in the said suit filed for declaration of title and a consequential permanent injunction. The petitioners/plaintiffs filed the subject I.A. under Section 45 of the Indian Evidence Act, 1872 (for brevity, 'the Act of 1872'), read with Section 151 CPC seeking an expert opinion on what was claimed to be the thumb impression of B.Chenga Mandadi in the unregistered partition deed dated 22.07.1987(Ex.B.23). By the order under revision, the trial Court dismissed the application.

Heard Sri N.M.Krishnaiah, learned counsel for the petitioners/plaintiffs and Sri N.Ashok Kumar, learned counsel on caveat for respondents 2, 3 and 4/defendants 2, 3 and 4.

Perusal of the order under revision reflects that the subject unregistered partition deed was marked in evidence as Ex.B.23 through D.W.1, upon his being recalled for further examination. However, when the trial Court asked for production of the admitted thumb impression of Chenga Mandadi for the purpose of comparison with the thumb impression in the unregistered partition deed (Ex.B.23), no admitted document was produced by the petitioners. Further, as B.Chenga Mandadi was no more, there was no possibility of obtaining his thumb impression at this stage. The only document which was available for comparison was Ex.A.2, the gift settlement deed said to have been executed by B. Chenga Mandadi in favour of the petitioners/plaintiffs. However, this document was not an admitted document as the respondents/defendants contested its genuineness. Given this situation, the trial Court opined that it would not be possible to invite an expert opinion as there was no admitted thumb impression of B.Chenga

Mandadi which could be taken as the standard for comparison with the thumb impression in Ex.B.23. Holding so, the trial Court dismissed the application.

Illustration (c) to Section 45 of the Act of 1872 reflects that when a disputed document is to be sent for expert opinion, it necessarily has to be along with a document which is either proved or admitted to enable the expert to offer his opinion upon comparison therewith. In the present case, the respondents/defendants admittedly disputed the genuineness of Ex.A.2 registered gift settlement deed. Thus, as matters stand the trial Court has not, as yet, held the said document to be proved and it is obviously not an admitted document. In effect, there was no admitted thumb impression of B.Chenga Mandadi, which could be subjected to comparison with the disputed thumb impression in Ex.B.23.

This Court therefore finds no irregularity or illegality in the order under revision warranting interference by this Court in exercise of judicial superintendence.

The civil revision petition is devoid of merit and is accordingly dismissed. Pending miscellaneous petitions shall also stand dismissed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

7th APRIL, 2016

Svv