

**THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI**

**CIVIL REVISION PETITION No.4945 of 2014**

**ORDER:**

This Civil Revision Petition, under Article 227 of the Constitution of India, by the unsuccessful petitioner/Defendant, is directed against the order dated 27.10.2014 of the learned

II Additional Junior Civil Judge, Tadepalligudem passed in I.A.no.1320 of 2014 in O.S.no.493 of 2005 filed under Section 45 of the Indian Evidence Act, 1872 requesting to send the agreement of sale dated 30.04.2004 to the Government Finger Prints Bureau, Forensic Science Laboratory, Hyderabad for comparison of the disputed thumb impressions on the said agreement of sale with the thumb marks/impressions of the petitioner, which may be obtained in the open Court, and to furnish a report.

2. I have heard the submissions of learned senior counsel appearing for the revision petitioner/defendant ('defendant', for brevity). I have perused the material record.

3. The learned senior counsel appearing for the defendant would submit that when notice was sent to the respondent/plaintiff through Court, the same was returned un-served and that hence, a notice was taken to the learned counsel on record appearing for the respondent [plaintiff] in the proceedings before the Court below and that the said notice was served on 19.02.2016 and that a memo in U.S.R.no.1913 of 2016 dated 14.03.2016 was filed before the Registry showing proof of service. In spite of the said service of notice on the said counsel for the plaintiff as stated, none appears for the plaintiff/respondent herein.

4. The facts necessary for consideration, in brief, are as follows:

The sole plaintiff brought the suit against the sole defendant for specific performance of an agreement of sale dated 30.04.2004. The defendant is resisting the suit by filing a written statement. While so, the defendant had filed the instant application for the aforementioned relief. On resistance of the said application by the plaintiff, the Court below, by the impugned order, had dismissed the said petition. Therefore, the present Revision is filed by the defendant.

5. The learned senior counsel appearing for the defendant would contend as follows: 'A meaningful reading of the written statement would show that the defendant has categorically denied his thumb impressions on the agreement of sale dated 30.04.2004 and that a defence was raised that his thumb impressions are forged and that the said agreement of sale is fabricated. But the Court below, having erroneously taken one sentence from the written statement in isolation,

came to a wrong conclusion that the defendant has admitted his thumb impressions on the sale agreement dated 30.04.2004 (exhibit A1) and had therefore, declined to grant the relief sought for by the defendant. The said approach of the Court below is incorrect and had resulted in injustice. Therefore, the order impugned is liable to be set aside, in the facts and circumstances of the case.'

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

7. Admittedly, the agreement of sale dated 30.04.2004 contains the thumb impressions said to be of the defendant. The said thumb impressions, according to the plaintiff, are that of the defendant. However, the defendant *inter alia* contends that the said thumb impressions on the said agreement of sale are forged and that the suit sale agreement is fabricated. In view of the findings of the Court below in the impugned order, now the first aspect to be considered is as to whether the defendant had admitted his thumb impressions on the said agreement of sale. In that regard, the learned senior counsel has drawn the attention of this Court to the contents of paragraphs nos.7, 8 & 9 of the written statement of the defendant. A meaningful reading of the entire written statement would indicate that not only at one place but at more than one place, the defendant had categorically denied his thumb impressions on the said agreement of sale and had urged in his defence that the thumb impressions on the said suit agreement of sale are forged and that the said agreement of sale is fabricated. Therefore, this Court is not in agreement with the findings of the Court below that the defendant has admitted his thumb impressions on the suit sale agreement.

8. As per the well settled law, an opinion furnished by an expert in regard to the thumb impressions shall be considered as an opinion based on exact science and that such an opinion does not admit any doubt. Therefore, if the request as sought for by the defendant is granted and an expert is directed to furnish a report with his opinion after comparing the disputed thumb impressions said to be of the defendant on exhibit A1 agreement of sale with his thumb impressions that may be obtained in open Court, such a report, in the well considered view of this Court, would certainly be constituting one more assured piece of evidence for effectively adjudicating the *lis* by the Court below. Thus, if the request of the defendant is considered and an expert opinion is obtained, then the Court below will have the advantage of considering the opinion evidence along with the other evidence that may be brought on record by the time the suit comes up for final adjudication on merits. Hence, if the thumb impressions said to be of the defendant on the disputed suit

document are directed be compared with his standard impressions, such a course would meet the ends of justice and such opinion that may be furnished by an expert would be of considerable assistance to the Court below in resolving the dispute and in setting at rest, the dispute, once and for all. Therefore, in a suit of this nature filed for specific performance of agreement of sale in respect of valuable immovable property, the request of the defendant to send the disputed document to an expert for getting an assured opinion in regard to the genuineness or otherwise of the thumb impressions thereon cannot be declined. Viewed thus, this Court finds that the order of the Court below warrants interference.

9. In the result, the Civil Revision Petition is allowed and the impugned order is set aside. Consequently, I.A.no.1320 of 2014 in O.S.no.493 of 2005 on the file of the Court below is allowed. The Court below is directed to send exhibit A1 to an expert of the Government Finger Prints Bureau, Forensic Science Laboratory, Hyderabad or any other Government Institution, with a direction to compare the thumb impressions said to be of the defendant on the suit agreement of sale with his thumb impressions that may be obtained in the open Court. However, the Court below shall complete the said exercise after directing the defendant to deposit the required amount towards fees and expenses for obtaining the expert's opinion.

There shall be no order as to costs.

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

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**M. Seetharama Murti, J**

16<sup>th</sup> March, 2016.

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