THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

Civil Revision Petition No.83 of 2017

ORDER:

1) This civil revision petition is filed by the petitioner/plaintiff aggrieved by the order dated 18.10.2016 in I.A.No.2254 of 20016 in O.S.No.117 of 2007 passed by the Additional Senior Civil Judge, Kadapa, whereunder the learned Judge dismissed the petition filed under Order XIII Rule 10 of the Code of Civil Procedure (for short 'C.P.C.) seeking sent for certain documents hereinafter referred.

2) The petitioner filed O.S.No.167 of 2004 seeking for declaration that the registered Sale Deed dated 27.12.2000 executed by the plaintiff in favour of the defendant in respect of plaint schedule property is null and void. His case briefly was that he borrowed amounts from the brother-in-law of the defendant viz. S.Narsimha Reddy and could not repay the said debt due to financial constraints and at the mediation of the defendant, the plaintiff was constrained to execute another pronote for Rs.1,87,000/- in favour of said Narsimha Reddy and some time thereafter, when Narsimha Reddy pressurized the plaintiff for repayment of money, the defendant could not pay the amount due to his financial crisis and at the time, the defendant intervened and induced him to execute a nominal sale deed in respect of the plaint schedule property in his favour so that the defendant would prevail upon Narsimha Reddy not to demand promissory note amount for some time and the defendant would re-convey the

property to the plaintiff as and when the plaintiff paid back the amount to Narsimha Reddy. Believing his words, the plaintiff executed a nominal sale deed on 27.12.2000 in favour of the defendant in respect of the plaint schedule property. It is his further case that subsequently he discharged the promissory note amount of Rs.1,87,000/- to Narsimha Reddy, but the said Narsimha Reddy did not return the promissory note stating that the said note was with the defendant. However, Narsimha Reddy filed a suit for recovery of the amount on the basis of the said promissory note. When the plaintiff asked the defendant, the defendant did not re-convey the sale deed property in his favour. Thus, the plaintiff came to know that the defendant and Narsimha Reddy cheated him. Hence, the suit for declaration that the sale deed was null and void.

3) The defendant filed written statement denying the plaint allegations. His case was that he purchased the suit property on 27.12.2000 for a valid consideration of Rs.28,000/- and excepting the fact that the said S.Narsimha Reddy was the brother-in-law of the defendant, the defendant had nothing to do with the money transactions between plaintiff and Narsimha Reddy and the defendant never stood as mediator and he never induced the plaintiff to execute any pronote or any other document in favour of Narsimha Reddy or any other persons.

4) While so, during trial, the plaintiff filed Ex.A.4—letter said to be written by the defendant in favour of the plaintiff making some

admissions as to his mediating between the plaintiff and Narsimha Reddy and obtaining sale deed from the plaintiff etc. facts. He filed I.A.No.13 of 2015 to send Ex.A.4-letter to the handwriting expert, which was allowed. It seems that the handwriting expert requested to send extensive admitted signature/writings in original written in the normal course of business such as cheques, withdrawal forms, loan applications, diaries, note books, deeds or any other documents of contemporary period. In that context, the plaintiff filed I.A.No.2254 of 2016 seeking to send for the following documents from concerned authorities and send them to the handwriting expert:

> 1) Income Tax returns submitted by Bharath Bhushan Rao (defendant) for the period 2000-2001 from Income Tax Officer, Ward 2, Proddatur, containing the signatures of the defendant.
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> 2) Thumb impression register containing the signatures of the defendant (Bharath Bhushan Rao) in the sale deed dated 27.12.2000 vide document No.1901 of 2000 executed by Jaya Rami Reddy in favour of Bharath Bhushan Rao from Sub-Registrar Officer, Mydukur.

5) Impugned order shows, the trial Court dismissed the petition mainly on the observation that Ex.A.4—disputed document does not contain the date, month and year of execution and therefore, even if the requested documents were summoned from the concerned authorities, no purpose would be served. The order of the trial Court thus, can be understood that, since the disputed document does not contain the date, month and year of execution, the signatures on other admitted documents were of no use as it was not known, whether they

belonged to the contemporary period of the signature contained on the disputed document.

Hence, this Civil Revision Petition.

6) Heard arguments of Sri G.Ramesh Babu, learned counsel for petitioner and Sri A.Sanmukh Reddy, learned counsel for the respondent.

7) Counsel for petitioner, while admitting that Ex.A.4—letter does not contain the date, month and year of execution, would still argue that the disputed sale deed was admittedly executed on 27.12.2000 and as Ex.A.4—disputed letter was executed by the defendant in his favour subsequent to 27.12.2000, despite the fact that Ex.A.4 does not contain the date, month and year of execution, still its period of execution can be taken as 2000 or 2001 and the requested documents i.e. Income Tax returns for the period 2000-2001 and the thumb impression register containing the signature of the defendant made at the time of execution of the sale deed dated 27.12.2000 before the Sub-registrar, Mydukur can be summoned to send the same to the expert for comparison.

8) Per contra, while supporting impugned order, learned counsel for the respondent would argue that the Income Tax Returns cannot be summoned from the concerned department. He relied upon ***Pentakota Surya Appa Rao v Pentakota Seethayamma*[1].** He further

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[1] 1975 Law Suit (AP) 68

argued that since Ex.A.4 does not contain the date, month and year of execution, the trial Court rightly held that its contemporary period of execution cannot be decided with reference to the documents summoned.

9) The point for determination is:

"Whether there are merits in the revision petition to allow?"

POINT:

10) On a perusal of the record, I find force in the submission of the learned counsel for the petitioner. As can be seen from the pleadings of either party, admittedly, the plaintiff executed the sale deed in favour of the defendant on 27.12.2000. The plaintiff's case is that the defendant executed the disputed letter under Ex.A.4 subsequent to 27.02.2000 admitting the fact of his acting as a mediator between plaintiff and Narsimha Reddy; his obtaining sale deed from the plaintiff on 27.12.2000 and agreeing to return the bond after execution of sale deed for Ac.0.03 cts. etc. So, as rightly submitted by the petitioner's counsel, Ex.A.4, if true, can be said to be executed on or after 27.12.2000. Therefore, the contemporary period of Ex.A.4 can be taken as the year 2000 or 2001. The documents sought to be summoned in I.A.No.2254 of 2016 were also of the year 2000. Therefore, the admitted signatures of the defendant in those documents would serve the purpose of comparison with the disputed signature on Ex.A.4. In my considered view, the trial Court was

wrong in dismissing the petition on the sole ground that Ex.A.4 does not contain the date of execution.

11) The argument of the respondent that the Income Tax returns pertaining to the defendant cannot be summoned from the Income Tax Department, lacks conviction. In ***Pentakota Surya Appa Rao*'s** case, in similar circumstances, a Division Bench of this Court while considering Sections 137 and 138 of the Income Tax Act as they stood prior and subsequent to 01.04.1964, held that the trial Court in that case was right in summoning the income tax records from the Income Tax Department, in so far as the said record relate to the period subsequent to 01.04.1964, but the records relating to the assessments up to 01.04.1964 were concerned, confidential and they come within the prohibition laid down by Sections 54 and 137 of the Income Tax Act as stood prior to 01.04.1964. The Division Bench thus made it clear that, as per the provisions of the Income tax Act as they stood subsequent to 01.04.1964, there was no embargo for the Court to summon the Income Tax returns of a person. They further observed that Income Tax returns are public documents within the meaning of Section 74 of the Evidence Act. In our case, the first document i.e. Income Tax returns submitted by the defendant, which was sought to be summoned, pertains to the period 2000-2001. Hence, there can be no embargo for summoning the said record. Equally, the thumb impression register, which contains the signature

of the defendant in the sale deed dated 27.12.2000 from the Sub-registrar Office, Mydukur can also be summoned.

12) In the result, the Civil Revision Petition is allowed setting aside the order dated 18.10.2016 in I.A.No.2254 of 20016 in O.S.No.117 of 2007 passed by the Additional Senior Civil Judge, Kadapa and consequently, the trial Court is directed to send for the documents mentioned in the concerned petition and refer them to the handwriting expert for comparison with Ex.A.4. There shall be no order as to costs.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 13.03.2017
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