

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition Nos.129 and 130 of 2017

COMMON ORDER:

The genesis of these two revisions filed by the unsuccessful respondent-defendant, is the common order, dated 15.11.2006, of the learned VII Additional District Judge, Mahabubnagar, passed in IA.Nos.587, 588 and 589 of 2016 in OS.No.79 of 2013, filed by the plaintiff.

2. I have heard the submissions of Sri J.S. Raju, learned counsel for the revision petitioner-defendant. Though the respondent-plaintiff was served with notice, she did not enter appearance. I have perused the material record.

3. The parties shall hereinafter be referred to as the plaintiff and the defendant for convenience and clarity.

4. The facts, which are necessary to be stated as a preface to this order, in brief, are as follows:

The plaintiff brought the suit against the sole defendant-revision petitioner herein for partition of the plaint schedule properties into two equal halves by metes and bounds and allotment of one such separated share to the plaintiff and for award of mesne profits and other reliefs. The sole defendant is resisting the suit. The defendant relied upon exhibit B3, Will, while defending the right of the plaintiff to claim partition of the plaint schedule properties. The defendant examined the sons of the scribe and an attester of the said Will, who was also a thumb impressionist. One of the contentions of the plaintiff is that Kistamma never executed exhibit B3, Will, dated 08.04.1984, and that she died intestate. Therefore, the plaintiff filed the afore-stated three interlocutory applications viz., IA.No.587 of 2016 under Section 151 of the Code of Civil Procedure, 1908 ('the Code' for short) for reopening the evidence; IA.no.588 of 2016 under Order XIII Rule 10(1) read with

Section 151 of the Code to call for the original record in OS.no.148 of 1980 on the file of the District Munsif Court-cum-Junior Civil Judge Court, Mahabubnagar, from the record room of the said Court; and, IA.No.589 of 2016 under Section 45 of the Indian Evidence Act, 1872, read with Section 151 of the Code requesting to send the said Will, exhibit B3-dated 08.06.1984 to an expert for obtaining an opinion as to the genuineness of the thumb impression said to be of the testatrix on the said Will after comparison of her thumb impressions on her vakalatnama, affidavits and plaint in OS.No.148 of 1980 on the file of the Court of the learned District Munsif-cum-Junior Civil Judge, Mahabubnagar. The said applications were resisted by the defendant. By the common order impugned in these revisions, the trial Court allowed all the three petitions of the plaintiff. Aggrieved of the common orders passed insofar as the petitions (IA.Nos.588 and 589 of 2016) to call for the record and send exhibit B3, Will, to fingerprint expert, the defendant is before this Court. Be it noted that it is submitted that no revision is filed assailing the common order insofar as allowing IA.No.587 of 2016 filed for reopening the evidence.

5. From the pleadings and submissions made before this Court, the following facts emerge for consideration.

The plaintiff and the defendant are sisters and are daughters of one Kistamma. According to the plaintiff their mother Kistamma is the absolute owner of the plaint schedule property and that she died intestate and that therefore, the plaintiff and the defendant are entitled to a half share each in the plaint schedule property and, therefore, she brought the suit for partition. However, the case of the defendant is that Kistamma did not die intestate and that before her death, on 31.03.1985, she executed a Will, dated 08.06.1984, that is, exhibit B3. During the course of trial, after the closure of the evidence on the side of the plaintiff, the defendant examined the sons of the scribe and attester as the scribe and attestors of the said Will died. It is an admitted fact

that Kistamma during her life time filed OS.no.148 of 1980 against the Municipality, Mahabubnagar, on the file District Munsif Court-cum-Junior Civil Judge Court, Mahabubnagar. According to the plaintiff, Kistamma, mother of the plaintiff and the defendant, affixed her thumb impressions on Vakalatnama and pleadings in the said suit; the plaintiff had already obtained certified copies of the said documents from the said suit record; in order to substantiate her plea that the Will being relied upon by the defendant is forged she filed the applications to reopen the evidence, call for records of the former suit from the record room of the Court of the Junior Civil Judge, Mahabubnagar, and for sending the disputed Will to an expert for comparison of the thumb impressions on the said Will with the thumb impressions that are available on the Vakalatnama and pleadings in the aforesaid suit filed by Kistamma. The main contention of the defendant, who is resisting the said applications, is that the suit is at the stage of arguments and the documents in the suit record are 30 year old documents and the plaintiff cannot ask the thumb impressions on the said documents to be compared with the disputed thumb impression on the Will, which is a genuine Will. However, the trial Court in its judicial discretion felt that if the Will is sent to an expert and an opinion is called for in regard to the genuineness or otherwise of the disputed thumb impression on the Will, exhibit B3, the same would be helpful for effective adjudication of the *lis* and accordingly allowed the petitions of the plaintiff.

6. Learned counsel for the defendant would contend that the plaintiff has already let in evidence and that the evidence on the side of the defendant is also closed and that during the stage of trial, the plaintiff never expressed her intention to make a request to send the documents to an expert for his opinion and that the order of the trial Court is erroneous.

7. I have given earnest and thoughtful consideration to the facts and submissions.

8. Admittedly, the plaintiff and defendant are sisters. The plaintiff claims that the plaint schedule property is exclusive property of their mother Kistamma and that on her intestate death the plaint schedule property devolved upon the plaintiff and defendant in equal shares whereas the defendant while denying the claim of the plaintiff for partition relied upon the Will, dated 08.06.1984, exhibit B3, said to have been executed by their mother Kistamma. Admittedly, Kistamma filed OS.no.148 of 1980 on the file of the Court of the learned District Munsif-cum-Junior Civil Judge, Mahabubnagar, against the Municipality and in that suit she affixed her thumb impressions on the vakalatnama and the pleadings. The plaintiff now requests to call for the said vakalatnama and pleadings in the said suit for comparison of the admitted thumb impressions on the vakalatnama and the pleadings in the said suit with the disputed thumb impression on exhibit B3, Will, being relied upon by the defendant, to substantiate her case that the said Will is a forged Will. Except stating that the applications are filed belatedly, no tenable objection is raised by the defendant. The law is now well settled that on ground of delay, application filed for sending a document to an expert for his opinion need not be dismissed (see: *Bande Siva Shankara Srinivasa Prasad v. Ravi Surya Prakash Babu and others* [AIR 2016 AP 188 FB]). Admittedly, neither the scribe nor the attester of the Will was examined as they are no more. One of the crucial issues that falls for consideration in the suit is in regard to the genuineness or otherwise of the Will being relied upon by the defendant. The law is now well settled that an opinion furnished by an expert in regard to the genuineness or otherwise of the thumb impressions shall be considered as an opinion based on exact science and that such an opinion does not admit any doubt. In the decision in *Jaspal Singh v. State of Punjab* [AIR 1979 SC 1708], the Supreme Court held as under: 'The science of identifying thumb impression is an exact science and does not admit any mistake or doubt'. Therefore, in the well considered view of this Court, if the thumb impressions said to be of the

testatrix on the disputed Will are directed to be compared with her admitted thumb impressions on her vakalatnama and her pleadings in the former suit and a report with opinion of finger print expert is called for as being sought for by the plaintiff such a course would meet the ends of justice. Further, if the expert furnishes a comprehensive opinion, such an assured piece of evidence may be of considerable assistance to the Court below in effectively resolving the dispute and in setting at rest the dispute once and for all.

9. On the above analysis, this court finds that the trial Court is justified in passing the impugned common order and that the said considered order does not call for interference.

10. Viewed thus, this court finds that there is no merit in these revisions and that these revisions are liable to be dismissed.

11. In the result, the Civil Revision Petitions are dismissed.

Miscellaneous petitions pending, if any, in these civil revision petitions shall stand closed. There shall be no order as to costs.

17th April, 2017
Vjl

M. SEETHARAMA MURTI, J