

THE HON'BLE SRI JUSTICE GUDI SEVA SHYAM PRASAD

CRP No.3361 of 2010

ORDER:

This revision is directed against the order dated 28.04.2010 passed in I.A.No.159 of 2010 in O.S.No.441 of 2007 on the file of the Principal Junior Civil Judge, Kothagudem (for short, trial Court). The revision petitioner is the plaintiff and the respondents herein are the defendants in O.S.No.441 of 2007.

2. The revision petitioner/plaintiff filed O.S.No.441 of 2007 for perpetual injunction. In the said suit, the respondents/defendants filed I.A.No.159 of 2010 under Order 8 Rule 1(3) of CPC seeking production of original documents from the concerned authorities before the trial Court in connection with the trial of suit O.S.No.441 of 2007. In the affidavit in I.A.No.159 of 2010, the respondents/defendants stated that their grandmother late Romala Kanakamma did execute registered sale deed in favour of the plaintiff on 22.02.1975 and the signatures on the sale deed are forged signatures of Romala Kanakamma. It is also stated that their grandmother obtained widow pension from the Government through Mandal Revenue Officer, Aswapuram and that her original thumb impressions on the documents are available with the Revenue Department at Aswapuram of Khammam District. The details of the documents given as (i) old age pension dated 01.04.1981, pension No.I/1891/81, dated 21.03.1981 and (ii) Form 1A, regd. No.258, Nallepaka Bazar, containing the thumb impression of Romala Kanakamma on 1-A namuna land form. Therefore, the respondents/defendants prayed the trial Court to call for those documents from the custody of the concerned Revenue Authorities

to send them to the handwriting expert for comparison with the disputed signatures.

3. The revision petitioner/plaintiff filed counter in I.A.No.159 of 2010 denying the allegation that the grandmother of the defendants late Romala Kanakamma never executed registered sale deed in his favour on 22.02.1975. It is also denied that the signature of late Romala Kanakamma was forged on the sale deed. It is stated that he does not know about the availability of original thumb impression of said Romala Kanakamma with the Revenue Department of Ashwapuram, Khammam District. It is also stated that Romala Kanakamma sold the schedule property and executed a registered sale deed in favour of the revision petitioner/plaintiff on 22.02.1975. If the version of the defendants was true, they ought to have issued legal notice to the plaintiff with regard to schedule property. It is also stated that the defendants did not take the plea in their pleadings that the signature of Romala Kanakamma was forged, and hence, they cannot take that plea now without mentioning the same in their written statement. It is also stated that the thumb impression of Romala Kanakamma, as found in I-A form was not attested by competent authority. The deceased Romala Kanakamma was owning and possessing the property, as such, the question of obtaining old age pension by her does not arise. The orphans are only entitled for pension, and therefore, the question of thumb impression on pension form and I-A form do not belong to late Romala Kanakamma, and therefore, the plaintiff sought for dismissal of the petition.

4. The trial Court, on consideration of the arguments of both sides and the averments in the petition and counter has arrived at conclusion

that it is just and necessary to call for the petition schedule documents for proper adjudication of the suit and allowed the petition.

5. Aggrieved by the said order, this revision has been preferred by the revision petitioner.

6. Heard both sides.

7. Learned counsel for the revision petitioner submits that the petitioner has filed a suit for perpetual injunction and the trial Court has to see whether the petitioner is in possession and enjoyment of the petition schedule property by the date of filing of the suit or not. The revision petitioner has filed the sale deed which is executed by the grandmother of the respondents to prove that he is having *prima facie* title and also possession over the schedule property. The revision petitioner has got other documents like pahanies and revenue entries to prove his possession and therefore, calling for documents from the revenue department pertaining to the grandmother of the defendants is not necessary. He further submits that unless the documents are admitted by the revision petitioner, it cannot be sent to the expert.

8. Learned counsel for the respondents submits that the revision petitioner has filed the suit basing on the sale deed. The signatures of the grandmother of the respondents are forged and to prove those facts, the admitted signatures of the grandmother of the respondents are required and therefore, they filed the petition calling for the documents from the revenue department which contains the thumb impressions of their grandmother pertaining to the pension applied by her. Therefore, the trial Court has properly appreciated the facts and ordered the petition calling for the documents for sending it to the expert. He further submits that in

compliance of Sections 73 and 74 of the Indian Evidence Act, the documents can be sent to an expert.

9. On consideration of the arguments of both sides, it is obvious that to send the documents to an expert, the procedure under Sections 73 and 74 of the Indian Evidence Act, has to be followed.

10. It is appropriate to refer to Sections 73 and 74 of the Indian Evidence Act, which reads as under:

“73. Comparison of signature, writing or seal with others admitted or proved:

In order to ascertain whether a signature, writing, or seal is that of the person by whom it purports to have been written or made, any signature, writing, or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing, or seal has not been produced or proved for any other purpose.

The court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person.

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74. Public documents

The following documents are public documents :-

(1) documents forming the acts, or records of the acts –

(i) of the sovereign authority,

(ii) of official bodies and tribunals, and

(iii) of public officers, legislative, judicial and executive, [of any part of India or of the Commonwealth] or of a foreign country;

(2) Public records kept [in any State] of private documents.

(b) any other person to apply the public key listed in the Digital Signature Certificate and verify the digital signature purported to have been affixed by the person.

11. The only point to be considered in this petition is, whether the documents called for from the revenue department can be directly sent to an expert for comparison; or whether the documents to be marked in the case and after due procedure, it has to be sent to an expert.

12. The revision petitioner cannot raise objection to send the documents to an expert for comparison, unless they are produced before the Court and are admitted. Therefore, the trial Court is directed to take necessary steps as per the provisions of the Indian Evidence Act and after considering whether they are admitted documents or not, and if they are admitted documents, they have to be sent to an expert for comparison with the disputed documents.

13. With the aforesaid observation, the Civil Revision Petition is disposed of. There shall be no order as to costs. The Miscellaneous Petitions, if any, pending shall stand closed.

GUDI SEVA SHYAM PRASAD, J

21st March, 2017
ssp

