

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP. No.5829 of 2016

ORDER :

This Revision is filed assailing the order dt.29.09.2016 in I.A.No.1355 of 2016 in O.S.No.323 of 2009 of the Principal Senior Civil Judge, Eluru, West Godavari District.

2. Petitioners are defendants in the above suit. The said suit was filed by the respondent for declaration of title to the plaint schedule property and for consequential permanent injunction.

3. The basis of the suit is a Partition List dt.01.02.1989 being relied upon by the respondent/plaintiff.

4. A specific plea was raised in the written statement that the said document is a fabricated document.

5. Thereafter, issues were framed, trial commenced and also concluded. The matter was posted for arguments.

6. At that stage, petitioners filed I.A.No.1355 of 2016 stating that the signature of the 1st petitioner on the Partition List dt.01.02.1989 is a forged one, that he never signed it and it was therefore just and necessary to refer it to a handwriting expert to find out if the signature on the last page of the said document against serial Nno.2 is forged or not, by comparing the same with the admitted hand-writings available in the record.

7. Counter affidavit was filed opposing the application.

8. By order dt.29.09.2016, the Court below dismissed the said application taking note of the objection taken by the respondent

that it was filed at a belated stage, even though the contention of the forgery was specifically raised in the written statement and the petitioners have kept quite all these years without taking any steps. It also held that when the matter was posted for arguments, after completion of evidence of both sides, this application has been filed without furnishing any explanation for the delay and so there were no *bona fides* on the part of the petitioners.

9. Challenging the same, this Revision is filed.

10. Counsel for the petitioners contended that the view taken by the Court below is not correct and that a Division Bench of this Court in a judgment reported in ***Janachaitanya Housing Limited Vs. Divya Financiers***¹ had held that no time could be fixed for filing application under Section 45 of the Indian Evidence Act, 1872 for sending a disputed signature of writing to a handwriting expert for comparison and opinion, and the same shall be left open to the discretion of the Court, depending on the facts and circumstances of the each case. It was also held that no hard and fast rule controlling the discretion of the Courts can be laid down.

11. Counsel for the petitioner placed strong reliance on the above Division Bench judgment.

12. Counsel for the respondent refuted the same and supported the order passed by the Court below.

¹ 2008(3) ALT 409

13. Since the suit is filed for declaration of title and recovery of possession on the basis of a Partition List dt.01.02.1989 and since the petitioners dispute the 1st petitioner's signature on the said document and contend that it is a forged one and since the entire suit depends on this document, in the facts and circumstances of the case, notwithstanding that there is a delay on the part of the petitioner in seeking to send the document to an expert, I am satisfied that it is a fit case, where the Court below should have sent the disputed document to the handwriting expert to compare the signature purporting to be that of the 1st petitioner on Partition List dt.01.02.1989 with the admitted signatures of the 1st petitioner.

14. Accordingly, this Civil Revision Petition is allowed; the order dt.29.09.2016 in I.A.No.1355 of 2016 in O.S.No.323 of 2009 is set aside; and the said I.A. is allowed. The Court below shall direct the petitioners to produce document containing the 1st petitioner's signature other than those which are filed into the Court, for the purpose of comparison with the disputed signature on Partition List dt.01.02.1989. There shall be no order as to costs.

15. Consequently, miscellaneous petitions pending, if any, shall stand closed.

M.S.RAMACHANDRA RAO, J

23rd February, 2017.
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