

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

Civil Revision Petition Nos.5477 & 5640 of 2016

COMMON ORDER:

Both the CRP Nos.5640 and 5477 of 2016 are filed by the petitioner/plaintiff against the orders dated 11.08.2016 in I.A.Nos.1041 and 1043 of 2016 in O.S.No.46 of 2016 respectively on the file of IV Additional District Judge, Kadapa.

Since both the CRPs are inter connected they are disposed of by this common order.

2a) I.A.No.1041 of 2016 is filed by defendants 2 to 8 under Order XIII Rule 10 CPC to send for the petition mentioned documents from C.C.No.58 of 2015 on the file of II Additional District Judge, Kadapa whereas I.A.No.1043 of 2015 is filed by the same defendants to send suit agreement to sell dated 25.09.2009 which contains endorsement dated 20.12.2009 (Ex.A2) along with admitted or standard signatures of 1st defendant and attester viz. S.V.Ramappa to the expert to obtain his opinion on the authenticity of the signature of 1st defendant and aforesaid attester.

b) O.S.No.46 of 2010 is filed by the petitioner/plaintiff for specific performance against 1st defendant. Subsequently defendants 2 to 8 were added. D2 to D4 are the wife and children of 1st defendant whereas D5 to D8 are third party purchasers of part of the suit property. D1 remained ex-parte in the suit. Plaintiff's plea is that 1st defendant agreed to sell the

suit property for Rs.45 lakhs and entered into agreement to sell dated 25.09.2009 and received Rs.20 lakhs as advance and subsequently the plaintiff paid another sum of Rs.10 lakhs on 20.12.2009 and obtained endorsement on the reverse of agreement to sell for which S.V.Ramappa and M.Ram Mohan Naidu acted as attestors.

c) It appears the plea of respondents/D2 to D8, *inter alia*, is that the endorsement dated 20.12.2009 (Ex.A2) on the reverse of the agreement to sell is a forged one inasmuch as the signatures of 1st defendant and attestor—S.V.Ramappa were forged. It appears they filed C.C.No.58 of 2015 against the petitioner/plaintiff on the file of II Additional Judicial Magistrate of First Class, Kadapa accusing her of forgery. In the said criminal case they already obtained an expert opinion on the authenticity of signatures of 1st defendant and S.V.Ramappa appearing on Ex.A2. Be that as it may, in order to substantiate the forgery plea in the instant suit, they filed the aforesaid two petitions one for summoning of the documents from C.C.No.58 of 2015 which are said to contain the signatures of 1st defendant and S.V.Ramappa and another petition for sending Ex.A2 along with the aforesaid documents to expert for comparison and for giving his opinion. The petitioner/ plaintiff opposed both the petitions. However, the trial Court allowed the said petitions on the observations that since the respondents/ defendants 2 to 8 disputed the authenticity of the signature of 1st defendant and S.V.Ramappa on Ex.A2, the said contention can be resolved only by sending the disputed documents to the expert for which there cannot be any objection for any

party. Further, the plaintiff did not take the plea that the documents summoned do not contain contemporaneous and admitted signatures of 1st defendant and S.V.Ramappa and on the other hand, she simply contended the documents were not relevant. The trial Court accordingly allowed both the petitions and hence the instant revisions petitions.

3) Heard both sides.

4) The point for determination in these CRPs. is:

“Whether there are merits in the CRPs. to allow?”

5a) **POINT**: As can be seen from the respective contentions, the main defence of the respondents/D2 to D8 in the suit was that the signatures of 1st defendant and S.V.Ramappa on Ex.A2 were forged. In substantiation of the said plea, they filed two petitions one for summoning of documents which are said to have contained the signatures of 1st defendant and S.V.Ramappa from the Court of II Additional Judicial Magistrate of First Class, Kadapa and another petition to send Ex.A2 for comparison of the signatures of 1st defendant and S.V.Ramappa with the signatures contained in the documents which were sent for. As rightly observed by the trial Court, since the respondents/defendants 2 to 8 were challenging the authenticity of signatures of 1st defendant and S.V.Ramappa on Ex.A2, they have every right to establish their plea to the satisfaction of the trial Court to vindicate their right. Hence, they can seek for referring Ex.A2 to the expert. In that regard, the petitioner/plaintiff cannot object. To that extent the observation of the

trial Court is correct. However, the crucial aspect is whether the documents which were sought to be summoned from the Court of II Additional Judicial Magistrate of First Class, Kadapa contained the signatures of 1st defendant and S.V.Ramappa to treat them as specimen signatures for comparison with their disputed signatures on Ex.A2. Unless the authenticity of signatures of 1st defendant and S.V.Ramappa on the documents summoned is established it is not safe to send those documents along with Ex.A2 for comparison as it may lead to disastrous result.

b) It appears, the trial Court has taken for granted the authenticity of signatures of 1st defendant and S.V.Ramappa on the summoned documents on the sole ground that petitioner/plaintiff did not question their authenticity. I am afraid, this is not correct approach for, the petitioner/plaintiff was not a party to any of the documents mentioned in I.A.No.1041 of 2016 and therefore, naturally she is not in a position either to approbate or reprobate the authenticity of their signatures in those documents. Therefore, it is not safe for the trial Court to place implicit reliance on those documents only on the ground that petitioner/plaintiff has not taken a specific objection. In the considered view of this Court, respondents/D2 to D8 are duty bound to establish at first, the authenticity of signatures of 1st defendant and S.V.Ramappa on the documents sought to be summoned from II Additional Judicial Magistrate of First Class, Kadapa and trial Court upon being satisfied

with their authenticity, can send those documents along with Ex.A2 to the expert for comparison.

6) In the result, both the Civil Revision Petitions are ordered and the orders passed by the trial Court in I.A.Nos.1041 and 1043 of 2016 in O.S.No.46 of 2016 are confirmed with the following directions:

- a) The respondents/D2 to D8 shall to the satisfaction of the trial Court, establish the authenticity of signatures of 1st defendant and S.V.Ramappa on the documents sent for from II Additional Judicial Magistrate of First Class, Kadapa and upon such satisfaction the trial Court shall send Ex.A2 along with the aforesaid documents to Government Examiner for Questioned Documents (GEQD) for comparison of disputed signatures of 1st defendant and S.V.Ramappa appearing on Ex.A2 along with the signatures appearing on documents referred to him.
- b) Though respondents/D2 to D8 failed to establish the authenticity of signatures of 1st defendant and S.V.Ramappa on the documents summoned from the II Additional Judicial Magistrate of First Class, Kadapa, still they are at liberty to produce other documents which contain contemporaneous signatures of those documents and establish their authenticity, in which case the trial Court can send those documents for comparison.

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

U. DURGA PRASAD RAO, J

Date: 06.06.2017

Murthy

Note: (1) Mark copy to the trial Court.

(2) Issue C.C by 07.06.2017

(b/o)

SCS