

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 2568 of 2017

ORDER:

- 1) Assailing the order, dated 04.03.2017, passed in I.A.No.170 of 2017 in O.S.No.76 of 2007 on the file of the III Additional District Judge, Tirupati, wherein an application filed under Section 45 of the Indian Evidence Act read with Section 151 of C.P.C., to send Ex.A1-agreement of sale, dated 25.06.2007, to a second handwriting expert along with the admitted signatures of the petitioners therein, was allowed, the petitioners, who are plaintiffs, filed the present Civil Revision Petition under Article 227 of the Constitution of India.
- 2) For the sake of convenience, the parties hereinafter referred to as arrayed in the suit.
- 3) The facts in issue are as under:

The plaintiffs filed the above suit with the following reliefs:

- 1) directing the defendants to come and execute a regular registered sale deed in terms of agreement of sale dated 25.06.2007 by receiving the balance sale consideration;
- 2) directing the defendants to deliver possession of the plaint schedule property to the plaintiffs;
- 3) If the defendants failed to execute regular registered sale deed the plaintiffs are at liberty to have registered sale deed through court by due process of law.

4) Directing the defendants to pay the costs of the suit.

Pending the suit, the defendants filed I.A.No.471 of 2010, under Section 45 of the Indian Evidence Act, to send the suit document to handwriting expert along with the signatures of the defendants, obtained in the open Court and their admitted signatures. The said petition was allowed and the said document was sent to handwriting expert. The expert sent his opinion but it was not a full fledged one, hence, the defendants again filed I.A.No.170 of 2017 to send the said document to a second handwriting expert.

4) A counter came to be filed by plaintiff No.3 contending that the petition is not maintainable, as the suit document was already sent to the expert. It is to be noted here that during pendency of the suit, the defendants filed separate petitions to send the suit document along with some other documents to a hand writing expert, for comparison and opinion. The defendants put their signatures in different versions, in different styles, to create confusion in the mind of the Court as well as to handwriting expert by changing the style of the signatures. Hence, it is urged that they are not entitled to send the agreement of sale to a second handwriting expert.

5) After considering the rival arguments advanced, the trial Court allowed the petition. Challenging the same, the present Civil Revision Petition is filed by the plaintiffs.

6) Learned counsel for the petitioners/ plaintiffs would submit that unless the opinion of the first handwriting expert is set aside, sending of the same document to another expert is illegal. He further submits that filing of successive application for the same relief, particularly under Section 45 of the Evidence Act, is impermissible under law. The same is opposed by the learned counsel for the respondents/ defendants contending that since the opinion given by the first expert is not a full fledged opinion and as the expert expressed his inability to compare the signatures marked Q1 and Q2 with standard signatures marked as S1 to S31, it is necessary to send the same to government expert for opinion.

7) In support of his plea, learned counsel for the petitioners relied upon the following judgments:

1. P.Bharathi and others v. State of A.P.¹
2. N.Sreenivasulu v. N.Prakash Reddy and another²
3. M/s. Aditya Rice Industries, Chettipalem, Thripuraram, Nalgonda District vs. Assistant Commercial Tax Officer, Miryalaguda Circle³

8) In *Korvi Rosaiah v. Mitta Srinivasa Reddy*⁴ a learned single Judge of this Court held as under:

“6. In an exercise under [Section 45](#) of the Evidence Act, the signature of a party on a disputed document is to be compared with the one, on an undisputed document. The vakalat or the depositions of the parties concerned are treated as the basis and the signatures thereon are compared with those on the disputed document. If the

¹ (1998) 2 ALT 385

² (2009) 4 ALD 745

³ (2017) 2 HLT 515 (D.B)

⁴ (2006) 3 ALD 211

signature is in the form of a thumb impression, no difficulty, as such, would arise. Where, however, the signatures are in writing, there is every likelihood of there being variation, either on account of deliberate attempt by the party concerned or due to change of writing with the passage of time.

7. The signature of the petitioner on the vakalat was found to be at variance with the one on the promissory note. The respondent suspected that the petitioner has deliberately changed the pattern of his signature on the vakalat. It was in this context that he wanted the signature of the petitioner on a loan application form, which has nothing to do with the suit transaction, to be compared with the one on the promissory note. Such a course would result in a valid and genuine exercise, under [Section 45](#) of the Act. No prejudice can be said to have been caused to the petitioner.

8. In the decision [R. Bhaskar Reddy v. Chinni @ Chengal Reddy](#)⁵ this Court held that a party cannot seek opinion from another expert, if the earlier was not favourable to him. In that case, a second opinion was sought with reference to the same set of signatures i.e., the admitted and disputed ones. In the instant case, it is not so. The respondent entertained a doubt as to the genuinity of the very signature on the promissory note.”

9) All the cases relied upon by the learned counsel for the petitioners are cases, where there was a report of the handwriting expert giving opinion, by comparing the disputed signatures with the admitted signatures. Since the expert has already given an opinion, which has become final, the Courts have taken the view that sending the very same documents again to another expert, seeking fresh opinion, is impermissible.

⁵ (1998) 3 ALD 113

10) However, the situation on hand is different. In the instant case, the suit was filed for specific performance of agreement of sale, dated 25.06.2007, executed by the defendants. Pending the suit, the respondents herein made an application for sending the document to a private lab. The documents which were sent to the expert are as under:

1. Agreement of Sale dated 25.06.2007 containing questioned signatures marked as 'Q1' to 'Q6' (2 sheets).
2. Partition deed dated 02.12.2002 consist of Rs.20 stamp paper marked as 'S1' to 'S9' and 'S32' to 'S40' (8 sheets)
3. Sale deed dated 13.12.2016 consisting of Rs.5000/- and six sheets of Rs.100 stamp papers marked as 'S10' to 'S16' and 'S41' to 'S49' (7 sheets)
4. Sale deed dated 02.01.2007 consisting of seven sheets of Rs.5000 stamp papers marked as 'S17' to 'S24' and 'S50' to 'S58' (7 sheets).
5. Vakalath dated 08.10.2007 containing standard signatures marked as 'S25' and 'S59'.
6. Written statements filed on behalf of defendant No.1 (S.Jayachandra Chowdary) dated 12.12.2007 containing standard signatures marked as 'S26' to 'S30' (2 sheets).
7. Written statements filed on behalf of defendant No.2 (S.Deenadayal) dated 12.12.2007 containing standard signatures marked as 'S60' to 'S64' (2 sheets).

8. Specimen signatures of S.Jayachandra Chowdary (D1) and S.Deenadayal (D2) obtained in the open court dated 20.09.2016 containing standard signatures marked as 'S31' and 'S65' respectively.
 9. Absolute sale deed dated 01.02.2008 containing standard signatures marked as 'S70' to 'S77' (9 sheets).
 10. Vakalath dated 02.01.2008 containing standard signature marked as 'S78'.
 11. Written statement filed on behalf of defendant No.3 (R.Santhalakshmi) dated 25.02.2008 containing standard signatures marked as 'S79' to 'S83' (3 sheets).
 12. Specimen signatures of (D3) R.Santhalakshmi obtained in the open court dated 20.09.2016 containing standard signatures marked as 'S84'.
- 11) The purpose of sending the document to the expert was to compare the questioned signatures marked 'Q1' and 'Q2' with the standard signatures marked 'S1' to 'S31' (S.Jayachandra Chowdary, the questioned signatures marked as 'Q3' and 'Q4' with the standard signatures marked as 'S32' to 'S66' (S.Deenadayal) and the questioned signatures marked as 'Q5' and 'Q6' with the standard signatures marked as 'S67' to 'S84' (R.Santhalakshmi) and to ascertain whether all these signatures are made by the respective persons or not.
- 12) It is to be noted that after comparing the admitted signatures with the disputed signatures, the expert found that "the person who wrote the blue enclosed signatures marked 'S32'

to 'S66' (S.Deenadayal) also wrote blue enclosed signatures marked as 'Q3' and 'Q4'. But no definite opinion was given by the expert on the authorship of the signatures marked as 'Q1' and 'Q2', by comparing the same with standard signatures marked as 'S1' to 'S31' (S.Jayachandra Chowdary). Under those circumstances, a request was made for sending it to a Government expert for giving opinion on the disputed signatures which were marked as 'Q1' and 'Q2'. That being the position, the judgments relied upon by the learned counsel for the petitioners may not be any help to him. In all the cases, an opinion was given by the expert with regard to disputed signatures and not being satisfied with the same, the parties therein sought for a second report.

13) In *M. Ramesh Babu v. M. Sreedhar*⁶, a Division Bench of this Court held as under:

“As observed earlier, it is the duty of the Court to ascertain the fact. The goal of the Court should be to find out the truth and for the purpose of arriving at a truth we may have to proceed a longer distance in a particular case. The procedural aspects should not come in the way of finding the truth. The procedural law should always be subvergent to the substantive law. Therefore, seeking the opinion of a second expert in such cases may be necessary for rendering complete justice. As far as Sections 45 and 46 of the Indian Evidence Act are concerned, the same is undoubtedly a part of substantive law and whereas the provisions under Order XXVI of C.P.C. appear to be procedural. Therefore, we are of the view that there is no bar to

⁶ (2009) 4 ALT 780 (D.B.)

take the opinion of a second expert without setting aside the earlier report.”

14) As stated earlier, the situation on hand is totally different. Though the expert gave opinion in respect of ‘Q3’ to ‘Q6’ but failed to give opinion on the authorship of the signatures marked as ‘Q1’ and ‘Q2’. It is no doubt true that the suit is of the year 2007, but having regard to the facts and circumstances in issue and in view of the judgment of this Court in M.Ramesh Babu (6 supra), this Court is of the view that the order under challenge warrants no interference.

15) Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs. Miscellaneous Petitions, if any, pending in this Civil Revision Petition, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

30.08.2017
gkv

