

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.1575 OF 2012

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order, dated 19-01-2012 passed in I.A.No.510 of 2011 in O.S.No.225 of 2009 by the I Additional Junior Civil Judge, Eluru.

2. Petitioner herein is the defendant, whereas the respondent herein is the plaintiff in O.S.No.225 of 2009, which is filed for injunction simplicitor.

3. Pending suit, respondent (plaintiff) filed the above interlocutory application under Section 45 of the Indian Evidence Act, 1872 (for short 'the Act') to send Exs.A1 and A2 along with the admitted signatures of the respondent to the handwriting expert for comparison and opinion. The trial Court after considering the material available on record, allowed the said application. Aggrieved thereby, the present revision is preferred by the defendant.

4. It is the case of the respondent herein (plaintiff) that he filed the suit for injunction simplicitor. It is his further case that he own an extent of Ac.1.05 cents in R.S.No.20/1A and 20/2A at Tallamudi village, Pedapadu Mandal, West Godavari District having purchased the same under a registered sale deed, dated 31-05-2000. Petitioner herein (defendant) is the adjacent owner to his land on southern side. On the date of purchase of plaint schedule property, the petitioner herein requested the respondent for laying pathway to his land from N.H.5 road and elders proposed a settlement and according to settlement, both of them agreed to lay joint pathway for their ingress and egress on the western side of his land from N.H.5 road to the land of the petitioner herein and the petitioner herein agreed to compensate him by surrendering an extent of

Ac.0.11 cents of land on his southern side and an agreement was reduced into writing on 31-05-2000 at the time of registration and obtained registered document. Thus the respondent herein is entitled to claim a joint right in the pathway and since the petitioner herein is trying to interfere allegedly with the enjoyment of Ac.1.05 cents of land, he filed the suit.

5. During the course of evidence, the document was marked and when it was confronted to D.W.1, who is the wife of the defendant, she denied the signature appearing on the agreement. Therefore, a request is made to refer the disputed signature on the agreement, dated 31-05-2000 along with signatures on Ex.A1 to the expert for comparison of disputed signatures on Ex.A2 with the admitted signatures on Ex.A1 and for his opinion.

6. The petitioner herein (defendant) filed counter alleging that Ex.A2 is styled as bilateral agreement and it requires registration and stamp duty as it extinguished right in the property and created right on the other person in view of Section 17 (B) of Registration Act and in view of Section 49 of the Registration Act, the document is inadmissible in evidence since it is not registered and the document though marked as exhibit, it cannot be looked into for any purpose.

7. Upon hearing the arguments of both counsel, the trial Court allowed the application and referred the disputed signatures on Ex.A2 along with the admitted signatures on Ex.A1 to the expert for comparison and opinion, which is relevant under Section 45 of the Act. Aggrieved thereby, the present revision is filed on various grounds.

8. One of the grounds is that the opinion of an expert in a suit for injunction simplicitor is not necessary and at best,

the plaintiff is required to establish his right by placing cogent and satisfactory evidence and the trial Court is required to record a finding whether the plaintiff is in lawful possession and enjoyment of the property in dispute or not. It is further contended that the Court can exercise its powers under Section 73 of the Act to compare the disputed signatures with the admitted signatures. Therefore, the order under challenge is erroneous and he prays to set aside the impugned order.

9. During hearing, both counsel reiterated the contentions raised in their respective pleadings.

10. The plaintiff is claiming injunction restraining the defendant from interfering with Ac.1.05 cents, which is not the subject matter of the suit. Therefore, the document marked as Ex.A2 is not relevant for the purpose of deciding the real controversy between the parties since the suit is for injunction simplicitor. The opinion of an expert on the disputed signatures with the admitted contemporaneous signatures of the husband of D.W.1 on Exs.A1 and A2 is irrelevant for deciding the real controversy. Therefore, reference of the documents to expert for comparison and opinion exercising the powers under Order XXVI Rule 10-A CPC is illegal and since the pathway is not the subject matter of the suit. Therefore, the impugned order is liable to be set aside.

11. Accordingly, the Civil Revision Petition is allowed setting aside the order dated 19-01-2012 passed in I.A.No.510 of 2011 in O.S.No.225 of 2009 by the I Additional Junior Civil Judge, Eluru. No order as to costs. Miscellaneous petitions, if any pending, in this revision shall stand closed.

M.SATYANARAYANA MURTHY, J

DATED: 04-07-2017.

Hsd

