

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.1629 of 2017

ORDER :

Heard both sides.

2. The docket order of the lower Court dismissing the application to send the document Ex.B.2-sale agreement, dated 28.07.1986, to Government handwriting expert at Hyderabad, no way speaks that the Court is an expert and it can compare invoking Section 73 of Evidence Act during trial in progress. What all it stated is there is evidence of scribe with reference to the document in question. The other observation is that the suit is filed against the 1st defendant firm and not against the individual and DW.1 is only partner of the 1st defendant firm and he has executed the document on behalf of the 1st defendant firm and attesor and scribe of the document denied the very execution.

3. Undisputedly, DW.1 is even referred in the very order as partner representing the 1st defendant firm. Once it is the application on behalf of the entity being its partner representing said juristic person, the lower Court went wrong in observing that there is no locus to file said application on behalf of DW.1, that too when he is saying the signature in dispute is that of the plaintiff and since plaintiff disputes he is seeking to send the same to the handwriting expert. The observation of the lower Court that on behalf of the plaintiff the scribe and attesor examined denied the very execution of the sale deed is not tenable for same is not a ground to dismiss the application for sending

the disputed signature to handwriting expert, when that opinion evidence is also required to be considered if at all in the ultimate appreciation for the Court either to believe the said evidence of plaintiff with the scribe or the opinion of the expert and as to same if in variance to their oral evidence and if so with what appreciation of other evidence on record. Thus, it is premature to go into that aspect much less to dismiss the petition.

4. No doubt, as pointed out by the learned counsel for the respondent/plaintiff, there is no any whisper in the application, much less before the lower Court of any contemporary relevancy of the signatures to the so-called sale agreement, dated 28.07.1986, in filing the application in February 2017. In the course of hearing, a memo, dated 09.11.2017, is filed by the revision petitioner on behalf of defendant No.1 that he is going to secure the contemporary relevant signatures to the period of Ex.B.2-sale agreement of 1986 in question for comparison of the signatures with the available signature of the plaintiff.

5. This Court in CrI.R.C.No.3204 of 2016 in T.Rajalingam @ Sambam v. The State of Telangana and another by order, dated 19.01.2017, observed in para 15 by placed reliance on the Full Bench expression of this Court in **Bande Siva Shankara Srinivasa Prasad v. Ravi Surya Prakash and others**¹, by referring to earlier Division Bench expression in **Janachaitanya Housing Ltd. V. Divya**

¹ 2016 (2) ALD 1 (FB)

Financiers², that opinion of the expert can be solicited as to determination of the disputed signatures by comparison with the signatures available not even of any contemporary relevance from long gap and further there is no time limit to file application in seeking to send the document containing a disputed signature or writing etc., to expert. However, contemporary relevancy of the signatures definitely as pointed out serves some purpose to secure the opinion and in the absence of which from the other available evidence contra to it, it will delay the proceedings with practically no purpose that can be possible.

6. Having regard to the above, the civil revision petition is allowed by setting aside the docket order, dated 15.03.2017, of the lower Court and the matter is remitted back to the lower Court. The petitioner/defendant No.1 is permitted to submit any contemporary relevancy documents to that Ex.B.2-sale agreement of the year 1986, within the proximity of two to three years gap to it, within fifteen days from the date of receipt of the order and therefrom on giving opportunity to file any additional counter by the plaintiff and from hearing, the trial Court shall pass fresh orders, if necessary, for sending said document to the Government handwriting expert for comparison and opinion with reference to available signatures of contemporary relevancy and by getting any specimen signatures. The

² 2008 (4) ALD 339 (DB)

trial Court shall decide the application within one month from date of receipt of this order.

Miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

Dr. B. SIVA SANKARA RAO, J

14th November 2017.

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