

HON'BLE SRI JUSTICE S.V.BHATT

C.R.P. No.5052 OF 2016

ORDER:

Heard Mr.Sva Sanker for petitioner and Mr.Venkat Reddy for respondent.

The defendant in O.S No.49 of 2011 in the Court of IV Additional District Judge-cum- Family Court, Kurnool is the revision petitioner. The respondent filed O.S No.49 of 2011 on the strength of promissory notes dated 01.07.2008. The petitioner filed I.A. No.87 of 2016 under Order 26 Rule 10 read with Section 151 of Civil Procedure Code and also under Section 45 of the Evidence Act to send the promissory notes marked as Exs.A1 to A3 to the Central Forensic Science Laboratory, Ramanthapur, Hyderabad for expert opinion.

The case of the petitioner is that the suit promissory notes are fabricated and the respondent herein with *mala fide* intention altered the 'year' of the suit pronotes as '2008' in place of '2007' to save limitation. In the written statement, the petitioner has stated as follows:

"It is further submitted that the suit promissory notes are fabricated only for the purpose of filing the suit. A close perusal of the suit promissory notes clearly shows that the plaintiff with a mala fide intention altered the year of the suit pronotes as 2008 in the place of 2007 only to save limitation."

From the pleadings in the written statement and also the affidavit filed along with I.A. No.87 of 2016, the revision petitioner seeks expert opinion on the alteration of 'year' from '2007' to '2008'. The learned trial Judge has recorded the following findings:

“Even according to the petitioner, he put a signature on the three promissory notes but on some other occasion which according to him when he purchased land from the Respondent. The promissory note dated 1-7-2008 for Rs.6,54,000/- contain signature of the petitioner and also the date put by him below his signature. Admittedly, he put signatures on all the three promissory notes on one day which according to him is 1-7-2007. The date put by him on the suit promissory note executed for Rs.6,54,000/- is 1-7-2007 and not 01-07-2007. In the affidavit filed in support of the petition and petitioner contends he signed on Exs.A1 to A3 on 1-7-2007 and subsequently the Respondent filled up blanks and filed the suit which shows that he is not disputing even the date put by him underneath his signature in the promissory note for Rs.6,54,000/-. Now he sought for examination of the suit promissory notes by an expert to know whether the year of the promissory notes is altered or not which is in a way already admitted by him as seen from his affidavit and also his own plea. It appears only for the purpose of dragging on the matter the present petition is filed. I, therefore, opine there are no merits in the present petition. The point is accordingly answered.”

Mr. Siva Sanker contends that the trial Court has not appreciated the purpose for which expert opinion is sought for, but has extended the admission of signature to the date as well. Further he contends that there is no time limit within which the application can be made by a party and that according to the view taken by the Full Bench, the Court is to be satisfied on the desirability of expert opinion and it is for the expert to examine the document and give his opinion. He further contends that, even if the opinion is given by the expert and the opinion is admitted, the value that can be attached to the opinion is matter ultimately within the domain of the trial Court. Even without passing through all these stages, the

prayer has been dismissed by recording findings against the petitioner. He relies upon decisions in *Dasari Lingaiah v. Thatikonda Venugopal Reddy*¹, *Matta Sriramurthy v. Arepalli Sirama Murthy*², *Mathangi Devasahayam v. Jetty Manikyamma*³, *Chityalgundameede Ramalakshmma v. Ediga Rangamma (died)* per LRs⁴, *Chidella Venkateswarlu v. Gurram Pushpa Latha*⁵, *Jalagadugula Eswara Rao v. Davala Surya Rao*⁶, *Thummu Srikanth v. Akula Babu*⁷, *Suthraya Prasada Rao v. Bogathi Jaya Rami Reddy*⁸ and *Chityalgundameede Ramalakshmma v. Ediga Rangamma (died)* per LRs⁹.

On the contrary, Mr. Venkat Reddy submits that the jurisdiction of the trial Court to call for expert opinion and the scope of review by this Court in cases where such discretion is refused is well established and according to him, once the signature is admitted, the opinion of expert is unnecessary. The learned counsel relies upon decisions in *Syndicate Bank, Madhapur-Hitech City Branch, Hyderabad v. Vasuda Pharma Chem Ltd., Hyderabad*¹⁰, *M. Narsi Reddy v. V. Paghu Ram Naidu*¹¹, *Nalnaru Shanmugam v. Nalnaru Narayanaiah*¹², *T. Venkatswamy v. Agiru Pullaiah*¹³, *M. Pentaiah v. B. Parameshwar*¹⁴, *Bhupathiraju Ravi Kumar v. Paluri Surya Prakasa Rao (died)* and others¹⁵, *Pamu Padmavathi v.*

¹ 2015 (4) ALD 486

² 2015 (1) ALD 168

³ 2014 (5) ALD 741

⁴ 2012 (6) ALD 755

⁵ 2012 (4) ALD 215

⁶ 2011 (2) ALD 572

⁷ 2010 (5) ALD 795

⁸ 2009 (3) ALD 551

⁹ 2012 (6) ALT 539

¹⁰ 2015 (1) ALD 441

¹¹ 2015 (3) ALD 234

¹² 2013 (1) ALD 301

¹³ 2012 (6) ALD 520

¹⁴ 2012 (3) ALD 755,

¹⁵ 2009 (3) ALD 405

Perati Yakub Reddy¹⁶, Chidara Uma Maheshwar Rao v.Methuku Janardhan¹⁷, Gowri Shankar v. J.L.Babu and another¹⁸, Janachaitanya Housing Ltd., Hyderabad v. Divya Financiers, Guntur¹⁹ and Bande Siva Shankara Srinivasa Prasad v. R.Avi Surya Prakash Babu (died) per LRs²⁰.

After perusing the pronotes and the plea taken by the parties, prima facie, it appears to this Court that the Court below was carried away by the circumstance that the petitioner herein is admitting the signature and also the date. Further, a finding for whatever limited purpose it is recorded, it is noted that the date put by petitioner is 01.07.2008 and 01.07.2007. This Court is of the view that the consideration of the prayer of petitioner is not conforming to the averments in the affidavit and the counter affidavit. The catena of decisions relied upon by the parties though need not be referred to in great detail still the applicable decision has to be referred to and issue decided. A few findings far beyond the scope of I.A. are recorded. Therefore, the order impugned in the revision is set aside, matter is remitted to trial Court for disposal in accordance with law within four weeks from the date of receipt of a copy of this order.

The C.R.P. is allowed. No order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

S.V.BHATT,J

Date: 21.03.2017

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¹⁶ 2008 (3) ALD 669

¹⁷ 2013 (6) ALD 314

¹⁸ 2012 (3) ALD 160

¹⁹ 2008 (4) ALD 339 (DB)

²⁰ 2016 (2) ALT 248 (FB)