

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

C.R.P.No. 1808 OF 2017

DATED 07TH APRIL, 2017

Between:

Mathurthi Ramu and others ... Petitioners

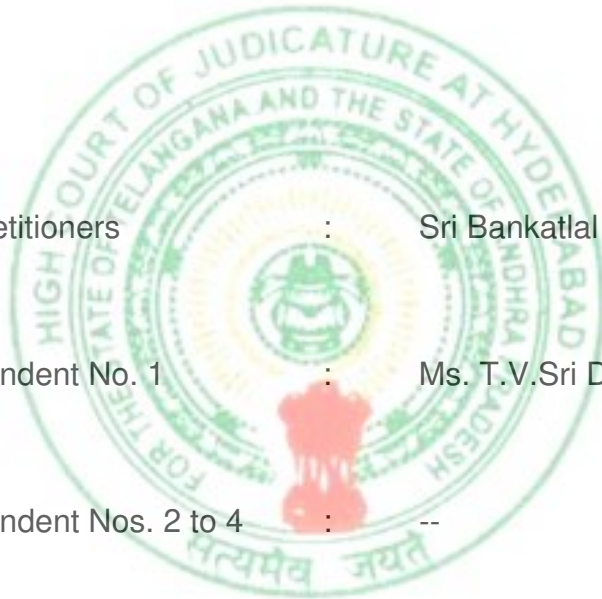
AND

Mathurthi Jogi and others ... Respondents

Counsel for the petitioners : Sri Bankatlal Mandhani

Counsel for respondent No. 1 : Ms. T.V.Sri Devi

Counsel for respondent Nos. 2 to 4 : --



THE COURT MADE THE FOLLOWING

ORDER:

This civil revision petition arises out of order dated 20-03-2017 in I.A.No. 1081 of 2016 in O.S.No. 217 of 2009 on the file of the Court of X Additional District and Sessions Judge, Visakhapatnam at Anakapalle (for short, 'the Court below').

2. Respondent No. 1 filed the aforementioned suit for partition of plaint schedule properties into four equal shares and allotment of one such share to him and for possession of partitioned shares after due division *etc.,*. In the plaint, respondent No. 1 has referred to Ex.A16 Will deed dated 08-09-1989 purported to have been executed by Mathurthi Tatayyalu @ Chenchayya @ Chenchanna bequeathing his properties in favour of his four sons, namely; respondent Nos. 1 and 2 and petitioner Nos. 1 and 2 with absolute rights to enjoy the plaint schedule properties equally. It was further averred as under:

"and the alleged Will dated 21-10-1981 and 08-09-1989 are not true, valid and binding on the plaintiff and his share as the above mentioned properties are ancestral properties and subsequently on 19-07-1991, the father of the plaintiff and"

In the written statement filed by the petitioners, they have denied the execution of Ex.A16 Will and termed the said document as absolutely forged and concocted.

3. In view of the dispute regarding genuineness of Ex.A16, the petitioners filed I.A.No. 1224 of 2015 for sending the said document for expert's opinion. Accordingly, the Court below sent the document to the Director, Andhra Pradesh Forensic Science Laboratory (for short, 'A.P.F.S.L.'), Hyderabad. Accordingly, Ex.A16 and Ex.B2 Wills were sent for comparison of the signatures contained

therein. The Director, A.P.F.S.L., has returned the said documents with a request to the Court to send more admitted signatures in original of concerned person written in normal course of business such as cheques, withdrawal forms, bank account opening forms, loan applications, deeds, pattedar passbook *etc.*, of contemporary period of the disputed documents. On coming to know about the said request of A.P.F.S.L., learned counsel for the petitioners filed a memo on 19-01-2016 to the effect that there are no other documents containing the signatures of the deceased Mathurthi Chenchayya for comparing the same with the disputed signatures on Ex.A16 Will and that Ex.B2 Will deed is only available for comparison. Learned counsel for respondent No. 1 endorsed on the aforementioned memo to the effect that as the plaintiff (wrongly mentioned for defendant Nos. 2 to 6) failed to file documents for the relevant period, they have no right to send the said document to expert. Thereafter, the petitioners have filed I.A.No. 1081 of 2016 for sending Ex.A16 and Ex.B2 for comparison of signatures of the said Chenchayya to Truth Labs, Hyderabad, or P.T.Ashok Kasyap or any other expert to prove their case. This application was dismissed on multiple grounds by the Court below.

4. At the outset, I find merit in the submission of learned counsel for the petitioners that the finding of the Court below that the petitioners have not taken the stand in the suit that Ex.A16 relied upon by respondent No. 1 is forged one is wrong. In para No. 6 of the written statement, the petitioners categorically denied the genuineness of Ex.A16 Will deed dated 08-09-1989 in the following words:

"The plaint alleged Will dt. 8.9.1989 allegedly executed by father of plaintiff and 2 to 3 defendants-Matturthi Tatayyalu @ Chenchayya is

absolutely a forged and concocted document. The alleged will dt. 8.9.1989 is not executed by the father of plaintiff and 2 to 3 defendants."

Be that as it may, the inaccuracy in the finding of the fact of the Court below would not enure to the benefit of the petitioners for the simple reason that they had already exhausted the opportunity of seeking an expert's opinion by sending Ex.A16 disputed document for comparison with Ex.B2 admitted document. As noted hereinabove, the expert felt the need of having more signatures of the purported executant of Ex.A16 and that too of the contemporary period. The petitioners as mentioned *supra* filed their memo to the effect that such documents are not available. Once an expert has opined that he requires more number of signatures for comparing whether the signatures on Ex.A16 were that of Mathurthi Chenchayya or not, the petitioners cannot be permitted to take further chance by filing successive applications for sending the same documents to some other experts. After all an expert's opinion is only an opinion evidence that does not bind the Court and eventually it is the Court which has power to compare the signatures and arrive at *its own* conclusions under Section 73 of the Indian Evidence Act, 1872. Hence, in a situation of the present nature, where one expert had already opined that more signatures are needed for comparison and in the absence of availability of such signatures, the suit cannot be allowed to be procrastinated at the instance of the petitioners-defendants in the name of sending the very same documents to some other expert.

5. For the aforementioned reasons, I do not find any merit in the revision petition and the same is accordingly dismissed.

6. As a sequel to dismissal of the revision petition, C.R.P.M.P.No. 2390 of 2017 shall stand dismissed as infructuous.

C.V.NAGARJUNA REDDY, J.

Date: 07-04-2017.

JSK

