

HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

C.R.P.No.5548 of 2016

ORDER

Petitioner is the defendant in O.S.No.71 of 2014 on the file of the Principal Junior Civil Judge, Chirala. The respondent-plaintiff filed the said suit for recovery of amount on the basis of a promissory note dated 15.6.2011.

It is the case of the petitioner that the suit promissory note was fabricated and he took a specific plea in the written statement that he was forced to fill the 1st line and the 11th line containing date, amount in numbers and letters and the remaining portion of the promissory note was filled by the plaintiff with the help of his draftsman. During the course of evidence on behalf of the plaintiff, the petitioner cross-examined the witnesses and the witnesses denied the suggestions put-forth by the defendant with regard to the said variations.

In those circumstances, the petitioner-defendant filed I.A.No.9 of 2016 for sending the suit promissory note along with specimen hand writing and admitted hand writing of the scribe of Ex.A1, who was examined as PW3 to Forensic Science Laboratory for giving an opinion as to whether the hand writing in line Nos.1 and 11 of Ex.A1 promissory note dated 15.6.2011 are tallying with other lines of the said pronote or not and as to whether Ex.A1 pronote contains hand writing of PW3.

A counter was filed stating that the said application was filed only to drag on the proceedings. It is further stated that the evidence of the plaintiff was complete and the burden is shifted to the defendant to prove his case. It is also stated that there is a gap of more than four years between two documents and it is not possible to get the opinion of the hand writing expert. The trial Court dismissed the application of the petitioner with the following observations.

“The petitioner/defendant if wanted to prove the fact that PW3 filled up body of Ex.A1 contents except line “1” and “11” regarding amount and date, he has to establish such prior fact of coercion on petitioner/defendant. Without establishing such coercion, sending of such Ex.A1 to expert for comparison of handwriting of scribe/PW3 appended on Ex.A1 with that of hand writing appended in line “1” and “11” would not arise at all. Moreover, on careful perusal of Ex.A1 promissory note there is variation and difference in hand writings appended in other lines of Ex.A1. This Court itself compare such hand writing U/s.73 of Indian Evidence Act. Further, if any prudent man goes through Ex.A1 promissory note found such variations with naked eye. Therefore, comparison of such line “1” and “11” filled up by him but not scribe. Therefore, in these circumstances, this Court is of considered view that this petition is untenable. Hence, the petition is dismissed.”

A perusal of the above order of the trial Court clearly shows that on comparison of the hand writing on the suit promissory note by the Court under Section 73 of the Indian Evidence Act,

variations were found to the naked eye. A categorical finding was also recorded that lines 1 and 11 were filled by the defendant, as admitted by him, but not by the scribe. On the basis of the comparison of the said promissory note, under Section 73 of the Indian Evidence Act, the Trial Court observed that it is not necessary to send the said promissory note to the hand writing expert.

I am in agreement with the opinion expressed by the trial Court. Accordingly, the Civil Revision Petition is dismissed. However, it is open to the petitioner-defendant to take necessary steps in accordance with law, if he is so advised. The trial Court shall dispose of the suit on its own merits. No costs.

Miscellaneous petitions pending, if any, shall stand closed.

JUSTICE A.RAMALINGESWARA RAO

4th January, 2016
rk/k

