

THE HON'BLE SRI JUSTICE M.S.K. JAISWAL

C.R.P.No.2563 of 2017

ORDER

This revision is directed against the order dated 15.09.2015 passed in I.A.No.131 of 2014 in A.S.No.37 of 2013 by the learned I Additional District Judge, Srikakulam, dismissing the petition filed under Section 45 of Indian Evidence Act, 1881, to send Ex.B7-Kararunama agreement dated 21.01.1997 to finger print expert for examination of thumb impression of Nakka Rajamma on the said document.

2. Though notice was served on the first respondent/first plaintiff, there is no representation on her behalf. Heard learned counsel for petitioners.

3. The controversy involved in this case is about the matrimonial relationship between the first petitioner/D1 and second petitioner/D2. According to petitioners/defendants, the first petitioner married second petitioner as second wife after the written consent given by his first wife i.e., first respondent, by executing Ex.B7 agreement dated 21.01.1997 and she has voluntarily put her thumb impression therein. Subsequently, she denied about the execution of said agreement and filed O.S.No.66 of 1998 on the file of Principal Junior Civil Judge, Srikakulam, to declare the marriage between petitioners 1 and 2 as void and illegal. The said suit was decreed on 18.03.2013. Aggrieved by the same, the petitioners filed A.S.No.37 of 2013 and also the impugned application. The appellate Court

having observed that the petitioners have not filed such petition during trial or hearing dismissed the said petition. Challenging the same, the present revision is filed.

4. Learned counsel for petitioners submitted that since authenticity and genuineness of Ex.B7 is in controversy and to resolve the same, Ex.B7 has to be sent to the finger print expert for examination and opinion.

5. Considering the facts and circumstances of the case and in order to give an opportunity to the petitioners/defendants to substantiate their claim, I deem it appropriate to set aside the order impugned. Accordingly, the impugned application is allowed, subject to condition that the petitioners/defendants shall deposit a sum of Rs.10,000/- (Rupees ten thousand only) tentatively, to the credit of the appeal, towards expert's fees, and on such deposit, the appellate Court should call upon the first respondent/first plaintiff to furnish her thumb impression and thereafter, send Ex.B7-Kararunama agreement, dated 21.01.1997, along with the admitted thumb impression of the first respondent to the finger print expert for comparison and report.

6. With the above direction, the Civil Revision Petition is disposed of. No order as to costs. Miscellaneous petitions, if any, pending in this revision shall stand closed.

1st September, 2017
sj

M.S.K. JAISWAL, J.