

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA
CIVIL REVISION PETITION Nos.886 AND 887 OF 2011

COMMON ORDER

The former Civil Revision Petition is directed against the order, dated 08.10.2010, in I.A. No.839 of 2010 in I.A. No.1180 of 2008 in a regular suit in O.S. No.95 of 1998 passed by the learned Principal Senior Civil Judge, Chittoor. The latter Civil Revision Petition is filed challenging the order, dated 30.07.2010 in I.A. No.1180 of 2008.

2. Both the above interlocutory applications were dismissed by the Court below and aggrieved over the same, the present Civil Revision Petitions are preferred by the petitioners - plaintiffs.

3. The relief in I.A. No.839 of 2010 sought for by the petitioner is under Section 151 of Code of Civil Procedure, 1908, to reopen I.A. No.1180 of 2008 for sending Exs.A-1 and A-2 to seek the opinion of hand-writing expert as to the signatures occurring on Ex.A-1 purported to have signed by one S. Gopalakrishnaiah Chetty. Thus, the signature of Sri S. Gopalakrishnaiah Chetty on Ex.A-1 - Will, is the disputed signature between the parties.

4. Originally, when a similar request was made in I.A. No.1180 of 2008, the Court below acceded to the request and sent Ex.A-1 - Will and Ex.A-2 - registered partition deed between defendant No.3 in the suit and his brothers for comparison of signatures, but the hand-

writing expert returned the documents requesting to send contemporaneous documents relating to Ex.A-1 for comparison of the signatures occurring on Ex.A-1 with the admitted signatures in the contemporaneous documents. It is clear from the affidavit contents in I.A. No.839 of 2010 that the revision petitioners could not succeed in getting the contemporaneous documents containing the signatures of S. Gopalakrishnaiah Chetty and, therefore, they made I.A. No.839 of 2010 requesting the Court below once again to send Exs.A-1 and A-2 for comparison and opinion of the hand-writing expert placing reliance on the decision of a learned Single Judge of this Court in **P. Venkatramana v. M. Venkataramana**¹.

5. When the respondents resisted it on the ground that the petitioners have been dragging on the matter by filing successive petitions, sought to reject the request.

6. The Court below on the ground that no contemporaneous documents are filed by the petitioners to compare the signatures occurring on them with the disputed signatures and making relevant observations in opining that there would be a change in the signatures of a person as the time marches and also observing that Will as well as registered partition deed can be established by other means of law as per Section 68 of the Indian Evidence Act, 1872, so far as the Will is concerned, and the partition deed by examining the witnesses as the

¹. 2009 (5) ALT 113

partition deed is a registered one and unless and until contrary is proved, it is presumed to be executed by the persons mentioned therein; opined that there are no justifiable grounds shown by the petitioners in reopening I.A. No.1180 of 2008, dismissed the petition, consequently, the Court below has closed I.A. No.1180 of 2008.

7. Heard Sri P. Veera Reddy and Sri K. Muralikrishna, learned counsel for the petitioners, Sri Sharad Sanghi, learned counsel for respondent No.3 and Sri K.V. Subrahmanya Narusu, learned counsel for respondent No.4. Respondent No.1 died and the notices sent to respondent Nos.2 and 5 returned un-served.

8. When the hand-writing expert made a request to send contemporaneous documents so as to enable him to compare the signatures on the contemporaneous documents with that of the disputed signatures occurring on the Will, it is obligatory on the part of the petitioners to search out and secure the contemporaneous documents and they cannot just come forward with a request expressing non-availability and making a request once again to send the very same documents i.e., Will and registered partition deed marked as Exs.A-1 and A-2 respectively, for the opinion of hand-writing expert, which amounts to constraining the hand-writing expert to go with one admitted signature. The hand-writing expert to tender opinion would have to resort to their procedures by examining as many as signatures available which are admitted so that they can

arrive at just opinion by expressing reasons in arriving at such an opinion. When there is constraint only, the hand writing expert would resort to such a course requesting to send the contemporaneous documents. In such an event, certainly, the order passed by the Court below rejecting the request cannot be said to suffer with any legal infirmity. The opinion expressed by the Court below as regards proving a Will and registered partition deed in accordance with the evidentiary rule is convincing and the parties left with the said option besides resorting to provisions of Section 73 of the Indian Evidence Act. Suffice it to say that there are no merits in the revision petition. The closure of I.A.1180 of 2008 by the Court below is a consequential order and, therefore, both these revision petitions are dismissed.

9. It is found that the regular suit relates to the year 1998. Therefore, it is desirable to give a direction to the Court below to dispose of the suit as expeditiously as possible, preferably within a period of one year from the date of receipt of a copy of this order. It is also made clear that the plaintiffs and defendants are directed to cooperate with the Court to enable the Court to dispose of the suit on merits within the above timeline.

10. Therefore, the present Civil Revision Petitions are dismissed. There shall be no order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending in the revision petitions, stand disposed of.

A. SHANKAR NARAYANA, J

February 13, 2017.

Mgr

