

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NOS.6001 AND 6190 OF 2016

COMMON ORDER:

These two revisions are filed under Article 227 of the Constitution of India, challenging the common order, dated 20-10-2016 in I.A.Nos.232 and 231 of 2016 in O.S.No.3 of 2014 passed by the Senior Civil Judge, Atmakur.

2. Respondent herein (defendant) filed the above interlocutory applications viz., I.A.No.232 of 2016 under Section 45 of the Indian Evidence Act, 1872 to refer the disputed signature of plaintiff for comparison of handwriting expert and I.A.No.231 of 2016 under Section 151 CPC to re-open the case for the purpose of sending the disputed signature of plaintiff for comparison of handwriting expert. The trial Court allowed the said applications. Hence, these revisions.

3. It is the contention of the learned counsel for the petitioner (defendant) before the trial Court that when the matter was posted for arguments, it is noticed that Ex.B8-rectification deed, dated 17-08-1963, contains the signature of the plaintiff and the plaintiff denied the signature on Ex.B8. To prove the case of the defendant, it is necessary to send the disputed signatures along with the admitted signatures of the plaintiff to the expert for examination and opinion to enable the Court to resolve the issue before the Court regarding genuineness of the document.

4. The respondent (plaintiff) filed counter denying the material allegations *inter alia* contending that the plaintiff advanced the arguments and the defendant also

argued the matter in part and when the matter was posted for further arguments of the defendant, at that stage, two applications were filed and the applications were filed only to fill up the lacunae and hence, he prayed for dismissal of the applications.

5. The trial Court upon hearing both the counsel, allowed the applications by placing reliance on a judgment of a Division Bench of this Court reported in **JANACHAITANYA HOUSING LTD. HYDERABAD V DIVYA FINANCIERS, GUNTUR**¹ and also in **SHAIK GOUSIYA BEGUM V SHAIK HUSSAIN AND OTHERS** (CRP No.2997 of 2013, dated 13-11-2013). Hence, these revisions by the plaintiff on various grounds.

6. The main contention before this Court is that the applications were filed at a belated stage when the argument of the defendant before the trial Court was heard in part and the applications were filed only to fill up lacunae, which is inadmissible in evidence. Apart from that, the document is unstamped and unregistered and the same is not admissible in evidence. But the trial Court did not consider the admissibility of the document in a proper perspective and allowed the applications erroneously and he prays to set aside the impugned orders.

7. Mr.C.Prakash Reddy, learned counsel for the petitioner herein (plaintiff) would contend that though the trial Court observed that the defendant filed the applications to fill up the lacunae, still allowed the applications on the ground that it will not come in the way of sending the documents to the expert for opinion. But this observation is contrary to the observations in the earlier lines of the order. Moreover the document is inadmissible for want of

¹ 2008 (4) ALD 339 (DB)

registration and stamp duty and no contemporaneous signatures of the executant's are available to refer the document for examination and opinion since the document is of the year 1963. But the trial Court did not take into consideration this aspect and committed illegality in allowing the applications.

8. On the other hand, Mr.A.Rajendra Babu, learned counsel for the respondent (defendant) while re-iterating the pleadings and contentions raised before the trial Court, drawn attention of this Court to para 8 of the order of the trial Court and prays to dismiss the revision.

9. The first and foremost ground raised before this Court is that the applications were filed at a belated stage when the matter was posted for arguments of the respondent herein (defendant) and at that stage the document cannot be referred to the expert for opinion. But this question is no more re-integra in view of judgment of *JANACHAITANY'S* case (1 supra), wherein this Court held that there is no hard-and-fast rule controlling the discretion of the Court to send the disputed documents/writings for the opinion of the expert or to examine him in support of such opinion after conclusion of trial including when the matter is coming up for arguments. Similar view is expressed in *SHAIK GOUSIYA BEGUM'S* case. Therefore, the delay by itself is not sufficient to deny exercise of discretion to send the document to the expert for opinion. Hence, on this ground the order passed by the trial Court cannot be set aside.

10. The second ground is that the applications were filed to fill up the lacunae. No doubt, there is an observation in para 6 of the order that these applications are filed to cover up the lacunae, but still allowed the applications

exercising its discretion. The document Ex.B8 is a rectification deed, which is unregistered and unstamped to rectify the mistake in the sale deed Ex.B6. But the legality and validity of the document and also whether the document is admissible or not cannot be decided in the application filed under Section 45 of the Act as the scope of examination of such questions is beyond the scope of Section 45 of the Act. Therefore, the admissibility on account of non registration and non payment of stamp duty is irrelevant for the purpose of deciding the applications. However, to fill up the lacunae, which is one of the considerations when the respondent before this Court is relying on Ex.B8 document in the suit filed by the petitioner for the relief of declaration of title and other consequential relief. The respondent before this Court has to establish his case independently by placing positive evidence in support of his claim. Therefore, sending Ex.B8 document to the expert for opinion would not amount to filling up the lacunae at this stage. If for any reason, the respondent failed to establish the execution of Ex.B8 or the document is expunged on account of in admissibility, the petitioner is entitled for a decree or otherwise he is disentitled in accordance with law. Therefore, to filling up the lacunae at this stage would not arise.

11. Though no ground is raised before the trial Court about non availability of contemporaneous signatures, such ground is raised for the first time during hearing. The document marked as Ex.B8 is of the year 1963. No authenticated document containing the signature for contemporaneous period is available on record, but such ground need be considered at this stage for the first time.

12. On perusal of the entire order, it is clear that the trial Court exercised its discretion in ordering the applications since filing of such applications at a belated stage by itself is not a ground. Therefore, the orders under challenge do not suffer from any legal infirmities so as to interfere with the order by exercising the jurisdiction under Article 227 of the Constitution of India.

13. Accordingly, the Civil Revision Petitions are dismissed. No order as to costs. Miscellaneous petitions, if any pending, in these revisions shall stand closed.

DATED: 04-07-2017.
Hsd

M.SATYANARAYANA MURTHY, J

