

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition 1081 of 2015

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, by the unsuccessful respondent/ defendant is directed against the order, dated 28.01.2015, of the learned Principal Junior Civil Judge, Huzurabad, passed in I.A.no.41 of 2014 in O.S.no.156 of 2013 filed by the petitioner/ plaintiff under Section 45 of the Indian Evidence Act, 1872, requesting to send the original registered document bearing no.1035/ 1982 of the defendant to an expert for examination of the disputed thumb impressions and signatures thereon with the admitted thumb impressions and signatures and furnishing an opinion.

2. I have heard the submissions of *Sri V.Ravi Kiran Rao*, learned counsel appearing for the revision petitioner/defendant, and of *Sri A.Madhava Rao*, learned counsel appearing for the respondent/ plaintiff. I have perused the material record.

3. The facts, which are necessary to be stated as a preface to this order, in brief, are as follows:

The plaintiff brought the suit against the sole defendant for perpetual injunction in respect of an agricultural land of an extent of Ac.0.16 ¼ guntas, in Survey No.672/ A situated at Jammikunta village and Mandal of Karimnagar District, more fully described in the schedule annexed to the plaint. The defendant is resisting the suit. In the said suit, the plaintiff filed the aforesaid application with the aforesaid prayer. The said application was also resisted by the defendant. On merits and by the order impugned in this revision, the trial Court allowed the petition filed by the plaintiff. Hence, the aggrieved defendant is before this Court.

4. The case of the plaintiff, in support of the aforesaid request, in brief, is this:

The plaintiff brought the suit for perpetual injunction in respect of the suit schedule property against the defendant. The defendant created the alleged registered document bearing no.1035/ 1982, dated 21.04.1982, by forging the signatures and thumb impressions of the plaintiff. This plaintiff never executed any document in respect of the suit schedule property in favour of the defendant. The thumb impressions and signatures said to be available on the disputed document are nothing but forged signatures and thumb impressions and the said document was fabricated with a view to grab the suit schedule land. If the said document is sent to an expert for examination of the disputed thumb impressions and signatures thereon with the admitted thumb impressions and signatures of the plaintiff and for furnishing an opinion as to the genuineness or otherwise of the disputed thumb impressions/ signatures, such an opinion would be useful for determining the genuineness and truth of the version of the plaintiff. Hence, the petition is filed.

5. The case of the defendant, in brief, is this:

The document was executed more than thirty years back. As per Section 90 of the Indian Evidence Act, where any document purporting or proved to be thirty years old is produced, the Court may presume that the signature and every other part of such document, which purports to be in the handwriting of any particular person, is in that person's handwriting; and, in case of a document executed or attested, the Court shall also presume that it was duly executed and attested by persons by whom it appears to be executed and attested. If the signatures on the disputed document of the year 1982 are to be compared with the signatures of a later point of time, definitely, there will

be variations, as a time of thirty years had elapsed by now. Hence, the request of the plaintiff cannot be considered.

6. At the hearing, both the learned counsel advanced arguments in line with the pleadings of the respective parties.

7. Be it first noted that in so far as the legal position with regard to the presumption under section 90 of the Indian Evidence Act and the decision in Gangamma and others v. Shivalingaiah [(2005) 9 SCC 359] there is no dispute. The subject document in question is a registered document. It is also not in dispute that the said presumption is a rebuttable presumption. The age of the document, its production from proper custody and its unsuspicious character are the foundations for the presumption of its genuineness under the said Section 90. Court must give an opportunity to the parties to rebut the presumption before the Court exercises the discretion to draw/raise the presumption. Be that as it may. The subject document, which is a registered document, contains not only the signatures but also the thumb impressions said to be of the plaintiff. The plaintiff is disputing the execution of the said registered document and is stating that it is fabricated and that he never executed the said document. The law is now well settled that on ground of delay, an application filed for sending a document to an expert for his opinion need not be dismissed (see: *Bande Siva Shankara Srinivasa Prasad v. Ravi Surya Prakash Babu and others* [AIR 2016 AP 188 FB]). One of the crucial issues that falls for consideration in the instant suit is in regard to the genuineness or otherwise of the registered document no.1035 of 1982, dated 21.04.1982, being relied upon by the defendant. The law is now well settled that an opinion furnished by an expert in regard to the genuineness or otherwise of a thumb impression shall be considered as an opinion based on exact science and that such an opinion does not admit any doubt. In the

decision in Jaspal Singh v. State of Punjab¹ the Supreme Court held as under:
'The science of identifying thumb impression is an exact science and does not admit any mistake or doubt'. Therefore, in the well considered view of this Court, if the document in question is sent to an expert with a request to compare the disputed signatures and the thumb impression/s on the said disputed document with the admitted signatures and the thumb impression/s of the party that are already available on record and also that may be taken in open Court and a report with opinion of a hand writing-cum-finger print expert is called for as being sought for by the plaintiff, such a course would meet the ends of justice. Further, if the expert furnishes an opinion, such an assured piece of evidence may be of considerable assistance to the Court below in effectively resolving the dispute and in setting at rest the dispute once and for all.

8. On the above analysis, this Court finds that the trial Court is justified in passing the impugned order and that the said considered order does not call for interference.

9. Viewed thus, this court finds that there is no merit in this revision and that this revision is liable to be dismissed.

10. In the result, the Civil Revision Petition is dismissed.

Miscellaneous petitions pending, if any, in this civil revision petition shall stand closed. There shall be no order as to costs.

M. SEETHARAMA MURTI, J

05th December, 2017

Note:- Issue CC by 06.12.2017
(B/o)
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¹ [AIR 1979 SC 1708]