

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.5596 of 2011

ORDER :

The revision petitioner is defendant No.1 in O.S.No.1673 of 2008 and unsuccessful petitioner in that pending suit in I.A.No.296 of 2011 covered by the impugned order, dated 12.10.2011. The revision respondent No.1 is the sole plaintiff and revision respondent Nos.2 to 4 are the defendant Nos.2 to 4. One M.Sarojini Devi, no other than the wife of defendant No.1 and mother of defendant Nos.2 to 4, being the sister of the sole plaintiff, in favour of the plaintiff as per the suit claim for specific performance based on the agreement allegedly executed by her on 09.06.1993 and that after the sale agreement, she died intestate on 21.09.2000 and thereby entitled to specific performance against the defendants and the contest by defendants is that the said Sarojini Devi never executed the so-called agreement of sale and the alleged sale agreement is a fabricated by forging her signature. It is during pendency of the trial, the defendants sought to send the said sale agreement for comparison of the disputed signature to the handwriting expert. The defendants sought so-called comparison with Ex.X-1, dated 09.06.1993, signature of Sarojini Devi, dated 25.06.1999, on Ex.B.1 obtained from M/s.Bhavanarishi Co-operative Urban Bank Limited, L.B.Nagar, Hyderabad, and the so-called specimen signature admitted by PW.1 that of Sarojini Devi of 1992 in the certified copy obtained from the Andhra Bank, S.R.Nagar,

Hyderabad. It is for that purpose also calling of the original of Ex.B.1 and originals from the said Banks. The order of lower Court speaks, plaintiff as sole respondent opposed saying these documents are not of contemporary relevancy to the disputed signature on the sale agreement, dated 09.06.1993, particularly of original of alleged Ex.B.1, dated 25.06.1999, with a gap of about six years and there is no necessity to send for the originals, much less to send after securing for comparison with the sale agreement through expert. The petitioners/defendants never clearly stated whether it is an application for opening account or of signature on passbook with Andhra Bank, S.R. Nagar, Hyderabad, of the year 1992 and it is also not possible to summon the said document since there is no clarity from the petitioners thereby not inclined to allow the petition to summon the documents from Andhra Bank, S.R.Nagar, Hyderabad, and M/s.Bhavanarishi Co-operative Urban Bank Limited, Hyderabad.

2. Two aspects are required for comparison of the disputed signatures with available specimen or admitted signatures, one is of contemporary relevancy to the extent possible and the other is the availability of originals. As the originals are stated available neither in the custody of the plaintiff nor in the custody of the defendants, but with third party and once it is necessary from the availability for comparison that too when it is not the contest of the defendants that those signatures are not that of said Sarojini Devi, the trial Court should have been considered to send for the original documents, by

substitution of the certified Xerox copies so that to return after the purpose of the comparison by the expert, by sending the originals being served when it is crucial for the very purpose of the suit of the signature on the so-called agreement in dispute to determine that too when sought by the defendants of the said disputed signature on the agreement, required to be compared as it is also the burden of the plaintiff to show that the sale agreement was executed by Sarojini Devi in her lifetime and the expert opinion serves for effective disposal of the suit with reference to other evidence being let in by both ends.

3. Having regard to the above and also from the settled law with reference to the Full Bench expression of this Court in **Bande Siva Sankara Srinivasa Prasad v. Ravi Surya Prakash Babu (died) per L.Rs. and others¹**, reiterated in para 15 of the order of this Court in Criminal Revision Case No.3204 of 2016, dated 19.01.2017, in **T. Rajalingam @ Sambam v. The State of Telangana and another**, of even contemporary relevancy signatures not available that is not the only criteria to dismiss the application to send the documents to the expert, leave about there is no stage when the documents in disputes sought to be sent to the expert for opinion. Having regard to the above, once the Andhra Bank account opening form stated contains the signature of 1992 for the sale agreement is after one year in 1993, which serves as contemporary relevancy as prior in point of time of

¹ 2016 (2) ALT 248 FB

one year apart from original of Ex.B.1 with the M/s.Bhavanarishi Co-operative Urban Bank Limited, L.B.Nagar, Hyderabad, of the year 1999 about six years subsequent to that disputed signature for the comparison with reference to it, apart from any other available signatures, if at all both parties can produce.

4. Accordingly and in the result, the civil revision petition is allowed by setting aside the dismissal order of the lower Court and the lower Court is directed to send for the originals from the Andhra Bank, S.R.Nagar, Hyderabad, and M/s.Bhavanarishi Co-operative Urban Bank Limited, L.B.Nagar, Hyderabad, and by retaining the originals grant the substituted certified copy at the expenses of the Court by virtue of this order to the file of the said Andhra Bank, S.R.Nagar, Hyderabad, and M/s.Bhavanarishi Co-operative Urban Bank Limited, L.B.Nagar, Hyderabad, as a stop gap arrangement for sending those originals with the disputed signatures of the sale agreement in question, dated 09.06.1993, to the expert and after receiving of the opinion, and after completion of evidence of the expert to return the originals to the said Andhra Bank, S.R.Nagar, Hyderabad, and M/s.Bhavanarishi Co-operative Urban Bank Limited, L.B.Nagar, Hyderabad, by substituting certified copies to the file. It is after securing at the expenses of the defendants to be deposited of Rs.10,000/- (Rupees ten thousand only) for the expert fees within the time to be fixed by the Court has to send.

Miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

Dr. B. SIVA SANKARA RAO, J

28th November 2017.

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