

THE HON'BLE DR. JUSTICE B.SIVA SANKARA RAO**CIVIL REVISION PETITION No.1136 of 2017****ORDER:**

The revision petitioner is the plaintiff in O.S.No.89 of 2013 pending on the file of Junior Civil Judge, Rayadurg, against respondents/defendant Nos. 1 to 3.

Pending suit, the petitioner/plaintiff filed I.A.No.1084 of 2016, under Section 45 of Indian Evidence Act and Section 151 CPC, to send the disputed signature on the gift deed dt. 12.04.1993 to a handwriting expert for comparison and opinion, in view of the contest by the plaintiff in the suit for bare injunction based on title that the alleged gift deed is a forged and fabricated one to non suit the plaintiff if possible by the defendants.

The counter filed by the defendants in opposing the same is the petition is not maintainable and the document is already received condoning the delay as per Orders in I.A.No.341 of 2014 and the petition is misconceived and the petitioner/plaintiff also got knowledge about the gift from the beginning including by the time of alleged purchase. The Court observed from para Nos.8 onwards that Pws. 1 to 3 on behalf of plaintiff were already examined and he did not choose to file the application to send the document for expert comparison and opinion in disputing the same and even it is his claim of purchase of the property on the self same day by unregistered sale deed dt. 12.04.1993 when that is the contest of the defendants and it is not even a suit for declaration or cancellation of the said gift deed but for bare injunction and it is irrelevant to decide the dispute on the document.

Aggrieved by the said dismissal Order dt.23.12.2016, the present Civil Revision Petition was filed.

Heard both sides. Perused the grounds urged in the revision and the impugned Order of the lower Court referred supra.

Undisputedly, in the Written Statement of the defendants, as per the suit claim of the plaintiff based on title under unregistered sale deed 12.04.1993, they pleaded about they are in possession and the plaintiff not in possession by virtue of the so-called unregistered gift deed of even date said to have been executed by the very vendor to the plaintiff. Once it is the issue to be decided as to the gift deed genuine or not, whether any title passed to the plaintiff or not even in a suit for bare injunction when the Court has to go incidentally into the title in question, the Court should have been chosen to send the document to expert when Court is not the expert for the very signature in dispute that too when the signature is available if at all from the sale deed to compare of the even date in the alleged gift deed leave about if at all to ask for other contemporary relevancy of the available signatures, if any.

No doubt, this Court in CrI.R.C.No.3204 of 2016 in *T. Rajalingam@Sambam Vs. The State of Telangana and Another* observed particularly at para No.15 referring to the full bench judgment of this Court in *B.S.S.S.Prasad vs. R.S.Prakash Babu (died) per LRs and others* (2016(2) ALT 248 FB) referring to the earlier division bench expression in *Janachaitanya Housing Limited Vs. Divya Financiers* (2008(3) ALT 409 DB), referred in the order of the lower Court supra, that there is no time limit as to when a document sought to be sent to the expert after filing of the suit before disposal of the suit, but for to depend upon the facts of

each case and even mere non-availability of any contemporary relevancy signatures or thumb impressions as the case may be itself is not a ground to refuse sending.

Apart from the above in the course of hearing, the revision petitioner also submitted with Memo another available contemporary relevancy signature of the said executant is the application form addressed to the Z.P High School with his signature on 24.06.1993 in admitting his daughter by name Suvarna.

Having regard to the above, this Civil Revision Petition is allowed and the dismissal Order dt.23.12.2016 in I.A.No.1084 of 2016 of the lower Court is set aside and the petitioner is directed to deposit Rs.10,000/- (Rupees Ten Thousand) within fifteen days from the date receipt of a copy of this Order towards expert fee to the credit of suit for sending out of it whatever the amount required and to refund the balance if any or to meet the remaining amount payable, if any, and after hearing both sides, the Court shall consider sending of the disputed signature on the said gift deed by keeping on record a Xerox certified copy to file in sending the original along with the other available and admitted signatures if any and specimen signatures required if any by obtaining in open Court.

Miscellaneous petitions pending consideration, if any, in this case shall stand closed. No order as to costs.

DR.B.SIVA SANKARA RAO, J

Dt. 29.11.2017
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