

THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

Civil Revision Petition No.6106 of 2016

ORDER:

Aggrieved by the order dated 31.08.2016 in I.A.No.66 of 2016 in O.S.No.187 of 2009 on the file of Junior Civil Judge, Badvel, Kadapa District, the defendant filed the instant C.R.P.

2) The plaintiff filed the suit for perpetual injunction. The defendant filed I.A.No.66 of 2016 under Sec.45 of Indian Evidence Act praying the Court to send the sale agreement dated 18.03.1992 along with other documents for opinion of a fingerprint expert of the Forensic Science Department, Red Hills, Hyderabad. The respondent/plaintiff contested the said petition and after due enquiry, the trial Court allowed the said petition. However, following the decision in *T.A.Narsimhan vs. Narayana Chettiar and another*¹, the trial Court opined that sending of the documents to an expert was not desirable and hence directed the petitioner/defendant to provide the particulars of an expert of his choice and pay batta for summoning the expert to examine the documents in the Court premises and to give his opinion.

Hence, the present CRP.

3) Notice was ordered to the respondent/plaintiff. In spite of serving notice, none appeared for the respondent/plaintiff and hence, the matter was heard.

¹ 1965 Law Suit (Madras) 301

4) While supporting the order, the main apprehension of the petitioner/defendant is that in case the expert is summoned to the Court premises for giving his opinion on the disputed documents, the petitioner, and for that matter, both parties may not have an opportunity to express their objections against his opinion and thereby they may also not get an opportunity to cross-examine the expert concerned. Therefore, the learned counsel seeks a direction to the trial Court to preserve the right of submitting the objections if need be, against the opinion of the expert and also to cross-examine him.

5) It must be said that such an apprehension was not made before the lower Court and hence, the trial Court had no occasion to discuss about it. Anyhow, since the petitioner/defendant's request is reasonable one, while confirming the order of the trial Court, a further order is made as follows:

In case, pursuant to the order in I.A.No.66 of 2016, an expert visits the trial Court and gives his opinion and report in respect of the disputed documents, the trial Court shall give an opportunity to both parties to submit their objections against his report and opinion and if required they may be given an opportunity to cross-examine him. The trial Court shall consider the objections and cross-examination made by both parties before taking into consideration the opinion of the expert and dispose of the suit on merits.

6) Accordingly, this Civil Revision Petition is disposed of. No costs.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 16.02.2017

Note: Issue C.C by Monday
(b/o)
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