

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION Nos.5128, 5129, 5197 & 5199 OF 2017

COMMON ORDER

O.S.No.530 of 2006 on the file of the learned III Additional District Judge, Ranga Reddy District at L.B.Nagar, was filed for specific performance of the agreement of sale dated 10.11.2004 (Ex.A4). The first defendant contested the suit on the ground that his signature in the suit agreement was forged and filed I.A.No.737 of 2015 therein under Section 45 of the Indian Evidence Act, 1872 (for brevity, 'the Act of 1872') to send his disputed signature in Ex.A4 agreement of sale for comparison with his admitted signatures. As the plaintiffs did not file a counter to this I.A., the trial Court passed order dated 11.12.2015 allowing the I.A. and sent Ex.A.4 agreement of sale for comparison of the signature therein with the admitted signatures, by collection of specimen signatures from the first defendant before the Court apart from furnishing of documents of the year 2004 containing his signatures. Thereupon, the first defendant produced Ex.A5 registered sale deed dated 15.05.2004 containing his signatures and requested that the said document should be used for comparison with the disputed signatures. However, the first defendant thereafter filed Memos on 31.12.2017 stating that Ex.A5 sale deed was only a certified copy and requested that the registered partnership deed dated 06.08.2004 bearing his admitted signatures should be used for comparison. The trial Court did not pass any order at that stage and only endorsed that both Memos were recorded.

Aggrieved by these developments, the plaintiffs filed C.R.P.No.3403 of 2016 before this Court. This Court disposed of the said C.R.P by order dated 16.06.2017. This Court noted that the order dated 11.12.2015 was in the nature of a consent order and thereby, the trial Court had directed the first defendant to submit documents containing his signatures. This Court opined

that it would be difficult to disturb the said order at that stage as it was passed with the consent of the parties. It was therefore left open to the plaintiffs to raise objections on the expert report, which was already filed before the trial Court, at the time of the hearing.

Be it noted, pursuant to the order dated 11.12.2015 in I.A.No.737 of 2015 in O.S.No.530 of 2006, the documents were sent to M/s.Truth Labs, Hyderabad, a private agency, for comparison of the signatures and for a report thereon. Report dated 25.01.2016 of M/s.Truth Labs, Hyderabad, was submitted in case File No.TLH/QD/012/16 even before the aforesaid C.R.P. was disposed of. That was the reason why the plaintiffs were given liberty to raise objections to the said report which was in favour of the first defendant.

While so, the first defendant filed I.A.No.583 of 2017 in the suit under Section 151 CPC to reopen his evidence to enable examination of the expert from M/s.Truth Labs, Hyderabad. He also filed I.A.No.584 of 2017 therein under Order 16 Rule 1 CPC to issue summons to Narinder Singh, the expert from M/s.Truth Labs to depose on his report dated 25.01.2016. The plaintiffs, on the other hand, filed I.A.No.642 of 2017 in the suit under Order 11 Rule 14 CPC to direct the third respondent, the third defendant in the suit, to produce the original registered sale deed bearing document No.5743/2004 dated 15.05.2004 so that it could be sent to the Government Forensic Science Laboratory, Habsiguda, Hyderabad, for analysis. They also filed I.A.No.643 of 2017 therein under Section 45 of the Act of 1872 to send the disputed signatures in Ex.A4 agreement of sale to the Government Forensic Science Laboratory, Habsiguda, Hyderabad, for comparison with the admitted signatures of the first defendant in the original sale deed, which they had sought production of by way of I.A.No.642 of 2017 filed in the suit. Be it noted that this original sale deed is the same document of which a certified copy (Ex.A5) was filed earlier by the first defendant. By separate

orders dated 08.09.2017, the trial Court allowed I.A.Nos.583 and 584 of 2017 filed in the suit by the first defendant and dismissed I.A.Nos.642 and 643 of 2017 filed therein by the plaintiffs. Aggrieved thereby, the plaintiffs are before this Court by way of these revisions.

C.R.P.Nos.5128 and 5197 of 2017 arise out of the orders in I.A.Nos.584 and 583 of 2017 respectively while C.R.P.Nos.5199 and 5129 of 2017 pertain to the orders in I.A.Nos.642 and 643 of 2017 respectively.

Heard Sri B.Vijaysen Reddy, learned counsel representing Sri V.V.Raghavan, learned counsel for the petitioners/plaintiffs, and Sri O.Manohar Reddy, learned counsel for the first respondent/first defendant.

Parties shall hereinafter be referred to as arrayed in the suit.

In so far as C.R.P.Nos.5128 and 5197 of 2017 are concerned, it is admitted by Sri B.Vijaysen Reddy, learned counsel, that the order dated 16.06.2017 passed by this Court in C.R.P.No.3403 of 2016 attained finality. It would therefore not be open to the plaintiffs to go behind this order and seek reopening of any issue that stood settled thereby. As already stated *supra*, this Court confirmed the earlier order dated 11.12.2015 passed by the trial Court in I.A.No.737 of 2015 in O.S.No.530 of 2006, observing to the effect that examination of the disputed signatures in Ex.A4 agreement of sale with the admitted signatures of the first defendant in the registered partnership deed dated 06.08.2004 by M/s.Truth Labs, Hyderabad, could not be found fault with. Having taken note of the fact that the expert report had already been filed, all that this Court observed was that it would be open to the plaintiffs to raise objections thereto at the time of the hearing.

Enabling them to do just that, the first defendant himself filed applications for reopening his evidence and to permit him to summon the expert from M/s.Truth Labs, Hyderabad, who had submitted the report dated 25.01.2016, for giving evidence. As this aspect of the matter stood covered

by the order passed by this Court in C.R.P.No.3403 of 2016, the plaintiffs can have no objection to the allowing of these I.As., which would enable them to cross-examine the expert witness based on their objections to his report. There is therefore no merit in these two civil revision petitions.

As regards the other two CRPs., though Sri B.Vijaysen Reddy, learned counsel, would contend that it is open to the plaintiffs to seek expert examination of the disputed signatures afresh with admitted signatures in the original of Ex.A5 sale deed, this Court is not persuaded to agree.

As already noted *supra*, the plaintiffs did not even choose to file a counter to the earlier application filed by the first defendant under Section 45 of the Act of 1872 and practically allowed a consent order to be passed. Thereby, expert examination was undertaken by M/s.Truth Labs, Hyderabad. The report dated 25.01.2016 submitted by the said agency remains undisturbed as on date. Permitting the plaintiffs to now seek examination afresh of the disputed signatures in Ex.A4 agreement of sale, through another agency and with another document, would result in two reports being placed before the trial Court. In the event the reports contradict each other, it would only put the Court in a quandary as to which report should be accepted. Though there is no hard and fast rule that expert examination cannot be resorted to a second time, it would have to be in compelling circumstances and after a finding that the first expert examination is unreliable or unworthy of acceptance. Without securing such a finding, a litigant cannot be permitted to seek multiple expert examinations of disputed signatures until he secures a favourable report. As the plaintiffs are yet to raise their objections to the expert report dated 25.01.2016 furnished by M/s.Truth Labs, Hyderabad, it is not open to them at this stage to seek expert examination afresh of the disputed signatures in Ex.A4 agreement of sale with another document.

In M.RAMESH BABU V/ s. M.SREEDHAR¹, a Division Bench of this Court observed that there is no bar to the Court taking the opinion of a second expert without setting aside the earlier report but it would not be desirable to refer to a second expert without there being valid reasons. It was observed that there should be special circumstances and the Court must record its reasons for sending the document to the second expert. In the present case, except for asserting that M/s.Truth Labs, Hyderabad, is a private agency, the plaintiffs have no other reason to seek examination of the disputed signatures afresh. It is an admitted fact that they did not contest I.A.No.737 of 2015 filed in the suit by the first defendant as they did not even choose to file a counter thereto and allowed a consent order to be passed therein. They cannot therefore come up with this plea at this belated stage. Further, they are yet to raise their objections to the report submitted by M/s.Truth Labs, Hyderabad, and cross-examine the expert witness who is now summoned to depose before the trial Court, pursuant to the allowing of the applications filed in this regard by the first defendant in the suit. This is therefore not an appropriate case to permit the plaintiffs to seek examination of the disputed signatures by a second expert at this stage.

Reliance was also placed upon KORVI ROSAIAH V/ s. MITTA SRINIVASA REDDY². The only principle laid down therein was that when the earlier examination by an expert was by comparison of the disputed signature with the signature on the vakalat, a second expert examination of the disputed signature with a contemporaneous admitted signature in a loan application form could not be held to be illegal. In the present case, as expert examination by M/s.Truth Labs, Hyderabad, was not with just the signatures in the vakalat and pleadings but also with the admitted signature

¹ 2009 (4) ALT 780 (D.B.)

² 2006 (3) ALT 605

in the registered partnership deed of the year 2004, a document contemporaneous to the suit agreement of sale allegedly executed in 2004, this judgment does not advance the case of the plaintiffs.

Sri B.Vijaysen Reddy, learned counsel, also placed reliance on the affidavit filed by one Dr.T.S.N.Murthy, Retired Joint Director, A.P. Forensic Science Laboratory, wherein he stated that ISO 17025 is the accreditation given by the National Accreditation Board for Testing and Calibration Laboratories to forensic science laboratories and other laboratories after they satisfy the requirements prescribed thereunder, whereas ISO 9001 deals with system quality and is given to any organization that follows system qualities as laid down therein. This is given to institutions such as schools, colleges, barber shops, offices, etc. He further stated that M/s. Truth Labs, Hyderabad, only has ISO 9001 certification. This aspect requires to be put to the expert from M/s. Truth Labs who would now be examined before the trial Court and it is for the petitioners to demonstrate as to how the report furnished by the said agency is unworthy of credibility.

On the above analysis, this Court finds that the attempt on the part of the plaintiffs to seek a second expert examination of the disputed signatures in Ex.A4 agreement of sale with another document of the year 2004, notwithstanding the fact that the earlier examination was also with one such document of the year 2004, does not merit acceptance.

The civil revision petitions are therefore devoid of merit and are accordingly dismissed. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

SANJAY KUMAR,J

17th NOVEMBER, 2017
PGS