

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

Civil Revision Petition No.6937 of 2017

Order:

The revision arises out of an order passed by the First Appellate Court rejecting an application under Section 45 of the Indian Evidence Act, 1872 to refer the suit agreement of sale to a handwriting expert.

2. Heard Mr. Thadikonda Koteswara Prasad, learned counsel for the petitioner.

3. The petitioner filed a suit in O.S.No.408 of 2007 on the file of the Principal Junior Civil Judge, Machilipatnam, for specific performance of a possessory agreement of sale dated 24-5-1992. The suit was filed 15 years after the date of the suit agreement of sale.

4. The defendant denied the very execution of the suit agreement of sale and also raised other contentions.

5. The Trial Court framed four issues for consideration, which are as follows:

1. Whether the defendant executed suit agreement of sale in favour of the plaintiff on 24-5-1992?

2. Whether the plaintiff is entitled to get the specific performance of suit agreement of sale?

3. Whether the plaintiff is entitled to get the decree passed as prayed for? and

4. To what relief?

6. On issue No.1, the Trial Court held that the genuineness of Ex.A-1 is to be doubted, as there were corrections and over writings. On the other issues, the Trial

Court held that the petitioner is not entitled to specific performance and he is not entitled to any relief.

7. Aggrieved by the judgment and decree, the petitioner filed a first appeal. In the first appeal, he filed an application in I.A.No.435 of 2016 under Section 45 of the Indian Evidence Act. The same was rejected by the First Appellate Court on the ground that the petitioner/plaintiff took out a similar application before the Trial Court. Though the said application was allowed and the petitioner deposited necessary expenses, he could not produce contemporary signatures. Therefore, the application under Section 45 of the Indian Evidence Act was later closed by the Trial Court.

8. Subsequently, the petitioner filed an application for reopening I.A.No.92 of 2013 filed under Section 45 of the Indian Evidence Act. That was dismissed. That order of dismissal was not challenged.

9. Therefore, on the basis of the fact that the petitioner failed to have the document sent for examination by the handwriting expert, after having secured an order in his favour from the Trial Court, the First Appellate Court has dismissed his application. I find no illegality or irregularity in the said order. As I have pointed out earlier, issue No.1 alone related to the genuineness of Ex.A-1. Even on issues 2 and 3, the Trial Court has held against the petitioner. Therefore, after having missed the bus, before the Trial Court, even after securing an order for referring the document for examination

by handwriting expert, the petitioner cannot take another bus before the First Appellate Court. Hence, the revision is dismissed. The miscellaneous petitions, if any, pending in this revision shall stand closed. No costs.

V.RAMASUBRAMANIAN, J.

15th December, 2017.

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