

HON'BLE SRI JUSTICE SURESH KUMAR KAIT

C.R.P. No.624 OF 2018

ORDER : (oral)

Vide the present petition, the petitioner has assailed the order dated 09.08.2017 passed in I.A.No.50 of 2017 in O.S.No.203 of 2012 on the file of the Principal Junior Civil Judge, Gurazala, Guntur District.

2. The aforesaid I.A has been filed by the petitioner/plaintiff before the Principal Junior Civil Judge, Gurazala, under Order XXVI Rule 10, Section 151 of CPC and Section 45 of Indian Evidence Act to send Ex.A1, Ex.C1 and Ex.C2 with the admitted signatures of the defendant in written statement, vakalat and evidence to the Expert, APFSL, Red Hills, Hyderabad for the purpose of comparison of signature and thumb marks of the defendant.

3. Learned counsel appearing on behalf the petitioner submits that the Court below have not properly considered the application and passed the orders observing that the application was filed at belated stage is an erroneous finding. The Court below ought to have seen that the handwriting Expert would arise, only if the evidence, which is already on record leaves something to be explained further and the Court feels that the best way to go nearer the truth of the matter is by sending the signatures to a handwriting Expert and no prejudice will be caused to the respondent.

4. To strengthen his arguments, learned counsel for the petitioner has relied upon a case reported in **MUDIREDDY TIRUPATHI REDDY v. T. LINGA REDDY AND ANOTHER**¹.

5. The petitioner/plaintiff filed suit before the Court below for specific performance of agreement of sale dated 27.08.2003, wherein, he pleaded that the respondent/defendant allegedly executed the said agreement of sale in his favour for a sale consideration of Rs.75,000/- and handed over the possession of schedule property to him. The said fact has been denied by the respondent and pleaded that the said agreement of sale is a rank of forgery and it was created due to disputes between them and also increase in the property value. Therefore, she is not liable to execute the registered sale deed in favour of the petitioner.

6. The learned Court below have seen from the plea of the respondent, she denied the execution of Ex.A1 and took a plea that it is a forged document as she is a thumb mark person, but not signatory. Moreover, the suit was filed on 10.10.2012 and the written statement was filed on 27.02.2013 and issues were settled on 05.06.2013. The trial was commenced on 04.11.2013 and later the matter underwent for several adjournments. Thereafter, on 03.12.2014, the petitioner examined PWs.1 to 3, and the trial Court by recording evidence of PW.3, posted the matter for

¹ 2015 (6) ALT 512

respondent evidence and thereafter the respondent herself was examined as DW.1. During the stage of further evidence of the respondent, the petitioner filed I.A.No.101 of 2015 and I.A.No.102 of 2015 to reopen the petitioner side evidence for examining the Branch Manager, SBI, Dachepalli, for cause production of account opening forms, loan forms and other documents containing signature of the respondent and the same were allowed by the trial Court on 04.03.2015 and summons were issued to Branch Manager, S.B.I. However, the petitioner not pressed the said application and summoned one Anasuryamma for cause production of the sale deed, allegedly executed by the respondent in her possession which contained signature of the respondent. The said Anasuryamma was examined as PW.4 but she did not produce the original document in her custody. Later the petitioner filed I.A.No.158 of 216 to I.A.No.160 of 2016 and summoned the document writer of Ex.C1-certified copy of sale deed executed in favour of Anasuryamma by the respondent and the said applications were allowed. The document writer by name Kalakanda Andraiah was examined as PW.5 and Ex.C1 was marked through him. So also, the SRO, Gurazala was summoned and one Sri N. John Mohan Kumar, SRO, Gurazala was examined as PW.6 and through him Ex.C2-thumb mark register was marked.

7. Thereafter, the petitioner filed I.A.No.50 of 2017 along with two other applications vide I.A.No.49 of 2017 to

reopen the petitioner side evidence and I.A.No.51 of 2017 to send for the thumb mark attendance register from the office of SRO, Gurazala.

8. In a case reported in **Dhatla Lakshmipati Raju vs. P.Venkata Ramana and another**², this Court has held that *“with the denial of execution of suit document in the written statement, the cause of action would be arisen to the party to come out with an application for sending the suit document for expert’s opinion.”* In the said case, this Court has observed that the petitioner having kept quiet for six years from the date of denial of the suit document in the written statement, got filed the petition seeking for expert opinion and dismissed the said application as belated one that too at the stage of arguments.

9. In view of the above judgment, in the present case, the petitioner was having knowledge of denial of execution of Ex.A1 in the written statement which was filed on 27.02.2013 and he kept quiet for about nearly four years and filed the aforementioned petition after filing of several petitions at belated stage that too during further evidence of the respondent. Due to that, the respondent has failed to adduce evidence and the matter has not been proceeded further before the trial Court.

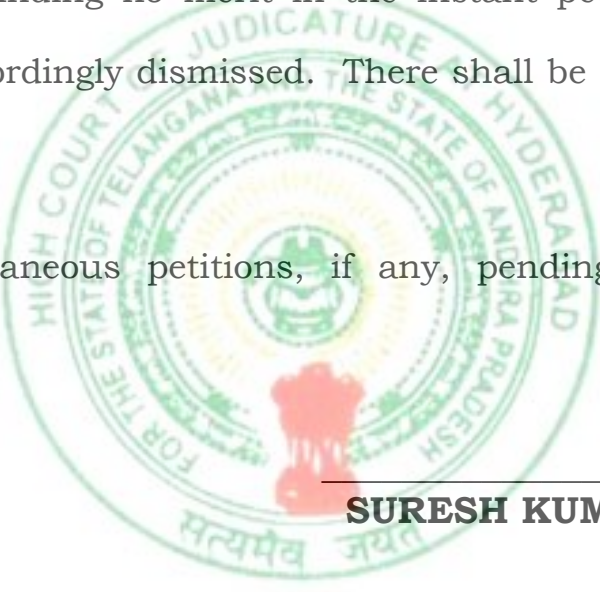
² 2017(4)ALT 386

10. The petitioner instead of taking all the above said steps during the course of his side evidence, he was filing petition after petition that too in the middle of the respondent evidence and resulting into pendency of the matter for years together.

11. In view of the facts and circumstances of the case, the case relied upon by the learned counsel for the petitioner herein is no avail.

12. Finding no merit in the instant petition and the same is accordingly dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.



SURESH KUMAR KAIT, J.

Date : 23-02-2018
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