

THE HON' BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CIVIL REVISION PETITION No. 3368 of 2018

ORDER:

By the docket order dated 16.03.2018 in O.S.No.123 of 2005, the learned Senior Civil Judge, Khammam, directed the defendant No.2 to appear before the Court on 21.03.2018 to give his left thumb impressions. The petitioner-defendant No.2, aggrieved by the said order, filed this petition.

The petitioners who are defendants 2 to 4 have filed this revision petition against the respondents 1 to 19. Out of them, respondent Nos.1 and 2 are the plaintiffs, and others are defendants. The respondents 3 to 19 are not necessary parties in this petition.

The plaintiffs have filed the suit for specific performance of agreement of sale dated 13.06.1986, 24.06.1993 and 19.06.1999, and for perpetual injunction against the defendants. The plaintiffs have filed I.A.No.549 of 2016 under Section 45 of the Evidence Act, to send Exs.A1 and A3 to the handwriting expert for comparison of signatures and thumb impressions of defendant No.2 who was examined as DW.1. The said petition was allowed by the trial Court for sending the documents to the expert for comparison, by order dated 21.02.2017. The learned Senior Civil Judge, vide docket order dated 16.03.2008, on receipt of a letter from Truth Labs dated 09.02.2008, requesting the Court to send the left thumb impressions of defendant No.2-M. Ramulu, has directed defendant No.2 to appear before the Court on 21.03.2018 for giving his left thumb impressions. The docket order under challenge, passed by the trial Court, reads as under:

“In view of the contents of letter of Truth Labs dt. 09.02.2018 under which the Chairman, Truth Labs requested this Court to send Left thumb impressions of M. Ramulu (D.2), the defendant No.2 is hereby directed to appear before this Court on 21.03.2018 for giving his left thumb impressions. Call on 21.03.2018.”

In the suit, the plaintiffs have filed I.A.No.549 of 2016 under Section 45 of the Indian Evidence Act, for sending the documents Exs.A1 and A3 to the handwriting expert for comparison of signatures.

The learned counsel for the petitioners submits that as per order dated 21.02.2017, the documents Exs.A1 and A3 were directed to be sent to handwriting expert for comparison of signatures and thumb impressions of defendant No.2. Once documents are directed to be sent to expert for comparison, there was no need for the expert to request the Court to send the left thumb impressions of defendant No.2 for comparison. The docket order is without any reason, so it is liable to be set aside.

Learned counsel for the respondent submits that as per the docket order in I.A.No.549 of 2016, the Court directed the respondent No.2 to appear before the Court to take his left thumb impressions.

On perusal of the docket order, it is obvious that there are no reasons mentioned by the trial Court for sending the left thumb impressions of the defendant No.2 for comparison to the expert, except stating that the Chairman, Truth Labs, requested the Court to send the left thumb impressions of defendant No.2. The docket order is cryptic, as it is without any reasons as to why the Truth Lab asked for left thumb

impressions of respondent No.2. The docket order also does not show that the Truth Lab addressed a letter in connection with the order passed in the I.A.No.549 of 2016. It is not revealed in the docket order that in pursuance of the order in I.A.No.549 of 2016, the respondent No.2 was called to Court to give his left thumb impressions. In fact, neither the petitioner nor the respondent has produced the letter addressed by the Truth Lab to the Court seeking for left thumb impressions of defendant No.2.

In adversarial litigation, the order passed by the Court should reflect the reasons for passing the order. Even if it is a docket order, both the parties are to be given an opportunity to advance arguments before passing the order, if the rights of the parties are at stake. The impugned docket order is an order affecting the rights of parties. There is no explanation either by the handwriting expert for asking for the left thumb impressions, or by the Court for sending the same for comparison.

If the thumb impression sent for comparison is not proper and not fit for comparison, the handwriting expert should inform the Court about the same and may seek the Court to send a better thumb impression. The docket order does not speak about the handwriting expert has made any such request to the Court for a better thumb impression of defendant No.2. Prima facie, the docket order passed by the trial Court is devoid of any reasons and, therefore, it is just and necessary to direct the trial Court to pass a detailed speaking order.

In view of the foregoing reasons, the impugned docket order dated 16.03.2018 is set aside, and the trial Court is

directed to pass appropriate orders by considering the material available on record after giving opportunity to both sides.

With the above direction, the civil revision petition is disposed of. No costs. Miscellaneous petitions, if any pending, shall stand closed.

GUDISEVA SHYAM PRASAD, J

10th August, 2018
MJL / Ksm

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