

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 2983 of 2018

ORDER:

Heard.

2. Assailing the order dated 31.01.2018, passed in I.A.No.1123 of 2017 by the I Additional District Judge, East Godavari District at Rajamahendravaram, wherein the application filed by the petitioner under Section 45 of the Evidence Act, read with Order XXVI Rule 10-A of C.P.C. to send Ex.A1 to hand-writing expert was dismissed, the present revision came to be filed under Article 227 of the Constitution of India.

3. As seen from the record, the respondent/plaintiff filed O.S.No.128 of 2013 for specific performance of agreement of sale, which is placed on record as Ex.A1. The averments in the plaint would show that the schedule property is the southern portion of the upstairs building consisting of G+2floors. The second floor was leased out to the plaintiff's family during 2011 on a monthly rental of Rs.3,000/- by one Addanki Bhaskar and an advance of Rs.10,000/- was also paid to him at that time. The defendant ratified the same and the said Bhaskar used to collect the rents from the husband of the plaintiff. After some time, the defendant himself used to collect the rents, representing that the matter between the said Bhaskar and himself was settled. It is stated that when the defendant proposed sell the schedule property to discharge his debts, the plaintiff agreed to purchase the property and accordingly paid Rs.25

lakhs out total consideration of Rs.32.10 lakhs. Thereupon, the defendant executed a sale agreement dated 23.10.2012 in favour of the plaintiff and acknowledged receipt of Rs.25 lakhs as advance, which he received from the plaintiff, interalia on certain terms and conditions. As per the terms and conditions of sale agreement, the defendant shall execute and register the sale deed at the expense of the plaintiff, within one year from the date of agreement and that the balance sale consideration of Rs.7,10,000, shall be paid at the time of registration of the sale deed. Seeking execution of the sale, the original suit came to be filed. A written statement came to be filed by the defendant in the month of July, 2013, stating that the alleged agreement of sale is a fabricated one. It is stated that the defendant obtained financial facility from the husband of the plaintiff on 22.07.2011, under a registered mortgage for a sum of Rs.1,50,000/-. At the time of borrowing money by the defendant, the plaintiff's husband obtained signatures on blank Rs.100/- stamp papers in four, pronotes, stamped papers and six conquest papers. Unable to discharge the said debt, he executed a registered sale deed on 05.12.2012, in favour of the plaintiff. It is stated that though the debt is only for Rs.1,50,000/-, the value of property for which the plaintiff obtained the sale deed was Rs.11,64,000/-. It is said that without paying balance amount, her husband by force obtained sale deed in favour of plaintiff. Pending suit, the present I.A. came to be filed. The learned counsel for the defendant would submit that since the document itself is fabricated and as the signed papers were used

for preparing document, he submits that it is a fit case where these documents should be sent for hand-writing expert. After considering the rival arguments, the Court below dismissed the I.A. Challenging the same, the present revision came to be filed.

4. Reiterating the arguments advance before the trial Court, namely that the agreement of sale is a fabricated one, that blank papers were used for the purpose of creating agreement of sale, learned counsel for the petitioner/defendant submits that it is a fit case where the Court below ought to have sent these documents to hand-writing expert.

5. It is to be noted here that as per the contents of the written statement, plea of the defendant is that at the time of borrowing loan from the husband of the plaintiff, he obtained signatures on Rs.100/- stamp papers in four, pronotes, stamped papers and on six conquest papers. It is not the case of the petitioner that the signatures on Ex.A1 are forged. It is also not the plea of the defendant that the signatures on page Nos.2 and 3 in Ex.A1 are photostat copies of signatures on blank papers. Therefore, when the signatures on Ex.A1, the agreement of sale is admitted, there is no point in sending the said documents for hand-writing expert for the purpose of identifying the genuinity of the signatures on Ex.A1. Further, it is also to be noted that the suit is filed in the month of June, 2013 and the written statement was also filed in the month of July, 2013. Long thereafter, this I.A. came to be filed in the month of January, 2017, i.e., nearly after four years. No explanation is

forthcoming as to why there is such a delay in filing the present Interlocutory Application.

6. In view of the above, I see no ground to interfere with the order passed by the Court below.

7. Accordingly, the Civil Revision Petition is dismissed. No costs.

8. As a sequel thereto, Miscellaneous Petitions pending if any in this Civil Revision Petition, shall stand closed.

27.07.2018
vhh



C. PRAVEEN KUMAR, J