

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

C.R.P.No.2824 of 2012

ORDER

This revision under Article 227 of the Constitution of India is filed challenging the order dated 04.06.2012 passed in I.A.No.105 of 2012 in O.S.No.563 of 2008 by the IV Additional Senior Civil Judge (FTC), Vijayawada.

2. The petitioner/defendant filed the petition under Section 45 of Indian Evidence Act, to refer the disputed signature on Ex.A1-agreement of sale dated 20.12.2003 along with her admitted signatures to the handwriting expert for comparison and opinion, as she specifically contended that the signature on Ex.A1 is forged and that the present suit is filed by the respondent/plaintiff for specific performance. Whereas, the respondent/plaintiff contended that the defendant admitted obtaining of her signatures on the blank papers and the stamp paper and therefore, there is no need to refer the disputed signature on Ex.A1 along with the admitted signatures to the expert for comparison and opinion and prayed for dismissal of the petition.

3. The trial Court, upon hearing argument of both the counsel, concluded that the petitioner has indirectly admitted her signature on the agreement of sale-Ex.A1, thereby there was no need to refer the disputed signature on Ex.A1 to the handwriting expert and at any rate, the burden is on the plaintiff to prove the valid execution of sale agreement to seek the relief of specific performance.

4. Aggrieved by the said order, the present revision is filed contending that the petitioner never admitted either directly or indirectly about the execution of Ex.A1 and that the signature on Ex.A1 is forged and therefore, the finding of the trial Court is erroneous and she prayed to set aside the order impugned.

5. During hearing, Sri P. Rajasekhar, learned counsel for petitioner, while reiterating the contentions would draw the attention of this Court to paragraphs Nos.XI, XII and XIII of written statement to substantiate his contention that the petitioner never admitted her signature on Ex.A1 dated 20.12.2003.

6. Whereas, the counsel for respondent has drawn the attention of this Court to paragraph No.XI of written statement alone to establish that the petitioner admitted her signature on Ex.A1 indirectly and prayed for dismissal of the petition.

7. The only reason for dismissal of the petition by the trial Court is that the petitioner has indirectly admitted her signature on Ex.A1. But, in view of the said finding, it is relevant to refer the contentions raised in the written statement. In paragraph No.XI of the written statement, it is stated that the defendant handed over blank papers with her signatures to one Murali, who is no other than her relative, to file caveat before the Principal Junior Civil Judge, Vijayawada, under Section 148-A of CPC against one K.D.S.Rama Rao in view of the disputes. Therefore, this admission, at best, would suffice to conclude that she handed over the signed blank papers only to file a

caveat petition, but in paragraph No.XIII of the written statement, the defendant clearly asserted as follows:

“the plaintiff prepared an alleged agreement of sale deed in his favour and he himself fixed the value of the property at Rs.8,25,000/- dated 20.12.2003 and forged the signature of the defendant on Rs.100/- stamp paper, bearing No.71840”.

This contention would suffice that the petitioner never admitted the signature on Ex.A1, which is the document sued upon. Thereby the finding of the trial Court that the petitioner has indirectly admitted the signature on Ex.A1 is erroneous on the face of record and the trial Court, without verifying the several contentions raised in the written statement, came to such erroneous conclusion, and even otherwise, the signature on the stamp paper is not required to file a caveat petition under Section 148-A of CPC. Therefore, the finding of the trial Court is apparently erroneous and the same is liable to be set aside.

8. The Court can exercise power under Order XXVI Rule 10(a) of CPC to appoint an Advocate Commissioner for scientific investigation , but not under Section 45 of Indian Evidence Act, since Section 45 of Indian Evidence Act deals with the relevancy of opinion of an expert. The petition should be filed under Order XXVI Rule 10(a) of CPC and at any stage of the proceedings, a Commissioner can be appointed under Order XXVI Rules 9 or 10(a) of CPC when there is sufficient cause.

9. Here in this case, the petitioner has categorically denied the execution of Ex.A1 while contending that the signature on Ex.A1 is

forged. In such case, the best mode of proof is to refer the disputed signature on Ex.A1 along with contemporaneous admitted signatures to the expert for comparison and opinion, though, the opinion of expert is not a substantial evidence to decide the real controversy between the parties regarding the alleged forgery of signature on Ex.A1. Hence, I find that it is a fit case to refer the disputed signature on Ex.A1 along with the contemporaneous signatures contained on any authenticated document to the expert for comparison and opinion.

10. Accordingly, the Civil Revision Petition is allowed, setting aside the order dated 04.06.2012 passed in I.A.No.105 of 2012 in O.S.No.563 of 2008 by the IV Additional Senior Civil Judge (FTC), Vijayawada, directing the trial Court to refer the document to the A.P. State Forensic Science Laboratory, on collection of fee payable to the expert. No order as to costs. Miscellaneous petitions, if any, pending in this revision shall stand closed.

M. SATYANARAYANA MURTHY, J

15th March, 2018

sj