

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.3046 OF 2011

ORDER:

This civil revision petition is filed under Article 227 of Constitution of India challenging the order dated 06.07.2011 passed in I.A.No.365 of 2011 in O.S.No.12 of 2009 by the XIII Additional District Judge, Narasaraopet, whereby, the petition filed under Section 45 of the Indian Evidence Act and under Section 151 of Code of Civil Procedure (for short "C.P.C.") was dismissed.

The petitioner herein is the defendant No.4 in the suit. The petitioner filed a petition under Section 45 of the Indian Evidence Act read with Section 151 of C.P.C. to refer the Ex.A.1 suit agreement of sale dated 16.11.2006 to any Government Expert for comparison and opinion, as to the signature of the petitioner as an attester on it, by comparing with the admitted signature of the petitioner on Ex.A.3 agreement of sale 04.09.2006.

It is alleged in the affidavit that the suit was filed for specific performance of agreement of sale dated 16.11.2006 alleged to have executed by the respondent Nos.1 and 2 and attested by the petitioner/defendant No.4. He has been contesting the suit by filing written statement that the signature on the alleged Ex.A.1 suit agreement of sale dated 16.11.2006 is a rank forgery and he never subscribed his signature on Ex.A.1 agreement of sale. During evidence also the respondent No.1/plaintiff did not choose to send the disputed signature of defendant No.4 to the expert for

opinion for the reasons best known to him. Without referring the agreement of sale to the expert for comparison of signature, it is difficult for the petitioner to prove his signature as attester on Ex.A.1 is forged one and Ex.A.3 agreement of sale bears admitted signatures of the petitioners, therefore, he requested to send the disputed/questioned signature on Ex.A.1 to the expert for comparison along with the admitted signature on Ex.A.3, for comparison and opinion.

Respondent/plaintiff filed counter inter alia contending that the petitioner herein adopted the cross-examination of defendant No.3. Further, in the event of any further cross-examination of witnesses, the petitioner/defendant No.4 has to establish that there are new facts brought on record and on the aspect of which, the witnesses to be cross-examined, but instead of doing so, the petitioner approached the Court by filing the present petition to send the Ex.A.1 suit agreement of sale dated 16.11.2006 to the Expert for comparison and opinion as to the signature of the petitioner as an attester on it, by comparing with the admitted signature of the petitioner on Ex.A.3 agreement of sale dated 04.09.2006, but at this stage, the present petition is not maintainable.

Upon hearing argument of both the counsel, the Court below based on the principle laid down by this Court in C.R.P.No.4259 of 2010 dated 29.01.2011 dismissed the petition.

Aggrieved by the order passed by the Court below, the present civil revision petition is filed by the petitioner/defendant No.4 contending that the order passed by the trial Court is

erroneous on the face of the record since the basis for claiming relief by the petitioner is Ex.A.3 and by adducing oral evidence, it is difficult to prove that the signature of the petitioner as attestor on Ex.A.1 is forged and except expert opinion no other mode is available to prove that his signature on Ex.A.1 is forged one, but the Court below did not consider this aspect in proper perspective and dismissed the petition.

During hearing, learned counsel for the petitioner reiterated the contentions raised in the revision and placed reliance on the judgment of this Court rendered in “**Ziauddin Ahmed v. M.A.Raoof (died) by L.R.**”¹

Learned counsel for the respondents while supporting the order passed by the Court below again referred the judgment of this Court rendered in “**Swarna Ramchandra Reddy v. Vemulapalli Pandu Ranga Rao (C.R.P.No.4259 of 2010)**”

The suit was filed for specific performance based on Ex.A.1 dated 16.11.2006 executed by defendant Nos.1 and 2 and the petitioner is only attestor of Ex.A.1. The petitioner is not denying execution of Ex.A.1 and he also admitted the execution of Ex.A.3 dated 04.09.2006. Whether the respondent No.1/plaintiff is entitled to claim relief is a different question as the present petition is filed for limited relief of referring the disputed signature on Ex.A.1 to the expert for comparison and opinion with the admitted signature on Ex.A.3, but the signature as attestor on Ex.A.1 is allegedly forged by respondent No.1/plaintiff.

Agreement of sale is not a compulsorily attestable document even if the signature of the attestor is forged, it would not affect the

¹ 2002 (5) ALD 830

rights of the parties under the agreement except to exercise jurisdiction under Section 20 of Specific Relief Act. But the signature of attesor need not be referred to the expert when the defendant Nos.1 and 2 themselves contesting the suit by raising specific plea, who are the executants of the documents. Therefore, the reference of disputed signature of the petitioner as 3rd attesor on Ex.A.1 to the expert to compare with the signature on Ex.A.3 would not serve any purpose and it will not have any impact on the decision to be rendered by the Court.

This Court in C.R.P.No.4259 of 2010 held that it is clear that the Court is empowered to form an opinion upon a point or issue in question on its own. Normally the question of sending a document or signature or impression for expert opinion arises only if the Court is not in a position to assess/compare on its own or where the issue involves examination by an expert.

Basing on the principle laid down by this Court in C.R.P.No.4259 of 2010, the trial Court denied the relief to the petitioner.

During hearing, learned counsel for the petitioner placed reliance on the judgment of this Court rendered in “**Ziauddin Ahmed v. M.A.Raoof (died) by L.R.**” (referred above), wherein it is held that the Court cannot on mere comparison of the admitted signature with the disputed one declare the document as forged in the absence of any other evidence. The principle laid down in the said judgment has no application since it pertains to the powers of the Court to compare the admitted signature with disputed signature.

In view of my foregoing discussion, I find no merits in this revision and the same is liable to be dismissed.

In the result, the revision petition is dismissed. No costs. However, it is left open to the Court to exercise power under Section 73 of the Evidence Act and decide the suit in accordance with law, uninfluenced by the observations made hereinabove.

Consequently, miscellaneous applications pending if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

28.02.2018
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