

* THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

+ CIVIL REVISION PETITON NO. 5097 OF 2015

% 12-09-2018

Tadikamalla Kasi Rathnam Setty S/o Kasaiah

...petitioner

Vs.

\$ Tadikamalla Kasi Viswanadham S/o Kasaiah and three others
... Respondents

!Counsel for the petitioner : Sri Chakkilam Venkateswarlu

Counsel for the Respondents: Ms.Nimmagadda Revathi.

< Gist :

> Head Note:

? Cases referred:

1. 2008(3) ALT 409 (D.B)
2. 2005(1) ALD 672



THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

CIVIL REVISION PETITION NO. 5097 OF 2015

ORDER:-

This revision is filed questioning the order dated 03-11-2015 passed in I.A.No.170 of 2015 in O.S.No.88 of 2011 on the file of the court of VI Additional District and Sessions Judge, Markapur.

2. I.A.No.170 of 2015 is filed under Section 45 of the Indian Evidence Act,1872 read with 151 CPC to send the document mentioned therein to an expert in handwriting for comparing the disputed signatures. The prayer is to send an unregistered Will, dated.29-09-1987, which is marked as Ex.B-1, for comparing with another document dated.17-05-1985, which is also purportedly executed by the same person.

3. The application was heard in the lower court and by the impugned order dated.03-11-2015 the application was dismissed essentially on the ground that there was lack of diligence on the part of the petitioner in filing the application at a belated stage.

4. This court has heard Sri Chakkilam Venkateswarlu, learned counsel for the revision petitioner and

Ms.Nimmagadda Revathi, learned counsel for the respondents.

5. Learned counsel for the petitioner argued that delay should not be the sole ground for rejecting the application. He cited an order of this court in C.R.P.Nos.1500, 1572, 4098 and 5088 of 2010 wherein the Division Bench of this court while relying upon the earlier Division Bench judgment in the case of *Janachaitanya Housing Limited vs. Divya Financiers*(¹), clearly held that views expressed by the Division Bench in *Janachaitanya* case as to the stage of the proceedings when an application can be moved under Section 45 of the Evidence Act still holds good. The Division Bench in the above revision petitions noted that merely because the application seeking an expert opinion is filed belatedly, it would not automatically mean that the signatures sent for comparison are not contemporaneous. In this view of the matter, the learned counsel for the petitioner is right in stating that rejection only on the ground of delay may not be correct. The learned counsel for the respondents, on the other hand, argued that there are two prayers which are made in the application and that as per Rule 55 of Civil Rules of Practice, there should be a separate application for each distinct prayer. In the case on hand, admittedly there are two prayers. One is for sending

¹ 2008(3) ALT 409 (DB)

the Will for comparison with the document and another prayer is to call for the records from the Sub Registrar's Office, Cumbum and more particularly document No.2426/1979, dated.09-11-1979. In reply to this, the learned counsel for the petitioner cited a judgment in *Kavali Narayana And Ors. Vs. Kavali Chennamma*⁽²⁾. Relying upon Para.9 of the said judgment, he argued that he will be confining himself to the first part of the prayer and seeking only comparison of the unregistered Will dated.29-09-1987 with the document dated.17-05-1985. He states that he will independently pursue the second prayer.

6. This court, after hearing the counsels and noticing the counter-affidavit, notices that comparison can be made between a disputed signature and an admitted signature. This is the reason why admitted signatures are also collected in an open court for the purpose of being compared. In the case on hand, the document dated.17-05-1985 is not an admitted document. The learned counsel for the respondents pointed out that in the counter itself they clearly stated that it is not correct to state that Tadikamala Kasaiah executed agreement of sale on 17-05-1985. Therefore, the learned counsel for the respondents submits

² 2005(1) ALD 672

that as the second document is a disputed document, it cannot be sent for comparison.

7. This court after hearing both the learned counsel is of the opinion that two prayers cannot be made in one application and that Rule 55 of Civil Rules of Practice squarely applies to the same. The bar is clear. However, as held by the Division Bench of this court in *Kavali Narayana (2nd cited)* the court can direct the applicant to restrict himself to one relief. In the case on hand, the learned counsel for the petitioner stated that he would be confining to prayer No.1, but, as noticed earlier by this court that there are no “admitted” signatures available to be sent for comparison. A disputed signature cannot be compared with another disputed signature. This court is thus of the opinion that the application is misconceived. This court agrees with the ultimate conclusion reached by the court in dismissing the application but for a different reason. This court finds no merits in the revision petition and the same is dismissed.

Accordingly, the Civil Revision Petition is dismissed. No costs. Miscellaneous Petitions pending, if any, shall stand closed in consequence.

12-09-2018
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D.V.S.S.SOMAYAJULU,J