

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.3713 OF 2017

ORDER:

This civil revision petition is filed under Article 227 of the Constitution of India, challenging the order in I.A.No.240 of 2017 in O.S.No.811 of 2011 dated 08.06.2017 passed by the II Additional Senior Civil Judge, Kakinada, dismissing an application filed under Order XXVI Rule 1 and Section 151 C.P.C to appoint an Advocate Commissioner to examine the expert by name D. Krishna Rao, Finger Print Expert, Finger Print Bureau-CID, Hyderabad and other expert who examined the questioned documents with relevant documents.

It is alleged that the petitioners filed I.A.No.985 of 2012 under Section 45 of Indian Evidence Act and the same was allowed and some of the documents vide Sale Agreement dated 14.04.2008, Gift Settlement Deed dated 18.09.2011 and Registered Will dated 28.11.2005 were sent for comparison and opinion. But, the finger print expert sent a report to this Court stating that thumb impressions marked as Q1, Q3 to Q14 are unfit for comparison and A1 to A4 are faint and not clear even. Then, again sent another set of documents to the expert for comparison of signatures in another interlocutory application. The expert again sent reports to the Court stating that, the signatures of Sale Agreement dated 14.04.2008 are not fit for comparison. Therefore,

the petitioners intended to examine the expert who returned those documents.

The respondents filed counter denying material allegations, *inter alia*, contending that, when the expert returned documents stating that they are unfit for comparison, examination of an expert by appointment of Advocate Commissioner would not serve any purpose and requested to dismiss the petition, as it amounts to protracting the proceedings.

Upon hearing argument of both the counsel and considering the report of the expert, the Trial Court dismissed I.A.No.240 of 2017, holding that the expert did not give any opinion as to the genuineness of Q-1 to Q-14 by comparing with the admitted signatures, held that there was absolutely no necessity to examine the expert.

Aggrieved by the said order, the present civil revision petition is filed on the ground that, the expert ought to have examined and expressed his opinion and instead of giving opinion, he returned the documents, without ascertaining any reasons for such return and therefore, to elicit truth in the report, Advocate Commissioner is to be appointed to examine him and record his evidence. But, the Trial Court committed an error in dismissing I.A.No.240 of 2017 and requested to set-aside the order in I.A.No.240 of 2017 in O.S.No.811 of 2011 dated 08.06.2017 passed by the II Additional Senior Civil Judge, Kakinada, by allowing this civil revision petition.

During hearing, learned counsel for the petitioner Sri P. Rajesh Babu, reiterated the contentions urged in the grounds of the petition and requested to pass appropriate orders, atleast to find out the truth in the statement of the expert as to the reasons, to conclude that they are unit for comparison or leave it open to these petitioners to file appropriate application under Order XXVI Rule 1 C.P.C, subject to permissibility under law. Whereas, learned counsel for the respondent supported the order of the Trial Court in all respects.

As seen from the material on record, the petitioner filed I.A.No.985 of 2012 under Section 45 of Indian Evidence Act, which was allowed and the documents containing questioned signatures and admitted signatures were sent to the expert for comparison and opinion, since the dispute is with regard to forgery of Sale Agreement dated 14.04.2008. But, the expert was unable to express any opinion as the documents were unfit for comparison. When the expert did not express any opinion, the question of relevancy under Section 45 of Indian Evidence Act does not arise and therefore, the expert need not be examined as a witness before the Court by appointing an Advocate Commissioner for the purpose of recording evidence by an expert is an useless effort, since the expert did not express any opinion. Therefore, the request of the petitioners to appoint an Advocate Commissioner to examine the expert is not for any purpose, more particularly, to prove the case of these petitioners. In such case, except to protract the proceedings for some time no purpose would be served. Hence, the Trial Court rightly dismissed the petition, which needs no

interference by this Court since the order under challenge is free from any legal infirmity, warranting interference of this Court by exercising power under Article 227 of the Constitution of India and consequently, the civil revision petition is liable to be dismissed.

In the result, the civil revision petition is dismissed.

However, liberty is given to these petitioners to file appropriate application to refer the disputed signatures with questioned signatures to any other expert, subject to permissibility under law.

Consequently, miscellaneous applications pending if any, shall stand dismissed. No costs.

Date:12.11.2018

SP

JUSTICE M. SATYANARAYANA MURTHY

