

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

CIVIL REVISION PETITION No.5203 OF 2018

ORDER:

The challenge in this civil revision petition is the order dated 21.08.2018 in I.A.No.229 of 2018 in O.S.No.269 of 2014 passed by the learned Junior Civil Judge, Bhimadole, West Godavari District, dismissing the petition filed by the petitioner/plaintiff under Section 45 of Indian Evidence Act seeking to send the Ex.B4 i.e., borewell Neeti Parudhala Khararu, dated 23.11.2001 to handwriting expert to give his opinion. The ground on which the trial court dismissed the petition was that the petition was filed belatedly when the matter was coming up for arguments and at the stage of trial, when Ex.B4 was marked after impounding the same, the petitioner/plaintiff did not raise any objection about his signature on Ex.B4 and on the other hand, he cross-examined defendant witness at length and it was only when the matter came up for arguments, he filed the petition to refer the document to the handwriting expert.

2. Heard learned counsel for petitioner. Though the respondents are appearing through a counsel, there is no representation on their behalf.

3. On a scrutiny of the record, I am unable to countenance the reasons given by the trial court for dismissal of the petition. As stated supra, the petition was dismissed on the

main ground that while the disputed document Ex.B4 was marked after impounding the same, the petitioner/plaintiff did not raise any objection and he cross-examined the defendant witnesses with reference to Ex.B4 and it was only when the matter was coming up for arguments, the petitioner/plaintiff filed I.A.No.299 of 2018 to refer the disputed document to handwriting expert.

4. Learned counsel for petitioner would submit that since Ex.B4 was excisable to stamp duty when it was tendered in evidence, he took objection with reference to Stamp Act and the court impounded the document. Learned counsel would further submit that the petitioner admittedly did not take objection for marking the document on the specific ground that the document was a forged one. His explanation is that whenever a forged document is sought to be marked by any party, the other party cannot object for marking the document on the ground of forgery. However, the other party can establish that the document which was marked was a forged one. Therefore, the petitioner/plaintiff did not raise objection for marking Ex.B4 specifically on the ground that it was a forged document. Learned counsel would further submit that during the cross-examination of D.W.2 (2nd defendant), he gave specific suggestions that Ex.B4 was not executed by plaintiff and the defendants have created the said document.

5. I find force in the submission of learned counsel for petitioner. A document cannot be objected to be marked as an exhibit on the contention that it is a forged document. If it is the case of the other party that the document sought to be marked is a forged document, that plea has to be established by producing cogent evidence. Therefore, the question of raising objection for marking document on that ground does not arise. To this extent, the plaintiff was right.

6. Thus, a perusal of cross-examination of D.W.2 shows that the plaintiff gave suggestions which would depict that he contends about the genuineness of Ex.B4. His cross-examination is thus:

“It is not true to suggest that no agreement was entered by the plaintiff on 23.11.2001 and he never signed on any document on the above said date. It is not true to suggest that myself and others created Ex.B4. x x x x x It is not true to suggest that no amount was paid by us vide Ex.B4 and the bore was dug by the plaintiff with his own amount. x x x x x It is not true to suggest that the bore well (is) belongs to the plaintiff and we have no right in the bore well.”

7. A close perusal of the line of cross-examination would unerringly suggest that the plaintiff has been vigorously questioning the genuineness of Ex.B4. Therefore, though he did not raise any objection for marking Ex.B4, still he has right to establish his defence by seeking the permission of the court to refer Ex.B4 to a handwriting expert to vindicate his stand. The trial court was not correct in dismissing the petition on

the ground that no objection was raised by the petitioner/plaintiff while the document was marked. As already stated supra, the objection for marking the document on the ground of forgery is not sustainable.

8. In the result, this civil revision petition is allowed, by setting aside the impugned order in I.A.No.229 of 2018 in O.S.No.269 of 2014 passed by the learned Junior Civil Judge, Bhimagole, West Godavari District and the trial court is directed to send Ex.B4 to handwring expert to give his opinion. No costs.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

19.12.2018
SS

U.DURGA PRASAD RAO, J

