

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

CIVIL REVISION PETITION Nos.5204, 5237 AND 5290 OF 2018

COMMON ORDER:

These three civil revision petitions are filed against the common order dated 01.08.2018 in I.A.Nos.319, 320 and 321 of 2018 in O.S.No.427 of 2007 passed by learned I Additional Junior Civil Judge, Ongole, dismissing those petitions filed by the petitioner/2nd defendant.

2. (a) The above I.As. were filed by the petitioner/2nd defendant under Section 151, Order XVIII Rule 17 and Order VIII Rule 1-A(3) of Civil Procedure Code (for short, C.P.C.) to reopen and recall the evidence of petitioner/2nd defendant and to receive the documents mentioned in the list appended to the petition i.e., 1) registered sale deed dated 18.05.1998 executed by petitioner's husband by name Bellamkonda Venkatapathi Chowdary in favour of one Nidamanuri Chenchiah, 2) promissory note dated 11.07.2002 executed by petitioner's husband in favour of one Nidamanuri Hanumantha Rao and 3) another promissory note dated 29.11.2001 also executed by petitioner's husband in favour of one Garikapati Thirupathaiah. This suit O.S.No.427 of 2007 is a specific performance suit, wherein, the case of respondent/plaintiff is that the mother of petitioner/2nd defendant executed an agreement to sell dated 12.06.1982 in favour of the respondent/plaintiff in respect of

plaint schedule property and subsequently, the mother of 2nd defendant died. While so, the 1st defendant was proclaiming that he was having a document to show that a part of the plaint schedule property was purchased by him, which is false.

(b) In this backdrop, when the matter was coming up for arguments, the aforementioned petitions were filed by the petitioner/2nd defendant.

(c) The trial court, upon hearing both sides, dismissed the above petitions on the main observation that already thumb impression of mother of the petitioner by name Ravi Audemma, who was the executant of Ex.A1, was sent to expert for opinion and the expert submitted his opinion. In that view, the comparison of the disputed signature of the attester under Ex.A1 with the admitted signatures on the documents appended in the list of the petition would not serve any purpose. Further, nowhere in the written statement, the petitioner/2nd defendant pleaded that signature of the attester in Ex.A1 was not that of her husband. Since there is no denial pleading to that effect, no evidence can be permitted to be adduced. Moreover, Ex.A1 was of the year 1982, whereas, the signatures sought to be sent for comparison appearing on the documents were of the year 2001 and 2002 and no contemporaneous signatures were produced and therefore, no purpose would be served in

referring the documents for comparison of the signatures. The trial court also observed that it was an old suit of the year 2007 and the petitions were filed after closure of the evidence and during the course of arguments and hence at that belated stage, petitions cannot be allowed. The trial court accordingly dismissed the petitions.

Hence, the instant civil revision petitions.

3. Heard learned counsel for petitioner and respondent.

4. Learned counsel for petitioner would strenuously argue that referring of the admitted signatures of the husband of the petitioner/2nd defendant for comparison with his alleged signature appearing on Ex.A1 will help the 2nd defendant to establish her case that the agreement to sell is a concocted document and the trial court instead of dismissing the petitions, ought to have allowed them and afforded an opportunity to the petitioner to refer the documents to the expert. Delay is not a ground when substantial justice is to be rendered particularly when valuable rights of the parties are at stake.

5. Per contra, learned counsel for respondent/plaintiff, while supporting the impugned orders, would vehemently argue that the suit is of the year 2007 and already once the suit was reopened at the instance of respondent/1st defendant and Ex.B10 was marked and thereafter, when

the matter was coming up for arguments again, petitions were filed by the 2nd defendant to reopen the matter and recall her for marking the documents which purportedly contain the signatures of her husband. Learned counsel further argued that as rightly observed by the trial court, no corresponding plea was taken in the written statement to the effect that the husband of 2nd defendant never acted as an attester to Ex.A1. Without such a plea, the petitioner/2nd defendant cannot be permitted to take such a plea in the petitions and she cannot be permitted to adduce evidence to that effect. This Court finds force in the submission of learned counsel for respondent.

6. As rightly observed by the trial court, no plea was taken by the petitioner/2nd defendant in her statement contending that her husband was not an attester of the alleged document. The said plea being a factual plea, the petitioner ought to have taken such a denial plea in her statement, without which, no evidence can be permitted to be adduced, that too at the fag end of the suit. Further, as rightly observed by the trial court, the thumb impression of petitioner's mother was already referred to the expert for comparison with her admitted thumb impression and report was already submitted by the expert. In that view, referring the signature of the petitioner's husband who was said to be an attester on Ex.A1 would be of no much consequence in the

suit. So, at the outset, I find no illegality or irregularity in the common order impugned. Hence, there are no merits in the civil revision petitions.

7. Accordingly, civil revision petitions are dismissed. No costs.

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

U.DURGA PRASAD RAO, J

26.10.2018
SS

